

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.M.C. No. 108/2023

Date of order: 19.02.2024

Wallam Jingsuk Barim vs The Union of India & ors

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. G. Yobi, Adv.
Mr. P. Yobin, Adv.
Mr. S. Singpho, Adv.
Mr. K.V. Kharlyngdoh, Adv.

For the Respondents : Dr. N. Mozika, DSG with
Mr. K. Ch Gautam, Adv.
Ms. A. Pradhan, Adv.

ORDER

(Made by Hon'ble, the Chief Justice)

The petitioner is arrayed as an Accused No.3 (A3) in connection with a Special NIA Case No.1 of 2022 (NIA Case No.RC-7/2022) registered for the alleged offences punishable under Section 120B/121/121A/122 IPC read with Sections 3 and 5 of the Explosive Substance Act, 1908 and a Charge Sheet was filed vide Charge Sheet No.18/2022 dated 29.07.2022 under Section 120B IPC r/w Section 6 of Explosive Substance Act, 1908.

2. The petitioner had moved bail applications before the Special Judge (NIA) and the same was rejected on 22.09.2022, 09.03.2023 and

21.08.2023. Thereafter, the petitioner has filed a bail application before this Court, which was taken up as Bail No.48 of 2023 and the same was withdrawn on 28.09.2023 with liberty to file afresh application.

3. According to the petitioner, there are no materials to implicate the petitioner, who is said to be a member of the banned Hynniewtrep National Liberation Council (HNLC) and there is no order of detention under Unlawful Activities (Prevention) Act, 1967. It is submitted by the petitioner that for an offence falling under Section 120B IPC namely, criminal conspiracy, the maximum punishment that can be imposed as per the provision of the Act is either death or imprisonment for life and there is no iota of evidence to show that the petitioner had deliberately conspired with others to commit the offence of bomb blasting under Section 6 of the Explosive Substance Act, 1908, thereby the petitioner had abetted the offence.

4. It is further submitted by the petitioner that he is in judicial custody for one year, nine months and twenty-five days as on the date of filing this application on 13.12.2023 and that the prosecution has enlisted 64 witnesses to be examined, which shows that the trial will take numerous time and further incarceration of the petitioner in judicial

custody will cause great prejudice and affect the petitioner to effectively prepare his defence for the fair trial.

5. It is also submitted that the Special Judge has failed to appreciate the plea of the petitioner that he has nothing to do with HNLC. Even though various averments have been raised in support of the bail application, we are concerned only with regard to the condonation of delay in entertaining the main appeal and according to the petitioner, there is a delay of 114 days in filing the appeal.

6. The Special Judge (NIA) has rejected the last bail application on 21.08.2023 and on receipt of the certified copy of the order on 13.09.2023, the Bail Application No.48 of 2023 was moved before this Court, which was disposed of with liberty to the petitioner to file afresh application. It was reiterated that the delay of 114 days will not cause any prejudice to anyone except the petitioner, who is under incarceration for nearly two years.

7. Learned counsel for the petitioner strenuously argued that though there is a limitation period prescribed under Section 21 of the National Investigation Agency Act, 2008, the period of 30 days with further 90 days to enable the Court to condone the delay in preferring

the appeal, the outer limit prescribed under the said provision is not an absolute one, as the bail is the rule and jail is the exception. For the sake of convenience, Section 21 is extracted below:

“21. Appeals.

- (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
- (2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.
- (3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.
- (4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
- (5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

8. The respondent / NIA has filed the affidavit dated 07.02.2024, stating that the petitioner was involved in a serious offence of crime and permission was sought to reserve liberty to put forth the submissions on merits in the bail application and confine the arguments with regard to

the non-maintainability of the application to condone the delay of 114 days in preferring the appeal.

9. Learned counsel for the respondent contended that there is no sufficient cause shown by the petitioner to condone the delay of 114 days and in terms of Section 21 of the Act, which is referred to supra, no application can be entertained beyond the outer time limit of 30 days as prescribed under the Act of 2008. He has further contended that the provisions of the Limitation Act, 1963 much less Section 29 (2) will not be applicable to this case, as the Act of 2008 is a special law, governing the proceedings relating to the offences falling under the said Act. Section 29 (2) of the Act, 1963 reads as follows:

“29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

Thus, it was stated that the petitioner, having not shown any sufficient cause for condoning the delay of 114 days in preferring the appeal, has no statutory right to seek for condonation of delay and hence, the application ought to be rejected at the threshold.

9.1. Learned counsel for the respondent has referred to the following judgments in support of his contention that when there was a restriction pressed into service in entertaining a delay petition, as the power to condone the delay is restricted under the first proviso to sub-section (5) of Section 21:

***i) Nasir Ahammed vs. National Investigation Agency*, reported in *MANU/KE/1598/2015/(2015) 3KLT 320*;**

19. In *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission* MANU/SC/0252/2010: (2010 (2) KLT SN 34 (C. No. 43) SC : (2010) 5 SCC 23), the Supreme Court held thus:

"32. In view of the above discussion, we hold that S. 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in S. 125 of the Electricity Act and its proviso. Any interpretation of S. 125 of the Electricity Act which may attract the applicability of S. 5 of the Limitation Act read with S. 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and the proviso to S. 125 will become nugatory."

The N.I.A. Act is an Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations and for matters connected therewith or incidental thereto. The superintendence of the N.I.A. shall vest in the Central Government, as provided in S. 4 of the N.I.A. Act. S. 6

provides for investigation of scheduled offences. S. 7 provides that the N.I.A. may request the State Government to associate itself with the investigation. S. 9 mandates that the State Government shall extend all assistance and co-operation to the Agency for investigation of the scheduled offences. Special courts are constituted under S. 11 for the trial of scheduled offences. S. 15 of the N.I.A. Act provides for appointment of Public Prosecutors and Additional Public Prosecutors. S. 16 provides for the procedure and powers of Special Courts. S. 19 of the N.I.A. Act states that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance. Sub-section (2) of S. 21 states that every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal. The scope of the provisos to sub-section (5) of S. 21 of the N.I.A. Act has to be considered in the light of the other provisions in the Act. The period of limitation provided under sub-section (5) of S. 21 is thirty days. The first proviso to sub-section (5) empowers the High Court to entertain an appeal after the expiry of thirty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of thirty days. The second proviso provides that no appeal shall be entertained after the expiry of the period of ninety days. The first proviso to sub-section (5) of S. 21 itself deals with condonation of delay in filing appeal and the delay up to sixty days (ninety days from the date of order) can be condoned by the High Court. By making a restriction that no appeal shall be entertained after the expiry of the period of ninety days, the application of S. 5 of the Limitation Act is expressly excluded. The High Court has jurisdiction to condone the delay in filing the appeal. But that power is restricted under the first proviso to sub-section (5) of S. 21. A further restriction in the second proviso is a clear indication that the High Court cannot exercise the power under S. 5 of the Limitation Act to condone the delay. To that extent, it amounts to an express exclusion of S. 5 of the Limitation Act as contemplated under S. 29(2) of the Limitation Act.

For the aforesaid reasons, we are of the view that the application for condonation of delay is not maintainable. Accordingly, the application for condonation of delay as well as the Criminal Appeal are dismissed as not maintainable.”

ii) Sheikh Rahamtulla and others vs. National Investigation Agency, reported in ***2023 SCC Online Cal 493***;

“57. Section 21 of the Act of 2008 has prescribed a different set of limitation regulating the accessory right to appeal to the High Court. Section 21 of the Act of 2008 has allowed an unfettered and unconditional appeal to the High Court within 30 days from the date of the judgment, order or sentence. The first proviso has granted an extension of up to 90 days subject to the satisfaction of the High Court that the appellant had sufficient cause for not preferring the appeal within the period of 30 days.

58. For the first 30 days from the impugned judgment, order or sentence of the Special Court, the appeal is unfettered, unconditional and is not subject to any restriction. Fundamental right to prefer the appeal in a case of conviction affecting personal liberty has not been interfered with, trampled upon or subjected to any restriction for the first 30 days from the date of the impugned judgment, order or sentence.

74. The issue that has been noted in paragraph 1 of this judgment has to be answered in the negative and as against the appellant, in light of the discussions above. An appeal sought to be filed after expiry of the period of 90 days from the date of judgment or order or sentence, under Section 21 of the Act of 2008 cannot be entertained. The period of 90 days from the date of the judgment or order or sentence has to be calculated on the principles analogous to Section 12 of the Limitation Act, 1963.”

10. Heard the learned counsel on either side and perused the material documents available on record.

11. The petitioner/A3, who was booked under the NIA Act, 2008, has been charge-sheeted for an offence under Section 120B IPC read with Section 6 of the Explosive Substance Act, 1908 for the alleged occurrence of a bomb blast. Admittedly, he has been undergoing incarceration from 04.02.2022 and that his bail applications have been rejected thrice. The last bail application filed by the petitioner was disposed of with liberty to file afresh application, which has been filed with a delay of 114 days. Of course, it is true that there is no restriction to file number of bail applications before the Trial Court, but as per the condition stipulated under the Act, it should be well within time. The petitioner could have filed a bail application immediately after withdrawal of the earlier application before the trial court.

12. Once a criminal act is committed by a person, the code of Criminal Procedure will be put into operation and Sections 4 & 5 of Cr.P.C. clearly contemplate that the offences committed under the Indian Penal Code will necessarily have to be investigated in a thorough manner without affecting the special enactment in existence. For the sake brevity, Sections 4 & 5 of Cr.P.C. are extracted hereunder:

4. Trial of offences under the Indian Penal Code and other laws.—

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

13. There is no doubt that the NIA Act of 2008 is a special enactment. Though Article 21 of the Constitution enumerates the Protection of Lives and personal liberty and to be more precise, no person shall be deprived of his life or personal liberty except according to procedures established by law, insofar as bail is concerned, it comes under the statutory right and not under the fundamental right.

14. The petitioner / A3 has relied upon two judgments of the High Courts, namely, one rendered by the Delhi Court reported in **2019 SCC OnLine Del 9158 (Farhan Shaikh v. State (National Investigating Agency)** and other by the Madras High Court in **Crl.M.P.No.19676 of 2023 in Crl.A.SR.No.52810 of 2023 (Buhari @ Kichan Buhari vs. State)**. The facts involved therein are distinguishable one, as the

petitioners therein have duly shown sufficient cause to condone the delay as is evident from reading of Paragraph Nos.90 to 95 of the judgment (**Farhan Shaikh v. State (National Investigating Agency)**), whereas the petitioner herein, having obtained adverse orders thrice and having withdrawn the last one, had missed the bus in filing yet another bail application in time and there was no whisper as to the cause for the delay, thereby sufficient cause to the best satisfaction of this Court is apparently absent, which is a mandatory requirement under the Act, 2008. Similarly, the Madras High Court in the given case (**Buhari @ Kichan Buhari vs. State**) proceeded on the basis that the fundamental right enshrined under the Constitution cannot be given a go-by by a procedural law, whereas, as stated earlier, bail is a statutory right and not a fundamental right, so as to bring it within the ambit of violation of fundamental right. Thus, the decision relied upon by the petitioner in the said case will not inure to the benefit of the petitioner, as it would amount to opening a Pandora box.

15. When the Special Law prescribes an outer time limit, this Court cannot extend the time on the reasoning that it would amount to legislation by the Court itself, which is not permissible. For example, if any application is filed for discharge, it has got to be filed within the time limit stipulated and if the contention of the petitioner is accepted

against the discharge petition, the accused will take his own sweet time to file such a petition with a request to condone the delay. Though Article 21 of the Constitution deals with personal liberty of a person, it does not mean that the said Article can be invoked to overcome the statutory provisions, more so, Special Enactments like NIA. For example, under the Employees Provident Fund Act, 1952 r/w Rule 7(2) of the Tribunal (Procedure) Rules, 1997 (extracted below), an outer time limit of 120 days is prescribed under Section 7-I in preferring the appeal beyond which the Tribunal will become *functus officio*.

“7(2) – Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification / order, prefer an appeal to the Tribunal:

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.”

Similarly, under the Payment of Gratuity Act, 1972 also, the maximum period of 120 days is prescribed to prefer an appeal before the Appellate Authority against the order of the Controlling Authority, beyond which the Appellate Authority has no power to entertain the

same as also the condition of pre-deposit within the time is emphasized, in the absence of which, no appeal can be entertained.

16. At this point of time, we feel it appropriate to refer to the maxim “*Ut res magis valeat quam pereat*”, which means that the statutes must be construed so as to make them effective and constructive and not ineffective or destructive. The Legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay, legislature left it to the Rule making authority to make a provision for limitation under the NIA Act, 2008. The provisions of the Limitation Act is expressly excluded, as a specific provision is made under the NIA Act, 2008. There is no bar for the petitioner to file any number of bail applications before the Special Court and if aggrieved by any order to be passed by the said Court, an appeal can also be preferred before the Higher Forum within the time prescribed under the NIA Act, 2008 and the Court is empowered to take up the matter, provided the appeal is filed well within 120 days.

17. In the result, finding no substance in the argument of the petitioner, we are of the view that the petition is liable to be dismissed. Accordingly, ***Crl.M.C.No.108 of 2023 stands dismissed*** and the petitioner / accused is at liberty to move the Special Court by way of

filing afresh bail application, if so advised. In case any such bail application is filed, the Special Court is expected to try the same and bring the issue to a logical conclusion without being uninfluenced by any of the observations made hereinabove.

18. Even though initially we thought of condoning the delay and expressed our view in that regard in the Open Court, after reserving the case for orders and upon going through various judgments of the Supreme Court and other High Courts and the principles of law, we have changed our mind, which is permitted in terms of the dictum laid down by the Supreme Court in the case of **Kushalbhai Ratanbhai Rohit and Others vs. State of Gujarat**, reported in **AIR 2014 SC 2291**, wherein it was held that once the order is signed, it attains finality and Section 362 Cr.P.C. is a bar and the Court cannot recall the order, but however, if it is not signed, the Court empowers to change its view.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

Meghalaya
19.02.2024
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PRE-DELIVERY ORDER IN
CrI.M.C. No. 108/2023