

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A (D) No. 18/2025
CrlM No. 540/2025

Mohd. Ishaw Chopan

.....Petitioner/Appellant(s)

Through: Mr. Mohd. Akeel Wani, Advocate

Vs.

National Investigation Agency
Jammu and another.

..... Respondent(s)

Through: Mr. Vishal Sharma, Sr. Advocate (DSGI) with
Mr. Eishaan Dadhichi, CGSC
Mr. Ashwani Verma, Public Prosecutor NIA

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER (ORAL)
24.09.2025

Sanjeev Kumar J

CrlM No. 540/2025

1. This is an application for condonation of delay of 59 days in filing an appeal under Section 21 of NIA Act 2008, challenging an order dated 09.12.2024 passed by the trial Court in an application titled "***Mohd. Ishaq Chopan Vs. National Investigation Agency and another***". Objections by the respondents have been filed.
2. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the appellant has shown sufficient cause, which prevented him for filing the appeal within time. The appellant is admittedly in jail and the appeal challenging the order

dated 09.12.2024 (supra) has been filed through her mother. Keeping in view the aforesaid fact, we find it a fit case for condoning the delay. The application is allowed and the delay in filing the appeal is condoned.

3. *Disposed of.*

Crl A (D) No. 18/2025

1. This appeal filed by the appellant, namely, Mohd. Ishaw Chopan under Article 21 of the NIA Act, 2008 (hereinafter referred to as “***the Act***”) is directed against an order dated 09.12.2024 passed by the learned Special Judge, NIA cases, Jammu [for short “***the Trial Court***”] in an appeal, i.e., File No. 215/Cr. Misc. titled “***Mohd. Ishaw Chopan Vs. National Investigating Agency***”, whereby the trial Court has rejected the appeal of the appellant herein, being barred by limitation.
2. Impugned judgment is challenged by the appellant, primarily, on the ground that the learned Trial Court has not appreciated that the appellant being in jail was incapacitated to file the appeal within a period of limitation and also that the order challenged before the trial Court in the appeal was passed by the Designated Authority beyond the stipulated period of 60 days and, therefore, the entire order of attachment/seizure confirmed by the Designated Authority was without jurisdiction.
3. Before we advert to the grounds of challenge, a quick look on the facts leading to the filing of this appeal will be necessary. A vehicle bearing Registration No. JK03L-4135 owned by the appellant herein was seized by the Chief Investigating Officer, NIA on 23.11.2022 in NIA case No. RC

No. 03/2022/NIA/Jammu. This seizure was with the prior approval of the Direction-General, NIA accorded order No. 2246/12 dated 20.10.2022.

4. The vehicle was brought before the Designated Authority, specified by the Central Government under Section 21(I) (e) of the Unlawful Activities (Prevention) Act, 1967 (*hereinafter referred to as the, “Act of 1967”*) for confirmation of the seizure on 25.11.2022. The Designated Authority put the appellant to Show-Cause-Notice, so as to enable him to file representation. Responding to the notice, a representation was filed by the appellant on 30.12.2022. The Designated Authority sought the comments of NIA in respect of the issues raised by the appellant in the representation and after considering the matter, passed order dated 23.01.2023, confirming the seizure of the vehicle in question seized by the Chief Investigating Officer on 23.11.2022.
5. The appellant was also informed that he was entitled to prefer an appeal to the Court within a period of 30 days from the date of receipt of this order. The appellant was contesting the proceedings before the Designated Authority and had also preferred his representation and, therefore was well aware about the passing of the order by the Designated Authority. He, however, preferred to remain silent and filed a belated appeal before the trial Court which the Court dismissed, being barred by limitation. This is how, the appellant is before us, seeking to challenge the order passed by the trial Court as well as the Designated Authority in this appeal.
6. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order passed by the Designated Authority dated 23.01.2023, as also the order of dismissing the

appeal passed by the trial Court in terms of Section 25(6) of the Act of 1967, is perfectly legal and in consonance with law. The factual aspect of the matter, i.e., “whether the seized vehicle represents the ‘*proceeds of terrorism*’” is a question of fact, which the Designated Authority has gone into in light of the material placed before it by the NIA and the representation filed by the appellant.

7. The Designated Authority has arrived at its conclusion that the seized truck was involved for receiving and transportation of Pakistani terrorists of JeM from international border in Samba Sector to Sunjwan, Jammu. It was also found on facts that in the month of December, 2021, the appellant Mohd. Ishaw Chopan and his associate Bilal Ahmad Waray had used the vehicle in question for transportation of four freshly infiltrated Pakistani terrorists of JeM from International Border in Samba Sector to Kashmir valley and safely handed over said terrorist to unknown OGWs at Lassipora, Pulwama.
8. In view of the aforesaid findings of fact recorded by the Designated Authority, the order of seizure passed by the Investigating Officer was confirmed. The trial Court has rightly not interfered with the aforesaid order of the Designated Authority, may be on the ground of limitation, but the fact remains that there was no merit in the appeal as well.
9. Even on merits, we do not find any case made out for entertaining this appeal. Admittedly, the Designated Authority has passed the order, confirming the seizure within a period of 60 days, i.e., the period prescribed under Section 25 (3) of the Act of 1967. The argument of Mr. Mohd. Akeel Wani that the order of the Designated Authority was in violation of principles of natural justice is also without any substance, in that, not only

the petitioner made a representation in response to the notice issued by the Designated Authority, but the same was also duly considered by the Designated Authority before passing the final order.

10. Be that as it may, the fact remains that the seizure of the vehicle on the ground that it represents proceeds of terrorism, is to be followed by forfeiture in terms of Sections 26 and 27 of the Act of 1967. Before we proceed further, we deem it appropriate to set out the provisions of Sections 26 and 27 of the Act of 1967 below: -

“26. Court to order forfeiture of proceeds of terrorism.-

Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.-

(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the ground on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached-

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Court.”

From a reading of Sections 26 and 27, it clearly transpires that the Court initiating proceedings for forfeiture of the '*proceeds of terrorism*' is under an obligation to issue a show-cause notice to the person holding or in possession of '*proceeds of terrorism*' informing him of the grounds on which it is purposed to forfeit seized vehicle/goods and in such an eventuality, the person concerned shall have an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture.

Sub-Section 2 of Section 27 clearly provides that no order of forfeiture under Sub-Section 1 of Section 27 shall be passed by the Court if the person in possession establishes that he is a *bona fide* transferee of such proceeds for valid reasons without knowing that it represents '*proceeds of terrorism*'.

11. In view of the clear position emerging from reading of Sections 26 and 27 of Act of 1967, we are of the considered view that as and when the Court initiates proceedings for forfeiture of the seized vehicle, a notice of hearing shall be provided to the appellant. The appellant, who is served with a show-cause notice under Section 27(1) of the Act of 1967, shall be well within his rights to plead and establish before the Court that he is a *bona fide* transferee of the seized vehicle representing the proceeds of terrorism.
12. In view of the aforesaid, we do not find any merit in this appeal and the same is, accordingly, **dismissed** alongwith connected applications, if any.

13. We further make it clear that nothing said hereinabove in this order shall prejudice any of the parties in the proceedings for forfeiture before the Court concerned.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
24.09.2025
Rahul

Whether the order is speaking: Yes
Whether the order is reportable: Yes