

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.16471 of 2015**

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1. Anil Kumar son of late Sita Ram Prasad resident of Village - Rasoolpur  
P.S. - Barharia, District - Siwan.

.... .... Petitioner/s

Versus

1. The State of Bihar.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Suresh Pd.Singh(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR**  
**SINGH**  
**ORAL ORDER**

2      15-04-2015                      Heard learned counsel for the petitioner and the state.

The present application has been filed for modification of order dated 12.3.2015 passed in Cr. Misc. No.8479 of 2015 whereby the petitioner's application for bail under sections 439 and 440 of Cr.P.C. as not maintainable was disposed of in view of the ratio laid down by a Division Bench of this court in Cr.W.J.C. No. 487 of 2014, Aasif P.K. alias Md. Aaripha alias Aasif alias Md. Aasipha alias Md. Aasif alias Aarif Vs The State of Bihar and others. Paragraph nos. 157 and 158 read as follows:

“157. An accused, who has been taken into custody in connection with any offence under the NIA Act, cannot apply to the High Court seeking bail, under Section 439 of the Code of Criminal Procedure, without making any application to the Special Court or Court of



Session, as the case may be, under Section 437 of the Code of Criminal Procedure nor can the accused, on rejection of his application for bail by the Special or the Court of Session, as the case may be, under the NIA Act, apply to the High Court to invoke the High Court's jurisdiction under Section 439 of the Code of Criminal Procedure.

158. However, an accused may, in terms of provisions of Section 21(4) of the NIA Act, prefer an appeal to the High Court, against an order passed by the Special Court, or the Court of Session, as the case may be, refusing to enlarge him on bail. If a Special Court or Court of Session, as the case may be, grants bail under the NIA Act, the State cannot invoke High Court's powers, under Section 439(2) of the Code of Criminal Procedure for cancellation of such bail. The remedy of the State lies, in such a case, in preferring an appeal, in terms of Section 21(4) of the NIA Act, to the High Court for cancellation of bail and if such an appeal is preferred, it would remain open to the High Court to examine the order, granting bail, on merit and determine if bail could at all have been granted to the accused by the Special Court or the Court of Session, as the case may be. At the same time, it would also remain open to the High Court to

determine if the accused, having received bail, has misused his liberty and, whether his bail should, therefore, be cancelled or not.”

The above ratio laid down in the case of Aasif P.K. (supra) has been diluted by judgment rendered by the Full Bench (Three Judge Bench) of this court in Cr. Appeal (FB) No.149 of 2015 (Bahadur Kora and ors. Vs. State of Bihar). The relevant paragraph of the said judgment reads as follows:

“.....It has already been mentioned that in these cases not a single step referable to Section 6 or 7 were taken either by the State Government or by the Central Government or by the N.I.A. Therefore, simply because an offence punishable under the Unlawful Activities (Prevention) Act, 1967 was alleged, the investigation and trial of such cases cannot be brought under the purview of the Act.

On facts it is clear that in none of the cases herein (a) the Central Government or the State Government has taken any steps under Section-6 of the Act; (b) the N.I.A. has transferred the investigation of the trial of the offence to the State Government under Section-7; (c) the State Government did not constitute any special court under Section-22; The occasion to forward a case to the court of sessions under Sub-section (3) of Section 22 would arise only if the case was transferred to the State Government by the N.I.A. Admittedly, no such eventuality has taken place. The result is that the very forwarding of the cases to the Court of Sessions or the taking cognizance of the offences by the court of sessions, directly, on the basis of the judgment of this Court in Aasif's case (supra) is untenable. As a consequence, the appeals preferred under Section-21(4) of the Act

become not maintainable.

Before parting with the case, we intend to express our view about two legislative aspects. Firstly, The definition of “Scheduled Offence” under Section 2(g) of the Act makes one to feel that it would have been better had it been worded in more succinct and clear terms. The “Scheduled Offence” is defined as to mean an offence specified in the Schedule. The Schedule, however, consists of the names of several enactments and few sections of Indian Penal Code in item 8, which reads as under:

*“1. The Atomic Energy Act, 1962 (33 of 1962); 2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967); 3. The Anti-Hijacking Act, 1982 (65 of 1982); 4. The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982 (66 of 1982); 5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993); 6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002); 7. The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005); 8. Offences under- (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)]; (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860)”*

The proper course would have been to define the expression „Scheduled Offence” as an offence, punishable under the enactments included in the Schedule.

The second is about sub-section (3) of Section 22 of the Act. It refers to “any offence punishable under this Act”. Even a microscopic analysis of the Act discloses that the Act does not define any independent offences nor does it provide for punishment thereof. It is felt that the proper expression to be employed, would have been “any offence which is liable to be investigated and tried under this Act”.

We, therefore, hold that

(A) the judgment in Aasif's case (supra), insofar as it held that investigating agency of the State Government can investigate and try offences in accordance with the provisions of the N.I.A. Act, in the cases where offences punishable under the Unlawful Activities (Prevention) Act are alleged, and that such cases must be tried by the Courts of Sessions under Sub- section (3) of Section-22 of the N.I.A. Act, cannot be said to have laid the correct law;

(B) the cases even where offences punishable under the provisions of U.A.P. Act are alleged shall be tried by the courts as provided for under the Cr.P.C. and not in accordance with the special procedure, under the Act unless (i) the investigation of such cases is entrusted by the Central Government to the N.I.A. and (ii) the N.I.A. transfers the same to the investigating agency of State Government.

The appeals shall be treated as bail applications, to be heard under Section-439 of Cr.P.C. and the registry shall place the same before the learned Single Judges after requiring the parties to alter the provisions of law;

(C) all the cases in the State of Bihar, which are being tried by the Courts of Sessions, on the basis of the judgment of this Court in Aasif's case (supra), shall stand transferred to the courts that otherwise have jurisdiction to try them; and

(D) none of the steps taken in such cases that were pending before the Court of Sessions shall render the investigation or trial, invalid or unlawful."

In view of the above ratio laid down by Full Bench

(Three Judge Bench), the order dated 12.3.2015 passed in Cr.

Misc. No. 8479 of 2015 is hereby rescinded and Cr. Misc. No.

8479 of 2015 is deemed to be revived for Admission before the appropriate bench.

The modification application stands disposed of.

**(Dinesh Kumar Singh, J)**

Anil/-

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