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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 16th November, 2016

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CRL.A. 642/2016

MOHD NASER PACKEER

..... Appellant

Through: Mr. M.S. Khan, Adv.

versus

NATIONAL INVESTIGATION AGENCY

..... Respondent

Through: Mr. Sanjay Jain, ASG with
Mr. Abhishek Bagaria, SPP,
Ms. Rajul Jain and
Mr. Vignaraj Pasayat, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, J

Crl.M.A.No.10879/2016

Heard.

For the reasons stated in the application, we are satisfied that the appellant was prevented from sufficient cause from filing the appeal belatedly. Therefore, delay in filing the appeal is hereby condoned and the application is allowed.

CRL.A. 642/2016

1. The instant appeal has been filed by the appellants under Section 21(4) of the National Investigating Agency Act, 2008

(‘NIA Act’ hereafter) assailing an order dated 8th April, 2016 passed by the learned District & Sessions Judge, Special Court (NIA), New Delhi whereby the application for grant of statutory bail under Section 167(2) of the Code of Criminal Procedure of the appellant was dismissed.

2. The matter relates to a case registered by the National Investigation Agency being FIR RC No.14/2015/NIA/DLI under Section 125 of the IPC and Section 18, 18B, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967

3. For the purposes of the present appeal, it is completely unnecessary to go into the matter on merits. It is an admitted position that the aforesaid case stand registered and the appellants stand arrested in the case on 11th December, 2015.

4. A compilation of the relevant orders and applications relating to the case has been handed over in court by Mr. Sanjay Jain, learned ASG after giving copy to the other side which is taken on record.

5. In accordance with the provisions of Section 43D{(2)b} of the Unlawful Activities (Prevention) Act, the NIA-respondent herein filed an application on 11th March, 2016 seeking extension of the period of detention in the case against the appellants beyond the period of 90 days upto 180 days for completing the investigation. An application u/s 167(2) of the CrPC had also been moved on behalf of the appellant.

6. It appears that in this case a report was filed by the learned Public Prosecutor under Section 43D{2(b)} of the UA(P) Act in a

sealed envelope seeking extension for the period of investigation with the following averments:

" 8. That during the course of investigation the accused had unearthed the larger conspiracy of IS activities in India and abroad including recruitment of resident and non-resident Indians by the IS. The identity involved of such associates is being ascertained.

9. That the NIA has identified some IS cadres in India and in this regard 16 more accused have been arrested from different parts of India, so far. The investigation in the instant case is spread in different parts of country and abroad. The investigation report in respect of accused Mohammed Naser is enclosed herewith in sealed cover for your perusal.

Prayer

It is therefore humbly prayed that Hon'ble Court may graciously be pleased to order for the detention of accused Mohamed Naser in this case beyond the period of 90 days i.e. 11.03.2016 onward from the date of his arrest i.e. on 11.12.2015 and extend the same as provided under section 43{2(b)} of UA(P) Act up to 180 days or the period as may be deemed fit by the Hon'ble Court justifiable in view of the facts and circumstances enumerated in this humble petition as well as on the basis of record as per the case diaries which is submitted for kind perusal and appreciation by the Hon'ble Court."

7. The application by the NIA was disposed of by the learned Special Judge, NIA by an order passed on 11th March, 2016 directing as follows :

"... Report of the Ld. PP, NIA u/s 43D of UA(P) Act has also been filed in a sealed envelope and the same is taken on record.

Heard. Keeping in view the aforesaid facts and

circumstances, the application stands allowed and the accused above named is directed to be kept in Judicial Custody and be produced before this court on 08.04.2016."

8. So far as the application moved on behalf of the appellant u/s 167(2) CrPC was concerned, the learned Special Judge, NIA vide the same order was pleased to issue notice, which was accepted by the ld. PP for the NIA to which he sought to file reply. The application was directed to come on 8th April, 2016 for reply and disposal.

9. It is complained by the appellant that in as much as no charge sheet came to be filed on 8th April, 2016 nor the period of investigation extended beyond this day, an indefeasible right accrued to the appellants to be released on bail in accordance with the provisions of Section 167(2) of the Code of Criminal Procedure. For this reason, they moved an appropriate application seeking grant of statutory bail. This application was placed before the Special Court, NIA on 8th April, 2016.

The NIA filed a reply on the 8th April, 2016 praying for dismissal of the bail application. A separate application was also moved by the NIA on the same date seeking extension of the period of Judicial Custody of the appellant for another period of 30 days. Reliance was placed on the report filed by the ld. PP, NIA u/s 43{2(b)} of the UA(P) Act on 11th March, 2016.

10. The application under Section 167(2) of the CrPC filed by the appellant was dismissed by the order dated 8th April, 2016 observing that the extension of time for filing the charge sheet

which was sought by the NIA stood granted and the application filed by the appellant under Section 167(2) CrPC had become infructuous. Additionally, it was directed that the appellant would be kept in judicial custody to be produced before the court on 6th May, 2016

11. Mr. M.S. Khan, learned counsel for the appellant has placed before us the application which was filed by the NIA on 8th April, 2016 to contend that by the order dated 11th March, 2016 extension had been granted only for 30 days and it was so understood by the NIA.

12. It has been submitted by Mr. Sanjay Jain, learned ASG that the application was filed on a misreading of the order and as a matter of abundant caution by the officer, it filed the application on 8th April, 2016.

13. We also find that the order dated 11th March, 2016 is explicit when it states that the application stands allowed, meaning thereby that the prayer as made in the application had been granted.

It needs no elaboration that an understanding of an order by the party would not detract from what has been stated in the order.

14. In view of the above discussion, this appeal is devoid of any legal merit and is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

NOVEMBER 16, 2016/kr