

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32780 of 2019

Arising Out of PS. Case No.-14 Year-2018 Thana- NIA District- Patna

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DILIP RAM @ DILIP KUMAR, aged about 23 years, Male, Son of Parikshan Ram, Resident of Village - Harpurgos, P.S.- Saraiya, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Union of India through the Ministry of Home Affairs, New Delhi.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Mithilesh Kumar Vidyarthi, Advocate.
For the State	:	Mr. Abhay Kumar, A.P.P.
For N.I.A.	:	Mr. Manoj Kumar Singh, (Spl. P.P. (NIA)).

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 08-07-2019 Heard learned counsel for the petitioner, learned
counsels for the State and The National Investigation Agency.

The present application has been filed for grant of bail
to the petitioner under Sections 439 and 440 of the Code of
Criminal Procedure.

The case relates to The National Investigation
Agency, Act, 2008 which is a Special Act. The procedure is
made to govern as per the provisions of the Act. As per Section
21(4) of the Act, an appeal is to be filed by the petitioner.

Section 21 of the Act are the following:

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.

In the case of Aasif P.K. @ Md. Aaripha @ Aasif @ Md. Aasiphs @ Md. Aasif @ Aarif. Vs. The State of Bihar through Principal Secretary, Department of Home Affairs, Government of Bihar & Ors., reported in 2015(1) PLJR, 1017, Section 21 of The National Investigation Agency Act, 2008 was considered and the same has been answered in paragraph no. 163 of the judgment.



Paragraph no. 163 of the aforesaid judgment is as follows:-

163. Recently, in the case of the **State of Andhra Pradesh through I.G., National Investigation Agency Vs. Md. Hussain @ Saleem**, reported in (2014) 1 SCC 258, the Supreme Court had the occasion to examine the issue as to whether an application under Section 439 of the Code of Criminal Procedure would be maintainable before the Single Bench of High Court. Having referred to its earlier decision in **Usmanbhai Dawoodbhai Memon** (supra) and Section 21 of the NIA Act, the Supreme Court has held that though grant or refusal of bail is, ordinarily, an *interlocutory order*, such an order is appealable under Section 21 of the NIA Act and, therefore, the High Court cannot exercise its power under Section 439 or 482 of the Code of Criminal Procedure for the purpose of granting or refusing to grant bail; rather the High Court exercises the power of an appellate Court in terms of the provisions of Section 21 of the NIA Act. The Supreme Court, in **Usmanbhai Dawoodbhai Memon** (supra), summarized its findings as follows:-

“(a) Firstly, an appeal from an order of the Special Court under NIA Act, refusing or granting bail shall lie only to a bench of two judges of the High Court.

(b) And, secondly as far as prayer of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act 1999, **as well as The**



Unlawful Activities (Prevention) Act, 1967, such offences are triable only by Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a bench of two judges of the High Court.”

In light of observations of the Division Bench of this Court, learned counsel for the petitioner is directed to convert the present application under Section 21(4) of The National Investigation Agency Act, 2008.

(Sudhir Singh, J)

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