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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-D-122-2024 (O & M)
Reserved on: 08.11.2024
Pronounced on: 20.12.2024

NAVISH KUMAR @ NAVIAPPELLANT

Versus

STATE OF PUNJABRESPONDENT

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Prince Sarangal, Advocate
for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The question of law which is involved in the instant criminal appeal relates to the jurisdictional competence of this Court to condone the delay in the filing of the instant appeal, at the instance of the aggrieved-accused, who receives a declining order, on the apposite bail application, wherein, became embodied offences constituted under the Unlawful Activities Protection Act (hereinafter for short called as the UAPA). The said declining order became passed by the learned Special Judge concerned.
2. What is of conspicuous import, and, to which a signification is to be imparted, is the hereafter extracted underlined last

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proviso which occurs in Section 21 (5) of the National Investigation Agency (NIA) Act, 2008.

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.

3. Before proceeding to decide the instant *lis*, it is relevant to extract the relevant paragraphs, as occur in the verdicts rendered by the various High Courts, whereby, respectively either the apposite delays became condoned and/or whereby the apposite delays were not condoned, thus, in the filings of the appeals cast under Section 21 of the NIA Act.

View of the High Court of Madras

Crl. MP. No. 19676 of 2023 in Crl. A.SR. No. 52810 of 2023

Buhari @ Kichan Buhari Vs. State

23. Thus, in a case of this nature, where a provision in the procedural law has the effect of extinguishing a fundamental right, we may read down the

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provision. If the petitioner/appellant is denied his right of appeal in spite of showing sufficient cause for the delay in filing the appeal, it would be denying his fundamental right, which cannot be permitted by any Court much less a Constitutional Court. Therefore, we are of the view that the 2nd proviso to Section 21(5) of the NIA Act, **has to be read down, and the word 'shall' shall be read as 'may' in respect of appeals, which, if not entertained would amount to a violation of a fundamental right.** The appeal challenging the judgment of conviction and the appeal challenging rejection of bail, in our view, are filed in exercise of one's fundamental right. The other appeal that we can think of which would involve the fundamental right of an accused is against an order cancelling his bail. Therefore, in those types of appeals, which are filed with a delay, the word 'shall', shall be read as 'may'.

24. As stated earlier, we are doing so notwithstanding that there is no challenge to these provisions, firstly, because the Hon'ble Supreme Court in Kailash's case [cited supra] read down a provision relating to the restriction of filing the written statement beyond the period of 90 days and also because the fundamental right of a citizen cannot be denied by a procedural law, which has to be treated only as handmaid of justice and not its mistress. To quote once again the observations of Justice Krishna Iyer, it can only be a lubricant and not a resistant in the administration of justice, more so in a case where the procedure itself has the effect of extinguishing a fundamental right.

25. However, we make it clear that we cannot hold that the word, 'shall' shall be read as 'may' in case of an appeal filed against any other order other than what is mentioned in paragraph No.23 of this order, unless there is a challenge to Section 21(5) of the NIA Act.

26. Therefore, we are of the view that in the instant case, **the application for condonation of delay is maintainable**, and since the petitioner/appellant has shown sufficient cause, the delay of 43 days in preferring the appeal is condoned. The Criminal Miscellaneous Petition stands allowed.

Reasons for dis-concurring with the verdict (supra) rendered by the Division Bench of the Madras High Court.

4. The judgment (supra) rendered by the Division Bench of the Madras High Court, became rested, upon the premise that when a right of appeal becomes vested in a convict, who receives a verdict of conviction, thereupons, irrespective of the same being barred by limitation, yet the apposite appeal is required to be decided on merits, but after condoning the occurrence of the relevant delay. The said premise is further grooved on the hinge, that since the said appeal is filed, thus in the exercisings by the

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convict(s) qua their fundamental right to life, thereby, the said constitutional right to life conferred upon the accused rather is not required to be scuttled. However, the supra premises are misfounded premises, thus for the following reasons.

a) The provisions occurring in the earlier Cr.P.C., and now occurring in the replaced theretos THE BHARATIYA NYAYA SANHITA, 2023 (hereinafter for short called as the BNS), evidently do not oust the right of a convict to, beyond the prescribed period of limitation thus, institute an appeal against the rendition of a verdict of conviction upon him. The reason for so stating becomes sparked from the trite factum, that there is no provision in the earlier Cr.P.C., and now in the replaced thereto BNS whereby, there is an ouster of the provisions of Section 5 of the Limitation Act. Therefore, it appears that thereby time barred appeals directed against the verdicts of conviction, thus are maintainable, before the Appellate Court, as the apposite delay is permissible to become well explainable, through the filing of an application cast under Section 5 of the Limitation Act. In sequel, thus on an analogical application of the principles (supra) relating to the maintainability of time barred appeals rather by the convict, on his receiving a verdict of conviction, that a similar indefeasible right became declared to become invested in the aggrieved from a declining order, as becomes passed by the learned Special Judge,

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thus on the apposite bail application embodying therein offences constituted under the UAPA.

b) In other words, the filing of time barred appeals, thus, becomes declared therein to not suffer the causality of dismissal, merely on account of any delay occurring in the filing of an appeal against the said declining order. As such, the last proviso (supra) was read down, thereby, facilitating the filing of an appeal by an aggrieved from the apposite declining order, thus irrespective of occurrence of any delay in the filing of an appeal thereagainst.

c) Consequently, reiteratedly thereby, when there is endowment vis-a-vis the convict qua the beneficent effects of the principles enshrined in Section 5 of the Limitation Act, for thereby thus on sufficient cause being demonstrated by the convict-applicant, rather precluding him to file an appeal within the prescribed period of limitation, whereupon, the aggrieved-convicts appeal(s) directed against the verdict of conviction, thus requires the same being decided on merits. As but a natural corollary thereof, the said right was also declared to become indefeasibly vested in an unsuccessful bail applicant, who seeks the according of indulgence of bail in respect of the apposite FIR, rather embodying therein offences constituted under the UAPA.

5. Be that as it may, the acceptance of sufficient causes rather deterring the aggrieved-convict to rear an appeal against the verdict of conviction, but naturally becomes normally accepted by

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the appellate court concerned, as unless they are accepted, therebys, the verdict of conviction and the consequent thereto sentences, but necessarily would remain un-reversed, whereupon, the liberty of the convict would become unnecessarily fettered. The ill consequence thereof, inasmuch as qua therebys thus their being derogation from the procedure established by law, imperatively meant to ensure that the convict does not suffer incarceration, merely on account of his maintaining a time barred appeal, thus would become curbed besides therebys the fundamental right to life inhering even in an accused, thus to erase the stigma of conviction, and, therebys to live with dignity, but would also become furthered.

6. Moreover, the further reasons' as enshrined in the said judgment, is/are founded on the premise, that when there is no limitation prescribed to make a challenge to an order cancelling the bail granted to an accused. Resultantly, even to an appeal reared by an accused alleged to have committed an offence under the UAPA, the said principle, thus is to be co-evenly applied vis-a-vis him, even when he suffers a declining order on his apposite bail application, and, whereafters, he outside the period of limitation prescribed in proviso of Section 21 (5) of the NIA Act, thus proceeds to file an appeal thereagainst.

7. However, yet the said reason is also mis-rested on the presumption that when there is no period of limitation prescribed in the earlier Cr.P.C., and, now in the corresponding thereto

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provisions occurring in the now enacted Bharatiya Nyaya Sanhita (BNS), for either challenging the order rejecting the bail application filed by the applicant, before the learned trial Judge and/or also in a situation where there is an order cancelling the granting of indulgence of bail to him. Since consequently, therebys, the right to life endowed upon an accused in terms of the constitutional principles enshrined in Article 21 of the Constitution of India, thus would become well facilitated besides also the majesty of the imposition of conditions upon the accused would become ensured to become complied with, as in the event of non compliance thereof, rather the aggrieved-victim, thus becomes endowed with a privilege to seek the makings of a rescinding order, vis-a-vis the according of indulgence of bail to the accused. As such, therebys, even the right of the victim becomes preserved.

8. Moreover, reiteratedly, since in the earlier Cr.P.C., and, also since in the corresponding thereto provisions, as occur in the now enacted BNS, though there may be a specific period of limitation, thus covering the supra situations. However, the prescription of a specific period of limitation for challenging the supra orders rather may not require any stricto sensu compliance, as the principles relating to condonation of delays, as manifested in the Limitation Act but would surge forth, whereby, the requisite delays may become condonable.

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9. In addition, when certain compliable conditions become imposed upon the bail applicant concerned, thus requiring compliance theretos becoming made, but within the period of time, as spelt in the apposite order, which however upon becoming evidently breached, therebys, from the date of arousal of the apposite breach, thereupon, the apposite cause of action arises to the complainant. Resultantly, if the period prescribed for the compliable conditions, becoming satisfied by the bail applicant, thus covers an elongated period of time, thus outside the period prescribed in the proviso (supra), thereupon alone, there is an endowment of a privilege to the victim-complainant to, on breach thereof being made, to access the learned trial Judge for seeking the rescinding of the bail order.

10. In addition, the challenge to the order rejecting bail applications, when do not restrict the right of the accused, to re-apply for bail, thus on emergence of changed circumstances, therebys, such changed circumstances, do endow a right in the bail applicant to re-file bail applications. Therefore, but obviously the Union Parliament in its legislative wisdom, thus deemed it fit and appropriate to not curtail the said successive rights vis-a-vis the bail applicant, to access the learned Courts concerned, despite earlier orders rejecting his bail rather becoming passed by the learned Courts. As such, the profound legislative wisdom as prevailed upon the Union Parliament, to not prescribe the period of

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limitation in the above situations, but naturally cannot be, on any analogical application thereof, thus made co-evenly applicable to the instant factual scenario, as appertaining to the belated raising of appeals, especially, when on the apposite bail applications, thus offences embodied under the UAPA become constituted.

11. The firmest reason for stating so becomes firmly grooved in the factum, that the Union Parliament in its legislative wisdom, rather in respect of the stringency of the offences constituted under the UAPA, thus has deemed it fit to prescribe in the proviso (supra), a rigid period of limitation, for thereby the accused availing the remedy of filing an appeal against the declining order, as became passed by the learned Special Judge concerned. In sequel, there is no possibility of any analogy either emerging or its being made applicable inter-se the above situations vis-a-vis the situation at hand, especially when the instant situation is completely covered by the profound legislative wisdom of the Union Parliament, in its enacting, the last proviso (supra) in Section 21 of the NIA Act.

12. Moreover, the further reason made by the Hon'ble Division Bench of the Madras High Court, to read down the word 'shall' as directory in nature and the same being read to be not construable to be holding any mandatory overtones, became rested upon a verdict rendered by the Apex Court in Kailash's case. In the said case, the Apex Court read down a provision relating to the

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statutory restriction created against the filing of a written statement by the defendant rather beyond the period of 90 days, wherebys, it was declared that the said restriction, as created through the supra procedural law, which otherwise has to be treated only as handmaid of justice and not its mistress, thus would unnecessarily extinguish the substantive fundamental right of a citizen. The said placed reliance by the Division Bench of Madras High Court, was a mis-placed reliance thereons. The reason being that the said decision was rendered in respect of a civil suit becoming instituted, wheretos, the written statement became enjoined to be filed within 90 days. As such, the said provision appears to be read down only on the score than unless the written statement is filed by the defendant, therebys, there would be no occasion for any issue being struck nor thus the evidence adducing discharging onus would become rested respectively on the plaintiff or on the defendant. Resultantly, therebys, but naturally the purpose of holding a fair trial of the civil suit would become completely jeopardized or would become scuttled, wherebys, but naturally the ends of justice would also become a concomitant causality.

13. Resultantly, it was held that the word '*shall*' as occurs in proviso to Section 21 (5) of the NIA Act, 2008, be in terms thereof, thus be read down to be rather readable as '*may*' and therebys irrespective of the strict statutory embargo created under

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the proviso (supra), wherebys no appeal has been declared to be entertainable after the expiry of the period of 90 days, thus became read down to be readable as directory, than being readable as mandatory.

View of the High Court of Madras

Crl A. Nos. 1224 & 1225 of 2024

Union of India represented by its Inspector of Police, NIA Vs. Abdul Razaak and Another.

64. Thus, we have no hesitation in arriving at a conclusion that ***the judgment of this Court in Buhari @ Kichan Buhari's case cited supra is not a good law and running counter to the legal principles settled by the Three Judges Bench of the Hon'ble Supreme Court of India in Arup Bhuyan's case cited supra.*** Thus, the judgment in Buhari @ Kichan Buhari's case denuded to lose its status as precedent in the matter of condoning the delay in preferring appeals under Section 21(5) of the NIA Act. Further, the High Court is not empowered to condone the delay beyond the permissible limit contemplated under Section 21(5) of the NIA Act.

65. Accordingly, we hold that ***the High Court is not empowered to condone the delay beyond the permissible limit contemplated under Section 21(5) of the National Investigation Agency Act, 2008.*** Consequently, the Criminal Appeals on hand stand dismissed on the ground of limitation. However, dismissal of the present criminal appeals under Section 21(5) of the NIA Act would not be a bar for an aggrieved person to approach the Trial Court, if it is otherwise permissible under law.

14. Though in the verdict (supra), the view propounded in **Buhari @ Kichan Buhari Vs. State** by the Division Bench of the Madras High Court, was dis-concurred with, despite the earlier view becoming also propounded by a co-equal Bench strength of the Madras High Court. The said dis-concurrence appears to be made with a profound wisdom, as the earlier made view by a co-equal Bench strength of the Madras High Court, but is for reason (supra) per incuriam the purposeful import of the last proviso, as becomes

engrafted in Section 21 (5) of the NIA Act. However, though this Court

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concurs with the verdict (surpa), but the reasons which therein become dealt with in extenso, are not acceptable to this Court. The reason for so stating becomes embedded in the factum, that the sub stratum of the said decision, becomes anchored upon a decision rendered by the Apex Court in case titled as *Arup Bhuyan Vs. State of Assam and others*, reported in (2023) 8 SCC 745. Nonetheless, the Hon'ble Supreme Court, while making decision in the case (supra), was proceeding to render an answer to the hereinafter extracted reference.

2.4 The short issue before the Bench is whether the judgments in Raneef (supra) and Arup Bhuyan (supra), have been correctly decided and whether “active membership” is required to be proven over and above the membership of a banned organization under the UAPA, 1967. Another issue which is required to be considered by this Bench is whether American decisions concerning freedom of speech referred to in the case of Raneef (supra) to which this Court agreed could have been relied upon while considering the right to freedom of speech available under the Constitution of India more particularly Article 19(1)(c) and 19(4) of the Constitution of India? Another question which is required to be considered is whether this Court was justified in reading down of a provision (Section 10(a)(i) of the UAPA Act, 1967) without impleading the Union of India as a party and more particularly when the constitutional validity of the aforesaid provision was not called in question?

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15. The answer and conclusions to the afore reference becomes extracted hereinafter.

Conclusions

66. The abovementioned decisions are in contradistinction to the scenario in question in India. The American decisions primarily involve indictment on the basis of membership of political organizations or incidents of free speech advocating overthrow of the government. However, under Indian law, it is not membership of political organizations etc. or free speech or criticism of the government that is sought to be banned, it is only those organizations which aim to compromise the sovereignty and integrity of India and have been notified to be such and unlawful, whose membership is prohibited. This is in furtherance of the objective of the UAPA, which has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. The distinction, therefore, is clear.

16. A reading of the supra extracted reference and the answers rendered thereto, but candidly declare that thereunders, thus did not

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become covered the subject at hand nor thereby the principles stated therein, could apply to the extant situation, which was also the situation before the Division Bench of the Madras High Court. Resultantly, the principle stated by the Apex Court in the verdict (supra), thus have been inaptly applied by the Division Bench of the Madras High Court, in the makings of a decision in case titled as **Union of India represented by its Inspector of Police, NIA Vs. Abdul Razaak and Another.**

View of the High Court of Jharkhand at Ranchi.
Sushila Devi and another Vs. Union of India through NIA
Cr. Appeal (DB) No. 2168 of 2023

18. The question which has been raised that the aforesaid provision if not mandatory rather it is directory, therefore, the same is required to be answered by this Court since the office has given the note the appeal to be not maintainable in view of the fact that the appeal has been filed beyond the period of 90 days, as such, the issue which requires consideration as to whether the provision as contained under Section 21(5) of the Act, 2008 is mandatory or directory

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40. Section 21(5) contains two provisos;

"the first proviso confers power upon the High Court with the word 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 appeal within the period of thirty days".

The second proviso is very specific which provides "that no appeal shall be entertained after the expiry of the period of 90 days".

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51. The second proviso stipulates that the appellate court shall not entertain an appeal beyond the period of 90 days.

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72. This Court, taking into consideration the very object and intent of the Act and reading it together with both the proviso of Section 21(5), is of the view ***that the aforesaid provision of filing an appeal with the maximum period of 90 days, according to our considered view, is mandatory.***

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17. The above view appears to be just and fair and for the further reasons to be assigned hereinafter, shall become accepted by this Court.

VIEWS CONTRA-DISTINCT TO THE VIEWS TAKEN BY THIS COURT.

High Court of Judicature at Allahabad, Lucknow Bench

Criminal Appeal Defective No. 124 of 2023

C.M. Application No. 1 of 2023

Sarfaraz Ali Jafri Vs. State of U.P. Through Principal Secy. Home

4. Right to appeal for protection of a right guaranteed under Article 21 of the Constitution of India is concomitantly an essential part of right to fair trial and one of the basic structure of our Constitution. The bar contemplated under the second proviso appended to Section 21 (5) of the Act, 2008, according to the State, is intended to oust the jurisdiction of this Court by the Damocles sword of delay, however the said deprivation of a fundamental right juxtaposed to law of limitation is the larger question of public importance that has surfaced before this Court in the present appeal.

8. It is true that the right to life and personal liberty as embodied under Article 21 of the Constitution of India conferred to the citizenry is fundamental but the security of the State is of equal paramount significance.

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10. In a recent decision rendered by Hon'ble the Apex Court in the case of *Union of India versus K.A. Najeer* reported in (2021) 3 SCC 713, it would be profitable to extract para 17 which for ready reference reads as under.

18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

The position in the case at hand is somewhat similar. Defeating the right to appeal within the scope of procedure as postulated under the second proviso appended to Section 21 (5) of the NIA Act, even if

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it is understood that the same does not render an aggrieved party altogether remediless, due to the remedy available under Article 136 of the Constitution of India i.e. the appellate jurisdiction of the Supreme Court against a judgment or order. However, if the Hon'ble Apex Court within exercise of its appellate jurisdiction can go into the adjudication of the surviving rights protected under Article 21 of the Constitution of India, the ouster of High Court jurisdiction due to the bar of limitation of 90 days imposed by the statute is far from fair and reasonable, especially when the Hon'ble Apex Court has held in K.A. Najeeb case (supra), that the presence of statutory restriction perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution.

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14. In any view of the matter, the Apex Court being seized of the issue in the case of State (NIA) versus Farhan Sheikh would soon resolve the conflicting opinions and settle the law on the point.

15. Until an authoritative view is pronounced by the Supreme Court of India, the order passed by this Court on 4.4.2023 in our considered opinion, is the good law. Accordingly, the application for condonation of delay is allowed.

18. Though the operation of the said decision has not been stayed by the Apex Court, but when the said decision has been challenged through the filing of an apposite SLP, SLP whereof has been tagged alongwith SLP (Criminal) Diary No.41439 of 2019, as becomes filed against the final judgment and order dated 16.07.2019, passed in CRLMA No.30949/2018, thus by the High Court of Delhi, whereovers the Apex Court has stayed the operation of the verdict (supra), wherein, an expostulation of law similar to the one, as carried in the verdict (supra), thus has been rendered. Consequently, therebys irrespective of no specific order of stay becoming passed, thus against the operation of the verdict (supra) pronounced by the Allahabad High Court, rather yet when the SLP challenging the supra decision, thus has been tagged alongwith SLP (Criminal) Diary No.41439 of 2019, wherein, there is an order staying the operation of the apposite impugned verdict passed by the Delhi High Court, therebys, it appears

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that impliedly the force of the apposite stay (supra) rendered in SLP (Criminal) Diary No.41439/2019, is also applicable to the verdict (supra) rendered by the Allahabad High Court.

19. In consequence, since at this stage, the Hon'ble Supreme Court had stayed the operation of the verdict passed by the Delhi High Court, wherein, an expostulation of law has been made, that the last proviso as occurs in Section 21 (5) of the NIA Act, does not stricto sensu create a bar of limitation against the filing of a time barred appeal by the aggrieved, from the apposite declining order, thereupon, the supra verdicts cannot, at this stage become firmly vindicated by this Court. In consequence, this Court proceeds to record the hereinafter inferences.

Inferences of this Court.

20. Now for all the above stated reasons, besides for the reasons stated hereafter, this Court dis-agrees with the view propounded by the Madras High Court in Buhari @ Kichan Buhari Vs. State (supra) and with the view propounded by the Allahabad High Court in Sarfaraz Ali Jafri Vs. State of U.P. Through Principal Secy. Home (supra), besides excepting, the substratum of the apposite decision, thus also agrees with the view propounded by the Madras High Court in case Union of India represented by its Inspector of Police, NIA Vs. Abdul Razaak and Another (supra) and also agrees with the view propounded by the

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High Court of Jharkhand at Ranchi in case Sushila Devi Vs. Union of India through NIA.

21. The reason for this Court being compelled to hold, that the proviso (supra) with the supra therein strict statutory embargo, vis-a-vis, the aggrieved being barred to outside the period of limitation prescribed therein, thus to raise an appeal against a declining order, as becomes passed by the learned Special Court concerned, upon, the apposite bail application, thus ensues from this Court declaring that the same is overloaded with a mandatory overtone, rather than the proviso (supra) being couched in a discretionary genre, besides the said provision explicitly ousting the provisions of Section 5 of the Limitation Act, thus becomes hinged inter alia on the hereafter premises.

22. a) Firstly, the statute whereunders the said proviso exists, is a special statute and is meant for facing a special circumstance, inasmuch as, for curbing the proliferation of insurgency in various territories of the Union of India. Resultantly, the holistic purpose behind the special statute (supra), which ultimately is to decimate the accruals of endangerment(s) to the security of the nation, but obviously is required to be well maneuvered towards the purpose (supra). The well maneuverings of the well purpose of the special statute (supra), wherein, the supra proviso exists, which limits and curtails the right of filing of appeal, to an aggrieved from a declining order, as becomes passed

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by the learned Special Judge, on the apposite bail application, thus would occur only, when a strict mandatory overtone is assigned to the mandate which occurs in the last proviso to Section 21(5) of the NIA Act, 2008. The said proviso whereof carries therein the mandatory phrase 'shall'.

b) The necessity of assigning a mandatory overtone to the provision supra becomes also borrowed from the fact that the supra statutory provision in the instant Special Act, has therein created a special provision governing the period of limitation, within which an appeal against the passing of a declining order, on the apposite bail application, thus is to be entertained. The specificity of the period of limitation mentioned in the proviso (supra), is to ensure that a prompt remedy becomes canvassed by an aggrieved from the passing of the apposite declining order. The legislative wisdom which infuses the (supra) proviso, is plain speaking to the fullest effect, that thereby becomes curtailed the applicability of Section 5 or of Section 14 of the Limitation Act. If the said proviso had not occurred, thereby, *prima facie*, the earlier thereto proviso may have been construed, to thus enable the Courts of Law, to borrow the principles stated either in Section 5 or in Section 14 of the Limitation Act. Contrarily, with the occurrence therein of the last proviso (supra), thereby, but necessarily there is a complete ouster of the workability of Section 5 and of Section 14 of the Limitation Act, vis-a-vis the apposite time barred appeals,

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thereupons, but a mandatory overtone is to be assigned theretos, than assigning theretos a directory overtone nor the said provision is to be read down, as the reading down of the said provision would defeat the employment of the legislative wisdom to engraft the same.

c) The right of appeal, thus, if is restricted by the said proviso therebys too, *prima facie*, there would not occur any ill curtailment of the liberty of the accused, nor therebys, there would be any *prima facie* infringement of the fundamental right of appeal, as invested in any citizen, under Article 21 of the Constitution of India, who would also be the accused. However, the imposition of restrictions on the right of life, as envisaged in Article 21, may be so made through a well meaning besides a purposeful restriction thereto becoming made, thus through the employment of an insightful wisdom by the Union Parliament. The carvings of the well meaning and purposeful restriction thereto, would ensue from the said restriction becoming sanctified with the requisite halo, thus premised qua the same becoming quartered within the domain of the procedure established by law.

d) Now the clue for rendering an answer, whether any meaningful and purposeful restriction, thus to right to life, as envisaged in Article 21, has been so done, through the creation of the embargo (*supra*), thus is readily available from the factum, that since neither the special legislation (*supra*) nor the proviso (*supra*),

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as engrafted therein has resulted in the vires thereof becoming invalidated. In sequel, the procedure established thereunders for restricting the right to life, but naturally assumes a halo of constitutional sanctity and/or is deemed to be a well meaning purposeful restriction. Resultantly the said procedure as engrafted in last proviso (supra) but requires that theretos a mandatory overtone becoming employed.

23. The further sequel thereof, is that, since upon an accused suffering a detention order and when during the period of his suffering a detention order, especially, when he is alleged to have committed an offence under the UAPA, which becomes placed on the Rule book, only for ensuring the security of the nation, as may become threatened on account of insurgency activities, being carried out in the various regions of the country. Consequently, if to the proviso (supra), any liberal interpretation is assigned or if it is declared to be directory in nature, thereby, the supra purpose will be defeated. Moreover, a further natural corollary thereof, is that, since all the aggrieved from the passing of the apposite declining order, are deemed to become intimated about the decisions made on their bail applications, thus, respectively by the Superintendents of the jails concerned, besides by the respectively counsels engaged by them. Therefore, if they yet omit to within the prescribed period of limitation, thus exercise the right of appeal against the declining orders, merely on the ground that the provision (supra) is to be

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assigned a directory overtone, thereby, the latter would not be a well made espousal.

24. In any case, an appeal as preferred against a verdict of conviction, and even if filed beyond the period of limitation, if is not permitted to be reversed in a time barred appeal, thereupon, it would lead to the ill consequence of the convict becoming punished without adherence to the procedure established by law. Conspicuously, when the hearing of the merits of the appeal besides the passing of a judgment on the merits of the appeal, rather is the pre-requisite procedural norm, for thereby adherence being ensured to be made to Article 21 of the Constitution of India. However, when a declining order becoming passed upon the apposite application, remains un appealed within the prescribed period of limitation, thereby, it is but not obviously co-equal to the passing of a verdict of conviction. Resultantly thereby too, there can be no analogy inter-se the right to a convict to appeal against the verdict of conviction, on the premise that the said being an indefeasible constitutional right, irrespective of fetters of limitation, but thus with the statutory limitations of the time being created vis-a-vis the accused, on his receiving a declining order on the apposite bail application.

25. Be that as it may, since the passing of a declining order against the accused who is alleged to commit offences, under the penal statutes, other than the UAPA, are endowed a privilege, to

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post the passing of the declining order, on the apposite bail application, thus re-institute bail applications. Naturally, the said privilege becomes rested on “the change of circumstances”. Therefore, the said change of circumstance is also required to be endowed to an accused of an offence under the UAPA, and who prior to the change of circumstance, but has received a declining order on the apposite bail application. The reason for so stating arises from the factum that in case such changed circumstances, disclose exculpatory circumstances emerging vis-a-vis the accused, who is alleged to have committed an offence under the UAPA, therebys, if such evidently emerging exculpatory changed circumstances, do not become permitted to be availed by the accused for an offence under the UAPA, therebys, there would be an impermissible incarceration of the accused, which would impign upon his right to life as enshrined in Article 21 of the Constitution of India.

26. In aftermath, we hold that since the aforesaid proviso is mandatory in nature, therebys, the High Court is not empowered to condone the delay beyond the permissible period of 90 days, as contemplated under Section 21 (5) of the NIA Act, 2008.

27. Consequently, the criminal appeal is dismissed on the ground that the same is not maintainable.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

20.12.2024

kavneet singh	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No