



2024:DHC:7456-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26th September, 2024

+ CRL.A. 6/2024 & CRL.M.A. 2679/2024

STATE NCT OF DELHI

.....Appellant

Through: Mr. Ritesh Kumar Bahri, APP with Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with Insp. Alok Kumar and SI Rahul Khokhar.

versus

SYED ANZAR SHAH

.....Respondent

Through: Mr. M.S. Khan, Mr. Prashant Prakash & Ms. Qausar Khan, Advs. (M: 9871264255)

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is an appeal filed by the State under Section 21(1) of the National Investigation Agency Act, 2008 (hereinafter, 'NIA Act') challenging the impugned order dated 17th October, 2017 passed by Id. ADJ-02, (FTC), Patiala House Courts, in **FIR No. 67/2015** registered at PS Special Cell, New Delhi by which the accused/Respondent-Syed Anzar Shah was discharged by the Special Court, NIA for offences punishable under Sections 18/18-B/20 of Unlawful Activities (Prevention) Act, 1967 ('UAPA').
3. The present appeal is accompanied with an application being **CRL.M.A. 2679/2024** under Section 5 of the Limitation Act, 1963 seeking condonation of Delay of 1745 days in filing the appeal. The chronology of relevant dates is set out below:



S. No.	Date	Particulars
1.	17/10/2017	Accused Anzar Shah was discharged in present case vide order dated 17.10.2017 passed by Ld. ASJ-02, Patiala House Court, New Delhi
2.	02/02/2018	Crl. Rev. Petition 98/2018 was filed by the State against the impugned order (delay of 111 days)
3.	20/10/2023	Crl. Rev. Petition 98/2018 was withdrawn with liberty to file a proper petition before the appropriate Court as per Law.
4.	03/01/2024	Present appeal i.e. Crl. Appeal No.06/2024 has been filed under Section 21 of NIA Act, 2008. (delay of 77 days)

4. The present case being one under Section 21 of the NIA Act, the maximum period available for filing an appeal would be 90 days. The relevant provision reads:

“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”

5. The question as to whether condonation of delay would be permissible or not in such a case has been dealt by this Court in ***Jagtar Singh Johal @ Jaggi v. National Investigation Agency, [2024:DHC:7110-DB]***. In the said decision, this Court has already observed that the issue, as to whether power under Section 5 of the Limitation Act, 1963 can be exercised to condone the delay in filing of an appeal under Section 21 of NIA Act, is pending before the Supreme Court in several matters. The Court has also taken note that the decision of the Co-ordinate Bench in ***Farhan Sheikh v. State (National Investigation Agency) [2019:DHC:3373-DB]*** has been stayed by the Supreme Court in ***CRL.A. No. 1824-1826/2019*** titled ***State (National Investigation Agency) v Farhan Sheikh***. Relevant portion of the decision in ***Jagtar Singh Johal (supra)*** is set out below:

“31. A perusal of the above decisions would show that there is a clear divergence of opinions between various High Courts and the question as to whether delay in filing as also delay in re-filing would be liable to be condoned or not, is pending final adjudication in the Supreme Court. The leading judgment in Farhan Sheikh(Supra) arising out of the decision of Id. the



Division Bench of this Court has been stayed by the Supreme Court.

32. In light of the above, this Court is of the opinion that, as per Section 21(5) of the N.I.A Act, read with the rule 5 of Delhi High Court Rules, though the initial filing was within time, the re-filing of the five appeals in May and June 2023 has to be construed as a fresh institution as the same is beyond the 30 days aggregate period of delay permissible under the Rules. Some of the decisions above hold that discretion can be exercised under Section 5 of the Limitation Act of 1963, by the Court for condoning delay in re-filing and some decisions hold that Section 5 would not apply. Either way, in order to exercise discretion to condone delay, it needs to be noted that the N.I.A Act is a special statute which prescribes an outer limit of 90 days under Sec. 21. Under such circumstances, this Court, is of the opinion that even delay in re-filing, which is beyond the 30 days permissible limit under Rule 5 of the DHC Rules, would not be liable to be condoned without power being exercised under Section 5 of the Limitation Act of 1963. **The said question whether power under Section 5 of the Limitation Act of 1963 can be exercised for condoning delay under Section of the N.I.A Act, 2008, is pending before the Supreme Court.** Considering the period of delay in re-filing is more than the aggregate period permitted under the Delhi High Court Rules, the applications for condonation of delay are not liable to be allowed. The same are accordingly dismissed. This would, however, be subject to decision, which may be rendered by the Supreme Court in **Farhan Sheikh(supra)** and the connected matters.”

6. Coming to the facts in this case, a perusal of the impugned order in the present case would show that the same is dated 17th October, 2017. The criminal revision being **Crl. Rev. Petition 98/2018** was filed on 2nd February, 2018. The same was withdrawn on 20th October, 2023. The present appeal



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has been instituted on 3rd January, 2024. Even if the Court gives benefit to the State for the period between 2nd February, 2018 to 20th October, 2023 under Section 14 of the Limitation Act, 1963, even then the filing of the present appeal is clearly beyond the time prescribed under Section 21 of the NIA Act.

7. The Court has called for the physical file of ***Crl. Rev. Petition 98/2018***. From the record of the said revision petition, the Court notices that the revision petition was itself filed with a delay of 111 days after passing of the impugned order dated 17th October, 2017 and there is no application for condonation of delay accompanying the revision petition.

8. In view of the above discussion, delay in this matter cannot be condoned and the appeal is liable to be dismissed. Accordingly, the application and the appeal are dismissed.

9. This shall, however, be subject to the decision of the Supreme Court in ***Farhan Sheikh (supra)*** and connected matters. Subject to the said decision, the State is given liberty to file an application seeking restoration of the present appeal.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

SEPTEMBER 26, 2024/dk/bh/ms/nc