

06.05.2025

DL-7
(AD)

**CRA (DB) 35 of 2025
with
IA No.: CRAN 1 of 2025**

In re: An appeal under Section 21(4) of the National Investigation Agency Act, 2008.

-And-

**In the matter of : National Investigation Agency
... ...Appellant**

Mr. Arun Kumar Maiti (Mohanty), Advocate
Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Debashish Tandon, Advocate

... for the appellant

Mr. Avik Ghatak, Advocate
Mr. Soham De Dhara, Advocate
Mr. Fahad Imam, Advocate

... for the opposite party no.1

Mr. Arnab Chatterjee, Advocate
Mr. Avik Ghosh, Advocate

... for the opposite party no.2 & 5

1. Appellant seeks to prefer an appeal against a judgment of discharge.
2. Department reports a delay of 15 days in filing the appeal.
3. Learned Advocate appearing for the opposite party no.1 draws the attention of the Court to the averments made in the application for condonation of delay. In particular, he draws the attention of the Court to the affidavit verifying the petition for condonation of delay. He points out that, paragraph 1 to 9 are affirmed as information derived from records and proceedings of the case including the investigation records which are believed to be true while paragraph 13 is affirmed to be true to knowledge and paragraphs 10 and 12 as respectful submissions. In such

context, he draws the attention of the Court to the averments made in the paragraphs 3 to 10. He submits that, the averments made therein cannot form part of the records for the deponent to verify it as true to knowledge on the basis of records and proceedings.

4. Learned Advocate appearing for the opposite party nos.2 and 5 submits that, the application is initiated as an application under Section 21(4) of the National Investigation Agency Act, 2008. He submits that, such sub-section deals with an appeal directed against an order granting or refusing to grant bail. In the present case, the appeal is sought against a judgment of discharge. Therefore, according to him, Section 21(4) does not apply. In such context, he submits that, since the application for grant of leave is not proper, the same should not be entertained.
5. It is trite law that, quoting a wrong Section in an application will not change the jurisdiction of the Court, if it is otherwise so possesses or the right of the parties.
6. In the facts of the present case, there is a judgment of discharge which, NIA seeks to prefer an appeal from.
7. NIA was the prosecuting agency before the learned Trial Judge which resulted in the order of discharge of the opposite parties herein.
8. Section 21 of the Act deals with appeal. It is divided into five sub-sections. Sub-section 1 of Section 21 specifies that notwithstanding anything contained in the Criminal

Procedure Code, an appeal shall lie from any, sentence or order not being an *interlocutory* order of a Special Court to the High Court both on facts and on law. As noted above, the appeal is sought against a judgment of discharge passed by the Special Court. Proceedings were conducted under the Act of 2008. Again, as noted above, the appellant was the prosecuting agency before the Special Court which resulted in the impugned judgment of discharge.

9. In such circumstances, the application for leave to prefer an appeal from order of discharge be treated as an application under Section 21(1) of the Act of 2008.
10. Learned Advocate-on-record for the appellant is granted leave to correct the cause-title.
11. So far as the application for condonation of delay is concerned, department reports a delay of 15 days while the appellant claims condonation of delay of 47 days.
12. Appellant seeks to explain the delay on the basis that, the impugned order was passed on November 12, 2024 and was received by the appellant on November 19, 2024. Thereafter, the appellant considered preferring an appeal both at the regional office as also at the head office at New Delhi which consumed some time.
13. It is trite law that, a Court while considering an application for condonation of delay is not concerned with the quantity of the delay but with the quality of the explanation for the delay.

14. In the facts of the present case, the appellant gives specific position as to the movement of the file at various stages. There is nothing on record to disbelieve such statements made by the appellant.
15. The statements made in paragraphs 1 to 9 of the application for condonation of delay is verified by the deponent of such application as information derived from the records and proceedings of the case including the investigation records. The movement of the files as narrated in paragraphs 1 to 9 of the application for condonation of delay obviously will appear from the records maintained by the appellant in its usual course of business. There is no material as noted above, placed before us to suspect the veracity of such statements.
16. In such circumstances, we accept the explanation given by the appellant for the delay occurring in making and filling the application seeking leave to prefer the appeal.
17. IA No.: CRAN 1 of 2025 is allowed.
18. Appeal is admitted.
19. Issue usual notices.
20. Call for the Trial Court records.
21. Paper books be prepared within four weeks from the date of receipt of Trial Court records.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)