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

+ **W.P.(CRL) 1246/2023**

SHARAD BHARGAVA

.....Petitioner

Through: Mr. Atul Sahi, Mr. Suryans
Aggarwal, Advocates

versus

NCB

.....Respondent

Through: Mr. Arun Khatri, SSC with Ms.
Shelly Dixit, Ms. Tracy Sebastian,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **09.05.2025**

CRL.M.A. 14590/2025 (for early hearing)

1. For the reasons and grounds stated in the application, the same is allowed and with the consent of the parties, the main petition is heard today itself.

2. Accordingly, the application is disposed of.

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3. The present petition filed under Article 226 of the Constitution of India, 1950 assails order dated 28th March, 2023¹ in FPA-ND-489/DLI/2022 passed by the Appellate Authority. The appeal was filed by the Petitioner against order dated 4th August, 2021 passed by the Competent Authority

¹ "the impugned order"



under the Narcotic Drugs and Psychotropic Substances Act, 1985 along with an application seeking condonation of delay. By the impugned order, the Petitioner's application for condonation of delay was rejected.

4. Counsel for the Petitioner submits that the Appellate Tribunal has erred in its interpretation of the matter. It is submitted that the Petitioner was entitled to benefit from the extended limitation period granted due to the COVID-19 pandemic, in accordance with the Supreme Court's judgment in ***Suo-Motu Writ Petition (C) No. 03/2020***. He submits that the appeal was filed on 1st June, 2022, and was therefore within the permissible time.

5. The Court has noted the facts and contentions of the Petitioner, however, remains unconvinced.

6. The Appellate Tribunal passed the impugned order after careful examination of the matter and concluded that even after applying the benefit extended by the Supreme Court's judgment in ***Suo-Motu Writ Petition (C) No. 03/2020***, the appeal was filed beyond the limitation period prescribed under Section 68-O of the NDPS Act. This conclusion has been rightly recorded in the impugned order, which observes as follows:

"If the period of limitation is determined from 1st March, 2022, it expired at the end of April 2022 itself however, for the reason that Apex Court has given 90 days period for taking remedies irrespective of the statutory provisions, we have taken the period of 90 days from 1st March for filing the appeal. There is no further direction of the Apex Court to extend the period of limitation and we cannot substitute the order of the Apex Court 30 as to permit the appeal beyond 90 days. If Section 68(O) of the NDPS Act is looked into, the maximum period is of 60 days and appeal is not maintainable beyond that period in absence of a provision to condone the delay rather it is only upto 15 days after 45 days of the period of the Limitation. That is the maximum period for filing the appeal without discretion to condone the delay after it.

The Apex Court, however, gave 90 days period irrespective of the limitation provided under the statute and that too from 1st March, 2022.



Otherwise, in the case, period of limitation started from 4th August, 2021 and under ordinary circumstances, limitation would have expired on 18th September, 2021 and thereupon maximum period of 15 days to condone the delay on submission of proper explanation. In the light of the aforesaid we are unable to accept the application to condone the delay beyond the period of 90 days.

In the light of the dismissal of the application for Condonation of Delay the delay, the appeal goes and it is also dismissed.”

7. As evident from the above extract, even after applying the extended 90-day period granted by the Supreme Court, the appeal remained time-barred under the statutory scheme.

8. As regards the question regarding this Court’s jurisdiction under Article 226 of the Constitution to condone delay under Section 68-O of the NDPS Act, the position is no longer *res integra*. Section 68-O mandates that the Appellate Tribunal has no authority to entertain an appeal filed beyond 60 days from the date of service of the Competent Authority’s order. While sub-section (1) permits filing within 45 days, the Tribunal may condone delay of up to 15 additional days if sufficient cause is shown. However, there is no discretion to condone any delay beyond this prescribed outer limit of 60 days.

9. It is a settled principle that the right to appeal is statutory, and not inherent. This principle has been reiterated by the Supreme Court in ***Durga Shankar Mehta v. Thakur Raghuraj Singh and Ors.***,² wherein the Supreme Court held that “*It is well known that an appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself.*”

10. It is equally well-settled that the High Courts while exercising

² (1954) 2 SCC 20.



jurisdiction under Article 226 of the Constitution of India cannot go beyond the framework of a statute. The Appellate Tribunal under the NDPS Act is a creation of statute and is vested with the power to condone delay which falls within the permissible limit of 15 days beyond the period of 45 days from the date of receipt of the order by the appellant. This can be done on the ground that the appellant was prevented by sufficient cause from filing the appeal in time. Therefore, in light of the clear stipulation laid down by the legislation, this Court finds no error in the view taken by the Appellate Tribunal in the impugned order.

11. In light of the foregoing, in the opinion of the Court, having regard to the statutory provision regarding the limitation, this Court is not in a position to grant the relief sought in the present petition.

12. In view of the above, the present petition is disposed of.

SANJEEV NARULA, J

MAY 9, 2025/ab