

**REPORTABLE**

## **IN THE HIGH COURT OF MANIPUR**

### **AT IMPHAL**

**Crl. A. No. 11 of 2024**

With

**Crl. A. No. 12 of 2024**

With

**MC (crl. A.) No. 23 of 2024**

With

**MC (Crl. A.) No. 24 of 2024**

The State of Manipur, represented by the Joint Secretary (Home), Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

***Appellant/Applicant***

**-Versus-**

1. Mrs. Lhaineikim Lhouvum @ Kikim, aged about 31 years, W/o M. Thangmang Haokip, resident of Molnom Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur, Pin No. 795128.
2. Mark Thangmang Haokip, aged about 39 years, S/o Limkhosei Haokip, resident of Molnom Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur Pin No. 795128

***Respondents***

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL  
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the appellant	::	Mr. Lenin Hijam, Advocate General, assisted by Mr. S. Niranjana, GA; Mr. Dimal Kumar Haobam, Advocate
For the respondents	::	Dr. Colin Gonsalves, Sr. Advocate, assisted by Mr. Osbert Khaling, Advocate
<b>Date of reserving Judgment &amp; Order</b>	::	<b>07.08.2024</b>
<b>Date of Delivery of Judgment &amp; Order</b>	::	<b>22.08.2024</b>

## **JUDGMENT & ORDER (CAV)**

**JUSTICE SIDDHARTH MRIDUL, CJ:**

**[1]** At the outset, it is considered appropriate to extract the relevant portion of the order dated 19.07.2024 wherein this Court recorded as below:

*"At the very outset, this Court informed Dr. Colin Gonsalves, learned senior counsel appearing for the respondents that one of us (Justice A. Guneshwar Sharma) remanded the accused when he was the then learned Special Judge (NIA), Imphal West, and enquired from him as to whether he has any objection to this Bench in hearing these matters. He fairly concedes that he does not have any objection."*

In the circumstances, this Bench proceeded to hear the connected appeals as well as the pending applications on the merits.

**[2]** Encapsulated briefly, the accused, Mr. Mark Haokip, was arrested on 30.05.2022, in connection with FIR No. 129(05)2022 Imphal PS under Sections 120B/121/121A/123/400 IPC and Sections 17/18 Unlawful Activities (Prevention) Act [in short, UAPA] and was thereafter remanded to judicial custody on the 09.06.2022. The accusations against him were for waging war and attempting to wage war against India and for cessation and creation of an independent "Government of the People's Democratic Republic of Kukiland", in collusion with other co-accused. The accused allegedly had started collecting funds towards this objective. Vide order dated 21.06.2022

in Cril. Misc. (B) Case No. 60 of 2022, the learned Special Judge (NIA), Imphal West rejected the accused's bail application and the said order of rejection was upheld by this Court, vide order dated 02.11.2022 in bail application BA No. 11 of 2022.

**[3]** Thereafter, vide order dated 30.10.2022 passed in Cril. Misc. Case No. 92 of 2022, the learned Special Judge (NIA), Imphal West, extended the period of investigation in relation to the subject FIR for a further period of 90 days, in terms of the proviso to Section 43D(2) of UAPA. Finally, on 25.11.2022, the prosecution submitted the subject chargesheet against the accused under Sections 120B/121/121A/123/400 IPC and Sections 17/18 UAPA however, with a rider that the supplementary chargesheet would be submitted after obtaining prosecution sanction order from the competent authority. On 28.11.2022, the Special Court registered the case as Spl. Trial No. 10 of 2022. The competent authority granted the requisite sanction vide two orders dated 26.12.2022 and 17.03.2023. Thereafter, the supplementary chargesheet was also filed on 17.03.2023 and duly received by the court on 20.03.2023.

**[4]** On the 17.01.2023, the accused instituted the second regular bail application, being Cril. Misc. (B) Case No. 3 of 2023; and on 18.03.2023, a default bail application, being Cril. Misc. (B) Case No. 45 of 2023, under the

provision of Section 167(2) CrPC read with Section 43D of UAPA, also came to be filed.

**[5]** Vide the common impugned order dated 28.03.2023 passed in Cril. Misc. (B) Case Nos. 3 of 2023 and 45 of 2023, the learned Special Judge (NIA), Imphal West, was pleased to grant bail to the accused, premised solely on the ground that, the subject chargesheet filed without obtaining the prosecution sanction order is incomplete and the accused was consequently entitled to default bail. The State moved applications being Cril. Misc. Case Nos. 42 of 2023 and 43 of 2023 under Section 439(2) CrPC before learned Special Judge (NIA), Imphal West for setting aside the common impugned order dated 28.03.2023. Vide order dated 29.03.2023, learned Special Court kept in abeyance the common bail order dated 28.03.2023 until further order. The accused thereafter moved an application under Section 362 CrPC being Cril. Misc. Case No. 61 of 2023 raising the issue of maintainability of the aforesaid two applications filed by the State under Section 439(2) CrPC.

**[6]** On 29.03.2023, the State also challenged the common impugned order dated 28.03.2023 before this Court by way of a criminal revision, being Cril. Rev. P. No. 7 of 2023 and the same was disposed of vide order dated 22.12.2023 with a direction to the learned Special Court to decide the pending applications filed by the State under Section 439(2) CrPC seeking cancellation of bail on merit expeditiously within a period of 6 weeks. Consequently, vide

order dated 20.05.2024, learned Special Judge (NIA), Imphal West disposed of the pending applications being Cril. Misc. Case Nos. 42 of 2023, 43 of 2023 and 61 of 2023 holding that the applications under Section 439(2) CrPC filed by the State for cancellation of bail granted to the accused were not maintainable, being barred by the provisions of Section 362 CrPC. Vide order dated 21.05.2023 in Spl. Trial No. 10 of 2022, the learned Special Judge (NIA), Imphal West modified the bail conditions laid down in the common impugned order dated 28.03.2023.

**[7]** The State approached this Court on 22.05.2024 by way of petitions under Section 439(2) read with Section 482 CrPC being Cril. Petn. Nos. 33 of 2024 and 34 of 2024 respectively, challenging the common impugned order dated 28.03.2023 passed by learned Special Judge (NIA), Imphal West in Cril. Misc. (B) Case Nos. 3 of 2023 and 45 of 2023, mainly on the ground that the applications under Section 439(2) CrPC were maintainable and the learned Special Judge (NIA), Imphal West had failed to appreciate the order dated 02.11.2022 passed by this Court, rejecting the bail application being BA No. 11 of 2022, filed by the accused. The learned Single Judge, vide common order dated 27.06.2024 in the said Cril. Petn. Nos. 33 of 2024 and 34 of 2024, held that the applications under Section 439(2) read with Section 482 CrPC filed by the State were not maintainable and further that only appeals under Section 21(4) of National Investigation

Agency Act, 2008 (in short, NIA Act) lay against orders granting bail. However, vide another order dated 27.06.2024 passed by the learned Single Judge in the said Cril. Petn. No. 35 of 2024 and MC(Cril.Petn.) No. 31 of 2024, the common impugned bail order dated 28.03.2023 was stayed till 05.07.2024, so as to enable the learned Advocate General to file the appeals, thereagainst.

**[8]** In the above circumstances, on the 29.06.2024, the State filed two appeals under Section 21 NIA Act, 2008 being Cril. Appeal Nos. 11 of 2024 and 12 of 2024 praying *inter alia* for setting aside the common impugned order dated 28.03.2023 passed by learned Special Judge (NIA), Imphal West in Cril. Misc. (B) Case Nos. 3 of 2023 and 45 of 2024 along with applications being MC(Cril.Appeal) Nos. 23 of 2024 and 24 of 2024 praying for stay of the common impugned bail order dated 28.03.2023; and the subsequent order dated 21.05.2024 passed in Spl. Trial No. 10 of 2022 modifying the bail conditions laid down in the common impugned bail order dated 28.03.2023.

**[9]** On 01.07.2024, this Court issued notice in both the appeals as well as the applications for stay, and the respondents who entered appearance, sought and were granted one day's time to file reply; which was filed on the next day, i.e., 02.07.2023. In the said reply, the respondents questioned the maintainability of the appeals, on the ground of being barred

by limitation. It is stated that the common impugned order was passed on the 28.03.2023 and the appeals filed on 29.06.2024 are therefore, hopelessly barred by time and further that there is no provision in the NIA Act for condoning the gross delay in filing the appeals.

**[10]** In this behalf, it is pertinent to note that in memo of appeals, it has been averred by the State that, the appeals have been filed within the period of limitation as provided under the provision of Section 21(5) of NIA Act read with Section 470(1) & (2) CrPC. The above asseveration *qua* the appeals being instituted within the time provided, has been explained as below:

Sl. No.	Date	Remarks
1.	28.03.2023	Accused was released on bail.
2.	29.03.2023	Special Court kept in abeyance bail order until further order upon applications, being Cril. Misc. Case Nos. 42 of 2023 and 43 of 2023 under Section 439(2) filed by the State for cancellation of bail.
3.	20.05.2024	Special Court held that applications under Section 439(2) CrPC for cancellation of bail not maintainable under Section 362 CrPC.
4.	21.05.2024	Special Court modified conditions of bail laid down in order dated 28.03.2023.
5.	27.06.2024	Single Judge observed that appeal ought to be filed and bail order was stayed till 05.07.2024 for filing appeal.

It is stated that the appeals are, in view of the above calculation, filed within time in terms of the provisions of Section 470(1)&(2) of CrPC. If required, it is further asserted that, the State may be permitted to file applications seeking condonation of delay, if so warranted.

**[11]** On the merits, it is urged that the learned Special Judge (NIA), Imphal West, failed to appreciate that as the subject FIR is registered under Section 17 and 18 of the Unlawful Activities (Prevention) Act, 1967, the grant of bail is stringently regulated, in view of the judgment of Hon'ble Supreme Court in the case of ***National Investigation Agency v. Zahoor Ahmad Shah Watali: (2019) 5 SCC 1 @Para 26***, wherein the Hon'ble Supreme Court held that the rigour of the provision of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, will be applicable in a case falling under the said provision; right from the stage of registration of FIR till the conclusion of the trial. It is contended on behalf of the State that that while granting bail under Section 167 (2) of the CrPC, the stipulation contained in Section 43D(5) of Unlawful Activities (Prevention) Act, 1967 have to be considered.

**[12]** It is also submitted that the chargesheet filed without attaching the sanction order is not an 'incomplete chargesheet' and hence default bail cannot be granted after the filing of such chargesheet; and also that if the accused is released on bail, there is every possibility of his fleeing to a neighbouring country.

**[13]** The accused respondent as hereinabove mentioned filed their counter affidavit, raising the issue of maintainability of the present appeals on the basis of the question of being barred by limitation, as provided under Section 21(5) of the National Investigation Agency Act, 2008. It is stated that an appeal is required to be instituted by the stipulation contained in the said provision within 30 days and that the Court cannot, in any event, condone the delay in filing the appeal beyond 90 days. It is also vehemently argued that provisions of the Limitation Act are not applicable in a proceeding under the NIA Act. It is urged that the common impugned order was passed on the 28.03.2023 and the present appeals have only been filed on 29.06.2024, which render them ex-facie, hopelessly barred by time. It is also stated that approaching the learned Single Judge and also the learned Special Judge (NIA), Imphal West, against the impugned order cannot be construed as proceedings instituted under a bonafide mistake in the wrong forum. It is submitted that as against any order passed by Special Court (NIA), only an appeal lies under Section 21 of the NIA Act.

**[14]** On merits, it is stated that the subject chargesheet filed without obtaining the sanction order cannot be termed as a complete chargesheet and hence, the accused is, ex-debito justitiae, entitled to default bail under Section 167 (2) of CrPC and further that in an application seeking default bail, the severity and the gravity of the offence cannot be examined and if the

complete chargesheet has not been filed within the statutory period, the accused has resultantly an indefeasible right to be enlarged on bail.

**[15]** Dr. Colin Gonsalves, learned senior counsel appearing for the respondents submits that the provisions of Limitation Act will not be applicable in the proceeding initiated in a Special Court under NIA Act in terms of the specific provisions of Section 21 which prescribes the period of limitation for filing an appeal against an order passed by the Special Court as 30 days and statutorily within a further period of 90 days. Learned senior counsel reiterates that when a specific period of limitation is provided in the special Act, the general provision for condoning the delay under the provisions of the Limitation Act will not be applicable. Accordingly, the provisions of Section 470 CrPC will not be applicable in a proceeding before a court under NIA Act and the State appellant cannot claim exclusions of time spent bonafide in the court without jurisdiction.

**[16]** Learned senior counsel for the respondents further draws the attention of this Court to the chronology of events for better appreciation of the admitted facts. In the present case, the impugned order is dated 28.03.2023 and the appeal is filed before the Division Bench only on 29.06.2024, much beyond the outer limit of 90 days as provided under Section 21(5). It is further pointed out that approaching the learned Special

Court as well as the learned Single Judge by various petitions cannot be said to be proceedings under bonafide mistake before the wrong fora.

**[17]** It is also stated that the provision of Section 470 CrPC, being related to limitation, shall not be applicable for consideration of condonation of delay under Section 21 of the NIA Act, even though other provisions of the CrPC may be applicable in a proceeding under UAPA. Dr. Colin Gonsalves, learned senior counsel for the respondents, consequently prays that the appeals ought to be dismissed on the ground of limitation alone.

**[18]** Dr. Colin Gonsalves, learned senior counsel, also submits that assuming for the sake of argument that the appeals are within time, the impugned order does not suffer from any irregularity as the accused is entitled to default bail on failure of the prosecution to submit the complete chargesheet within the statutory period. Learned senior counsel submits that the decision of the Gauhati High Court in the case reported as **Subra Jyoti Bharali v. Director of Enforcement** (Order dated 27.10.2022), relied upon by the learned Special Judge in the impugned order, will be binding in the present case, as the chargesheet without the sanction order is incomplete entitling the accused as aforestated to default bail. Reliance is also placed on a decision of the Hon'ble Supreme Court in the case of **Bikramjit Singh v. State of Punjab: (2020) 10 SCC 616** wherein it was held that, the right to default bail has not only become an infeasible right under Section 167(2)

CrPC read with Section 43D UAPA, it is also a fundamental right under Article 21 of the Constitution; once the complete chargesheet is not filed within the stipulated time. It is contended that, since the chargesheet filed by the prosecution is without the sanction order, the same is an incomplete chargesheet and as such the accused is entitled to default bail.

**[19]** In the alternate, Dr. Colin Gonsalves, learned senior counsel for the respondents, would urge that in the event this Court allows the appeals, and sets aside the impugned order, releasing the accused on default bail, the matter may be remanded back to the learned Special Judge (NIA), Imphal West, for deciding the regular bail application being Cril. Misc. (B) Case No. 3 of 2023 on its own merits. Learned senior counsel has invited our attention to the circumstance that, by the common impugned order dated 28.03.2023, two bail applications being Cril Misc. (B) Case No. 3 of 2023 for regular bail and Cril. Misc. (B) Case No. 45 of 2023 for default bail were disposed of by the learned Special Judge (NIA). By the said impugned order, however, the accused was released only on default bail, without there being any consideration of the merits of the application for regular bail. It is submitted that, in case the appeals are to succeed, he may be permitted to agitate all the points available under law before the learned Special Court (NIA), Imphal West in the application for regular bail.

**[20]** Per contra, Mr. Lenin Hijam, the learned Advocate General, Manipur, submits that the appeals have been filed within time. In this respect, he draws the attention of this Court to the provision of Section 16(3) of the NIA Act, 2008 wherein, it is provided that the Special Court shall have the powers of the Sessions Court and further that as practicable, the procedure of Code of Criminal Procedure shall be followed in a trial before the Special Court. The learned Advocate General would urge that while applying the provisions of CrPC, the provisions of Section 43D of Unlawful Activities (Prevention) Act, 1967, which modify the applicability of the some of the provisions of the CrPC with respect to the remand period and the grant of bail, have to be considered. Learned Advocate General would argue that save and except these modifications, the provisions of CrPC will be applicable in a proceeding before a Special Court, NIA. Accordingly, it is asseverated that the provision of Section 470 CrPC which provide for exclusion of certain time periods such as, time taken in in litigating bonafidely before the wrong forum, stay granted by the Court etc., have to be deducted while calculating the period of limitation.

**[21]** Mr. Lenin Hijam, learned Advocate General, Manipur, submits in this regard that, the common impugned order is dated 28.03.2023, but the same was kept in abeyance by the learned Special Court (NIA), Imphal West vide order dated 29.03.2024, in the application filed by the State for

modification and cancelation of the said impugned order. It is only by the order dated 20.05.2024 that the learned Special Judge (NIA) Imphal West, finally vacated the earlier stay order dated 29.03.2023, whilst holding that it has no jurisdiction to pass an order for recall of the impugned order dated 28.03.2023. Thereafter, on 22.05.2024, the impugned order dated 28.03.2023 was challenged before the learned Single Judge by filing Cril. Petition Nos. 34 and 35 of 2024 and said petitions were only decided vide order dated 27.06.2024; wherein the learned Single Judge held that the same were not maintainable, as only appeals under Section 21 of the NIA Act may be preferred against the impugned order granting bail passed by the NIA Court. Accordingly, on 29.06.2024, the present appeals have been instituted by the State appellant.

**[22]** Learned Advocate General, submits that the period from 27.03.2023 (the day, learned Special Judge, (NIA) Imphal West, kept the matter in abeyance, i.e., stay of the impugned order) to 27.06.2024 (the day criminal petitions were disposed of by learned Single Judge as not maintainable) have to be excluded whilst calculating the period of limitation. Learned Advocate General, Manipur, has pointed out that the appeals filed on 29.06.2024 are therefore, within time, within the meaning of Section 470 (1) and (2) of the CrPC, as the time spent in litigating before the wrong forum as well as the time period during which the stay granted of the impugned order by the Court obtained; are to be excluded.

[23] On the merits, learned Advocate General, Manipur, draws the attention of this Court to the recent judgement of the Hon'ble Supreme Court in the case of **Judgebir Singh and Ors. vs. National Investigation Agency (01.05.2023 - SC) : MANU/SC/0501/2023: 2023 INSC 472**, where the Hon'ble Supreme Court clearly and categorically held that a chargesheet filed without prosecution sanction cannot be termed as an incomplete chargesheet and the accused cannot claim a right to be released on default bail for want of sanction in this circumstance. It is highlighted that Dr. Colin Gonsalves, learned senior counsel for the respondents herein, canvassed this very issue, albeit unsuccessfully, before the Hon'ble Supreme Court in **Judgebir Singh (Supra)** and therefore he cannot be heard to rely on the aforementioned decision of Gauhati High Court. In terms of the observation made in para 43 of **Judgebir Singh (Supra)**, it is submitted that the impugned order passed by learned Special Judge (NIA), Imphal West granting default bail only on the ground of the chargesheet being incomplete in the absence of the sanction order, cannot be sustained in law and as such the impugned order is devoid of merit and deserves to be set aside.

[24] Learned Advocate General, Manipur, further urges that assuming without admitting; as submitted by Dr. Colin Gonsalves, learned senior counsel for the respondents, that default bail can be granted if the chargesheet is without any valid sanction order; the rigours of Section 43D(5)

of the Unlawful Activities (Prevention) Act, still have to be considered by the learned Special Judge, in view of the decision of the Hon'ble Supreme Court in ***National Investigation Agency v. Zahoor Ahmad Shah Watali: (2019) 5 SCC 1 @Para 26 (Supra)*** as Section 43D of UAPA Act will be applicable from the moment of registration of FIR till the conclusion of the trial. Relevant Para 26 is reproduced below:

*26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*

Learned Advocate General clarifies that default bail is available only after registration of the FIR and prior to the conclusion of the trial and hence,

the provision of Section 43D will be applicable while considering the grant of default bail, unlike in ordinary criminal proceedings. It is reiterated the impugned order has utterly failed to consider the mandate of the provision of Section 43D UAPA while granting bail to the accused/respondent (both regular and default).

**[25]** On the basis of the pleadings of the party and submissions made at the bar, this Court framed the following issues for determination in the present appeals :

***(a) Whether the provisions of Section 21(5) of the National Investigation Agency Act, 2008 is mandatory or directory?***

***(b) Whether the appeals are barred by time within the meaning of Section 21(5) of the National Investigation Agency Act, 2008?***

***(c) Whether filing of charge sheet without prosecution sanction order is an incomplete one and hence, the accused is entitled to default bail or not?***

***(d) Whether while considering the default bail application filed under Section 167(2) CrPC, the mandatory provisions of Section 43D(5) of Unlawful Activities***

***(Prevention) Act, 1967 have also to be taken into account or not in terms of the decision of the Hon'ble Supreme Court in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali: (2019) 5 SCC 1 @Para 26?***

**[26]** It will be relevant to reproduce the provisions of the statutes attracted to the facts and circumstance of the present case.

## **NATIONAL INVESTIGATION AGENCY ACT 2008 :**

### **Section 16 : Procedure and Powers of Special Courts**

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary, trial under this section, it shall be lawful for a Special Court to pass

a sentence of imprisonment for a term not exceeding one year and with fine which may extend to five lakh rupees.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session **so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.**

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section (2) of section 13 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall, the witness for cross-examination.

## **Section 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.**

### **UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 -**

**Section 43D :** Modified application of certain provisions of the Code

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that-

(a) the reference in sub-section (1) thereof--

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

**Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.**

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.]

## **Section 470 of Code of Criminal Procedure, 1973**

### **470. Exclusion of time in certain cases.—**

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

**[27]** On a plain reading of the provisions of Section 21 of NIA Act, especially sub section (5) thereof, it is clear that the stipulation for filing of the appeal within 30 days and in no case, beyond the period of 90 days, in any circumstances, is mandatory and the appeal must be instituted within this time period. However, we are in agreement with the submission of the learned Advocate General to the effect that, the provisions of Section 470 CrPC as regards the exclusion of time taken, such as litigation in wrong forum and period of stay granted by court, etc., ought to be excluded from calculating the period of limitation. This view is fortified by the specific stipulation of Section 16(3) of NIA Act which provides for applicability of the provisions of CrPC in a trial before NIA court.

**[28]** On perusal of the record, we find that the common impugned order dated 28.03.2023 was kept in abeyance by the learned Special Judge (NIA), Imphal West until further orders, vide order dated 29.03.2023. The State also filed a criminal revision petition being Cril. Rev. P. No. 7 of 2023 before this Court on 29.03.2023 wherein vide order dated 22.12.2022, this Court directed the learned Special Judge (NIA), Imphal West to decide on merit the pending applications filed by the State under Section 439(2) CrPC, seeking cancellation of bail. Accordingly, vide order dated 20.05.2024 the learned Special Judge (NIA), Imphal West dismissed the said applications, as not maintainable. Thereafter, vide order dated 21.05.2024 in Spl. Trial No.

10 of 2022, the conditions of bail laid down in impugned order dated 28.03.2023 were modified by learned Special Judge (NIA), Imphal West. On 22.05.2024 the common impugned order dated 28.03.2023 again came to be challenged by the State, before this Court by way of the said criminal petitions, being Cril Petn. Nos. 33 of 2024 and 34 of 2024 under Section 439(2) read with Section 482 CrPC, wherein, vide order dated 27.06.2024, learned Single Judge held that appeals ought to be filed and that revision petitions were not maintainable. However, the learned Single Judge, vide the said order, was pleased to stay the impugned bail order till 05.07.2024, to enable the State to prefer appeals

**[29]** We are of the view that, the present appeals have been filed within the period of limitation, as first petition being Cril.Rev. P. No. 7 of 2023 was filed before this Court on 29.03.2023 (against the impugned order dated 28.03.2023). The common impugned order dated 28.03.2023 came to be directed to be kept in abeyance by the learned Special Judge (NIA), Imphal West, vide order dated 29.03.2023 and the said stay order was vacated only on 20.05.2024. Then the State preferred petitions under Section 439(2) read with Section 482 CrPC against the common impugned order dated 28.03.2023 immediately thereafter on the 22.05.2024. In pursuance to the directions of learned Single Judge to prefer appeals vide order dated 27.06.2024, the present appeals were filed on 29.06.2024. Therefore, in

terms of the provisions of Section 470(1)&(2) CrPC, providing for exclusion of the time spent in adjudicating before the wrong forum and the period of stay granted by the learned Special Judge (NIA), Imphal West as well as by learned Single Judge, we hold that the appeals filed on 29.06.2024 before this Court are within the stipulated period of limitation.

**[30]** On a bare perusal of the common impugned order dated 28.03.2023, it is seen that the bail applications were allowed under the provisions of Section 167(2) CrPC by holding that the subject chargesheet was filed without obtaining prosecution sanction order and as such, it is an incomplete chargesheet, and resultantly, the accused is entitled to default bail.

**[31]** This issue is no longer *res integra* and has been settled in the case of **Judgebir Singh and Ors. vs. National Investigation Agency (01.05.2023 - SC) : MANU/SC/0501/2023: 2023 INSC 472**, where Hon'ble Supreme Court held that a chargesheet filed without the prosecution sanction order cannot be termed as an incomplete chargesheet and the accused cannot claim right to be released on default bail for want of sanction order. It was further held that obtaining prosecution sanction is not a part of the investigation and the same is required only for taking cognizance by the court. Relevant para are reproduced below for clarity.

43. **We find no merit in the principal argument canvassed on behalf of the Appellants that a chargesheet filed without sanction is an incomplete chargesheet which could be termed as not in consonance with Sub-section (5) of Section 173 of the Code of Criminal Procedure.** It was conceded by the learned Counsel appearing for the Appellants that the chargesheet was filed well within the statutory time period i.e., 180 days, however, the court concerned could not have taken cognizance of such chargesheet in the absence of the orders of sanction not being a part of such chargesheet. **Whether the sanction is required or not under a statute, is a question that has to be considered at the time of taking cognizance of the offence and not during inquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that cognizance is taken of the offence and not of the offender. It cannot be said that obtaining sanction from the competent authorities or the authorities concerned is part of investigation. Sanction is required only to enable the court to take cognizance of the offence. The court may take cognizance of the offence after the sanction order was produced before the court, but the moment, the final report is filed along with the documents that may be relied on by the prosecution, then the investigation will be deemed to have been completed. Taking cognizance is entirely different from completing the investigation. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the court.** The court in a given case, may not take cognizance of the offence for a particular period of time even after filing of the final report. In such circumstance, the Accused concerned cannot claim their indefeasible right Under Section 167(2) of the Code of Criminal Procedure for being released on default bail. What is contemplated Under Section 167(2) of the Code of Criminal Procedure is that the Magistrate or designated Court (as the case may be) has no powers to order detention of the Accused beyond the period of 180 days or 90 days or 60 days as the case may be. If the investigation is concluded within the prescribed period, no right accrues to the Accused concerned to be released on bail under the proviso to Section 167(2) of the Code of Criminal Procedure.

44. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. **Section 173 of the Code of Criminal Procedure does not speak about the sanction order at all. Section 167 of the Code of Criminal Procedure also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of Accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.**

45. Section 173(5) of the Code of Criminal Procedure, of course, requires all the documents or the relevant extracts thereof on which the prosecution proposes to rely on, to accompany the final report. Sanction order cannot be brought within the category of those documents contemplated under Clause (5) to Section 173 of the Code of Criminal Procedure. The grant of sanction is altogether a different act to be performed by the Government concerned Under Section 45 of the UAPA.

[32] From the ratio of the **Judgebir Singh (supra)**, it is now a settled proposition of law that, chargesheet filed without prosecution sanction order cannot be treated as an incomplete chargesheet so as to enable the accused to claim an indefeasible to be released on default bail. We are concomitantly of the view that, the learned Special Judge (NIA), Imphal West erred grossly in holding that the subject chargesheet filed without

prosecution sanction order from the competent authority is an incomplete chargesheet and the accused is entitled to be released on bail. The decision of Gauhati High Court, as relied by the learned Special Court as well as Dr. Gonsalves, can no longer be a precedent in terms of Article 141 of the Constitution of India as the same is patently contrary to the law propounded by the Hon'ble Supreme Court in **Judgebir Singh (supra)**. In the present case, the chargesheet without sanction order was submitted on 25.11.2022 and the default bail application was filed only on 18.03.2023. In the circumstances, the impugned order dated 28.03.2023 in Cril. Misc. (B) Case Nos. 3 of 2023 and 45 of 2023 releasing the accused on default bail is contrary to law and accordingly set aside. It is further our considered view that the default bail application under Section 167 CrPC being Cril. Misc. (B) case NO. 45 of 2023 is not maintainable as the same was filed only on 17.03.2023 that is much after submission of the chargesheet on 25.11.2022. However, it is clarified that the regular bail application, i.e., Cril. Misc. (B) Case Nos. 3 of 2023 filed by the accused was not considered at all by the learned Special Court and the same is therefore remanded back for a decision on merit in terms of the mandatory provisions of Section 43D(5) of UAPA. The accused is permitted to place additional facts and documents relating to subsequent events, if any, before the Special Judge (NIA) Imphal West, and the State is also permitted to file a reply to such new facts and documents.

**[33]** With these observations, the appeals are allowed. The pending applications are disposed of in terms of the above observations and directions. The interim orders are merged with the final order. However, the last issue framed above for consideration, i.e., applicability of the proviso to Section 43D(5) of UAPA while deciding default bail application under Section 167(2) CrPC, is kept open to be decided in an appropriate case.

Send a copy of this order to the learned Special Judge (NIA), Imphal West, for information and compliance, and provide copies to learned counsel appearing for the parties.

**JUDGE**

**CHIEF JUSTICE**

**FR/NFR**

*Sandeep*