

Arif Farooq Bhat vs National Investigation Agency on 7 January, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh, Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW
CRL.A. 2/20

ARIF FAROOQ BHAT

Through:

NATIONAL INVESTIGATION AGENCY

Through: Ms. Shilpa

Priyam Agr

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 07.01.2025

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Petitioner- Arif Farooq Bhat under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter, 'NIA Act') challenging the impugned order dated 27th August, 2024 passed by the Ld. Special Judge, Patiala House Courts, New Delhi in Case No. NIA/2/2022 titled 'NIA v. Tariq Ahmed Dar & Ors.' arising out of RC No. 29/2021/NIA/DLI registered at P.S. NIA under Sections 120B and 121A of the IPC and Sections 18,18A, 18B, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 by which the bail application of the Appellant has been rejected.

3. Ld. Counsel for the Appellant submits that the said order was obtained by the Appellant on 29th August, 2024 and the present appeal has been filed on 29th November, 2024 i.e., after 92 days. Various reasons have been given for seeking condonation of delay in filing the appeal.

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4. Ld. Counsel for the Appellant further submits that there is a glaring issue which has occurred in the impugned order i.e., arguments were heard in the application on 2nd July, 2024 and the order

was reserved. However, thereafter, the order on charge was passed on 30th July, 2024. The formal charges were framed on 20th August, 2024. In the impugned order, however, the subsequent events of framing of charge have been considered and on that basis, the Appellant's bail application which was reserved for orders has been dismissed. This, according to the Appellant would be an irregularity which would go to the root of the matter.

5. Ms. Shilpa Singh, ld. SPP has been requested to accept notice on behalf of the National Investigation Agency.

6. Heard. Admittedly, the appeal has been filed beyond the prescribed period provided under Section 21 of the NIA Act, 2008, i.e., 30 days as also the extended period of 60 days. This Court has already taken a view that under Section 21(5), any delay beyond 90 days would not be condonable. The relevant extract from the decision in Jagtar Singh Johal v. National Investigation Agency 2024 SCC OnLine Del 6504 is set out below:

"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 This is a digitally signed order.

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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.

33. The applications seeking condonation of delay being Crl.A. 493/2023, 538/2023, 539/2023, 540/2023, 541/2023 are accordingly, dismissed. Consequently, the

appeals are also dismissed."

7. In view thereof, the delay beyond 90 days would not be liable to be condoned even in the present case as the NIA Act is a special statute and the language of the Act does not permit condonation of delay beyond the prescribed period.

8. Insofar as the second submission that the circumstances relating to framing of charges having been considered by the Special NIA Court, Id. Counsel submits that the Appellant would like to file a fresh bail application before the Special NIA Court.

9. Thus, the appeal against the impugned order dated 27th August, 2024 would not be maintainable and is dismissed. It is made clear that if the This is a digitally signed order.

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10. The appeal is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

JANUARY 7, 2025 dj/rks/sc This is a digitally signed order.

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