

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**CRIL. PETN. No. 35 of 2024**

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

.... *Petitioner*

- *Versus* -

Mark Thangmang Haokip, (39) years, S/o Limkhosel  
Haokip of Molnom Village, P.O. & P.S. Churachandpur,  
Churachandpur District, Manipur – 795128.

.... *Respondent*

**B E F O R E**

**HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioner	:	Mr. Lenin Hijam, Advocate General Assisted by Mr. Dimal Kumar, Advocate
For the respondent	:	Mr. Colin Gonsalves, Senior Advocate Assisted by Osbert Khaling, Advocate
Date of hearing	:	23.05.2024
Date of delivery	:	<b>27.06.2024</b>

## **JUDGMENT & ORDER**

[1] Heard Mr. Lenin Hijam, learned Advocate General appearing through VC assisted by Mr. Dimal Kumar, learned counsel for the petitioner and Mr. Colin Gonsalves, learned senior counsel appearing through VC assisted by Osbert Khaling, learned counsel for the respondent.

[2] The present Petition has been filed under Section 482 of the Criminal Procedure Code with the following prayer:

- (i) To call for records of Spl. T. No. 10 of 2022 (Ref. : FIR No. 129 (05) 2022 IPS U/S 120-B, 121, 121-A, 123, 400 IPC S. 17, 18 UA(P) Act;
- (ii) To quash and set aside the other order dated 21.05.2024 passed by the Ld. Special Judge (NIA), Imphal West, Manipur in Spl. T. No. 10 of 2022 (Ref. : FIR No. 129 (05) 2022 IPS U/S 120-B, 121, 121-A, 123, 400 IPC S. 17, 18 UA(P) Act;
- (iii) To pass any appropriate order or orders or directions which the Hon'ble Court may deem fit and proper and just in the present nature of the case.

[3] The instant petition has been instituted on behalf of the State of Manipur against the order dated 21.05.2024 passed in Spl. T. No. 10 of 2022 of the Ld. Special Judge (NIA), Imphal West on the ground that the said order has been passed without giving opportunity of

being heard the public prosecutor thereby violating the principle of natural justice in the name of exercising discretionary power of the Court. The order has been passed in violation of Section 362 of Cr.P.C.

[4] By the said order dated 21.05.2024 impugned herein, the Ld. Special Judge (NIA), Imphal West has substantially modified the order dated 28.03.2023 to the extent that the two sureties may be non-Gazetted Government employees. The relevant portions of the order dated 21.05.2024 read as follows:

*"Perusal of the record shows that the accused has been in judicial custody for more than 1 year after he was granted bail, though it is also a fact that this Court had kept in abeyance of the operation of bail order until 20-05-2024.*

*Under the circumstances, the condition of the bail order dated 28-03-2023 is modified to the extent that the two sureties may be non-Gazetted government employees.*

*The sureties are appearing through V.C. from the Office of District & Sessions Judge, Senapati as requested by Ld. Counsel of the accused. On Instruction of this Court, Shri Shivakumar, LDA has examined the original copies of surety bonds. The original copies of the surety bonds and other relevant documents shall be forwarded to this Court within a reasonable time from the date of receipt of the same.*

*Interacted with the sureties, satisfied about the genuineness. Bonds are accepted.*

*Issue release order accordingly."*

[5] Vide order dated 20.05.2024 passed in Cril. Misc. Case No. 61 of 2023 by the Ld. Special Judge (NIA), Imphal West, the impugned order dated 21.05.2024 is very much contradictory to its own order dated 20.05.2024 wherein, it has been decided that the same Court is

not competent to alter or modified the judgment of the same Court except to correct a clerical or arithmetical error.

[6] Further, it has been mentioned that the Ld. Special Judge (NIA), Imphal West held that the Misc. Case No. 42 and 43 of the 2023 filed by the State have not been maintainable in Cril. Misc. Case No. 61 of 2023 by virtue of Section 362 of Cr.P.C. The same Ld. Special Judge could not modify or alter its common order dated 28.03.2024 without any application for modification of the said order and without giving any notice to the State.

[7] The learned senior counsel appearing for the respondent Mr. Colin Gonsalves requested this Court to take up the maintainability issue first before dealing with the merit of the case thereby raising the maintainability issue stating that the present application ought to have filed under an appeal but not under present proviso i.e. 439(2) of the Cr.P.C r/w 482 of the same Code. The learned sr. counsel draws the attention of the court to section 21 of the NIA Act and submits that under section 21(4) of the Act provides provision that an appeal shall lie to the High Court against an order of the Special Court granting or refusing the bail.

The learned Advocate General submits that the present application being preferred against bail order, the bail order is admittedly an interlocutory order, the appeal does not lie in the present case. The learned Advocate General draws this Court's attention to Section 21(1).

[8] Further, the learned Advocate General submits that Section 21 of the NIA Act will apply only to the Central Agency constituted by the Central Government, but the present case is investigated by the State Agency as such, the present case is maintainable. Further, the learned Advocate General draws this Court's attention to Sections 6 and 10 of the NIA Act, for clarity and for reference Sections 6, 10 and 21 of the NIA Act are reproduced herein below:-

"6. *Investigation of Scheduled Offences -*

(1) *On receipt of information and recording thereof under section 154 of the Code relating to any scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.*

(2) *On receipt of the report under sub-section (1), the State Government as expeditiously as possible.*

(3) *On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.*

(4) *Where the Central Government is of the opinion that the offence is a Scheduled offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.*

(5) *Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo moto, direct the Agency to investigate the said offence.*

(6) *Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and*

*shall forthwith transmit the relevant documents and records to the Agency.*

*(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation."*

*10. Power of State Government to investigate Scheduled Offences — Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.*

*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."*

[9] After hearing the rival contentions of the learned counsels for the parties, I am of the opinion that there are 3 (three) issues raised:

(i) Whether the present petitioner should file the present petition on appeal or under the present Sections which the present petitioner filed.

(ii) If at all appeal is to be filed other than the present Sections under which the petitioner filed, whether which one of Section 21(1) or Section 21(4) of the NIA Act.

(iii) The present Section 21(1) or 21(4) of the NIA Act will apply only to the investigation conducted by the agency constituted by Central Government or can also be applied to the investigation conducted by the State agency under the Scheduled Act.

[10] Section 6 relates to the investigating agency constituted by the Central Government, Section 10 relates to power of the State Government to investigate the Scheduled Offences and Section 21 relates to appeals challenging the orders passed by the Special Courts (NIA).

[11] It is admitted fact that allowing and rejecting the bail application is an interlocutory order, but a perusal of Section 21(1) of the NIA Act says that an appeal shall lie from any judgment, sentence or order not being an interlocutory order of Special Court to the High Court on facts and law. However, Section 21(4) specifically mentioned that an

appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. Hence, it is clear that in spite of being an interlocutory order, the order of the Special Court granting or refusing bail shall be filed on an appeal.

[12] On careful perusal of the section 21 NIA Act, it is evident that the Act does not specify as to whether this section will apply only to investigation made by the agency constituted by the Central Government and not to agency constituted by the State Government. But, on combined reading of Sections 6, 10 and 21 of the NIA Act, the Act does not specifically mention about the applicability of Section 21 to Central Government constituted agency but kept silent as to whether Section 21 shall apply to State Government constituted agency or not. If the Section 21 is to be applied only to the Central Government constituted agency, then the legislatures must put a provision separately for State constituted agency. Hence, the Section 21 is silent about the applicability of the agencies. It is presumed that both Sections 21(1) and 21(4) are applicable to the investigation conducted by the Central Government as well as the agency constituted by the State Government (State Agency).

[13] The learned counsel for the respondent further submits that the present application filed under Section 439(2) of Cr.P.C. r/w Section 482 of the Cr.P.C. is not maintainable and liable to be dismissed. The Hon'ble Supreme Court in **(2014) 1 SCC 258** [**"State of Andhra Pradesh through Inspector General, National Investigation**



**Agency V. Mohd. Hussain @ Saleem” and in the matter of “Pragya Singh Thakur V. National Investigation Agency”].** The relevant portions of the judgment are extracted hereunder:

*"16. The abovereferred Section 21(4) of the NIA Act provides that an appeal lies to the High Court against an order of the Special Court granting or refusing bail. However, sub-section (3) which is a prior sub-section, specifically states that "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, no such appeal or revision shall lie to any court except as provided under sub-sections (1) and (2), meaning thereby only to the High Court. This is the mandate of Section 21(3) of the NIA Act.*

*17. There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4) of the NIA Act, the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). Thus it is only the interlocutory orders granting or refusing bail which are made appealable and no other interlocutory orders, which is made clear in Section 21(1), which lays down that an appeal shall lie to the High Court from any judgment, sentence or order, not being an interlocutory order of a Special Court. Thus other interlocutory orders are not appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day-to-day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not therefore very much an order against which an appeal is permitted under Section 21(1) of the Act.*

*18. Section 21(2) of the NIA Act provides that every such appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court. This is because of the importance that is given by Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for*

*the investigation of which this Special Act has been passed. If Parliament in its wisdom has desired that such appeal shall be heard only by a Bench of two Judges of the High Court, this Court cannot detract from the intention of Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-section (4) of Section 21 has made that specific provision, though sub-section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-section (1) are to be heard by a Bench of two Judges as provided under sub-section (2). This being the position, there is no merit in the submission canvassed on behalf of the applicant that appeals against the orders granting or refusing bail need not be heard by a Bench of two Judges.*

20. As noted earlier, the submission of the applicant is twofold:

(i) Firstly, as stated above the appeal against an order granting or refusing bail under Section 21(4) of the Act need not be before a Bench of two Judges, which is untenable as noted above.

(ii) The other submission is that the application for bail which is made by the applicant before the High Court is an original application under Section 21(4) of the MCOC Act read with Section 439 of the Code, and is therefore, maintainable before a Single Judge of the High Court. As far as this submission is concerned, it has been repelled in **Usmanbhai** relied upon by the counsel for the applicant himself.

21. **Usmanbhai** was a matter under the Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), shortly known as "TADA". This Act also had a similar provision in Section 19(1) thereof which reads as follows:

"19. Appeal. –

(1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.

*It is also material to note that Section 20(8) of TADA had provisions identical to Section 21(4) of MCOC Act. The Gujarat High Court while interpreting the provisions of TADA had held that it did not have the jurisdiction to entertain the application for bail either under Section 439 or under Section 482 of the Code. That view was confirmed by this Court by specifically stating at the end of para 22 of its judgment in **Usmanbhai** case in following words : (SCC pp. 289 – 90).*

*"22. .... We must accordingly uphold the view expressed by the High Court that it had no jurisdiction to entertain an application for bail under Section 439 or under Section 482 of the Code."*

*24. In Para No. 13 of the judgment this Court confirmed the view taken in **Usmanbhai** in the following words: (**Salimbhai Abdulgaffar Shaikh case, SCC p. 58**).*

*"13. Section 20 of the TADA contained an identical provision which expressly excluded the applicability of Section 438 of the Code but said nothing about Section 439 and a similar argument that the power of the High Court to grant bail under the aforesaid provision consequently remained intact was repelled in **Usmanbhai Dawoodbhai Menon V. State of Gujarat** . Having regard to the scheme of TADA, it was held that there was complete exclusion of the jurisdiction of the High Court to entertain a bail application under Section 439 of the Code. This view was reiterated in **State of Punjab V. Kewal Singh**.*

*27.2. And, secondly as far as Prayer 9b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as the Unlawful Activities (Prevention) Act, 1967, such offences are triable only by the Special Court, and therefore application for bail in such matters will have to be made before the Special Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.*

*27.3. Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie to a Bench of two Judges of the High Court.*

In **(2020) 10 SCC 616 [Bikramjit Singh V. State of**

**Punjab]**, the relevant portions of the judgment are extracted below:

"25. When these provisions are read along with Section 2(1)(d) and the provisos in Section 43-D(2) of the UAPA, the scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if "the Court" is satisfied with the report of the Public Prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. "The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence – albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(ii) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the investigating agency of the State.

26. Before the NIA Act was enacted, offences under the UAPA were of two kinds – those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as all Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts

*set up under that Act. In the absence of any designated court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone. Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. The impugned Judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts."*

[14] The learned Advocate General on the other hand fervently submitted that the maintainability issue does not arise at all as the present case is investigated by the State investigating authority not by the agency constituted by the Central Government under Section 6 of NIA Act. But, the present case is purely a State case constituted under Section 10 of the NIA Act. Section 21 of NIA Act applies only for the cases investigated dealt with by the Central Agency empowered/constituted by the Central Government.

[15] The Law & Legislative Affairs Department, Government of Manipur issued a notification dated 10.06.2022 wherein under Section 22 (1) of the NIA Act, 2008, the Hon'ble Governor after consultation with Hon'ble The Chief Justice of the High Court of Manipur, Special Courts are constituted for trial of offences under any or all the enactments specified in the Schedule of the said Act and the same is reproduced herein below:

"GOVERNMENT OF MANIPUR  
SECRETARIAT : LAW & LEGISLATIVE AFFAIRS DEPARTMENT

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**NOTIFICATION**  
*Imphal the 10<sup>th</sup> June, 2022*

No. 3/9/72-Act/L(Pt)                      In exercise of the powers conferred by sub-section (1) of Section 22 of the National Investigation Agency, Act, 2008 (34 of 2008) and after consultation with the Chief Justice of the High Court of Manipur, the Governor of Manipur is pleased to specify the following Sessions Courts at column (II) as Special Courts at column (III) for the trial of offences under any or all the enactments specified in the Schedule of the said Act, within the local limits of their territorial jurisdiction at column (IV) below:

<b>Sl. No</b>	<b>Name of Sessions Court</b>	<b>Name of Special Court</b>	<b>Territorial jurisdiction</b>	<b>Ordinary place of sitting</b>
<i>(I)</i>	<i>(II)</i>	<i>(III)</i>	<i>(IV)</i>	<i>(V)</i>
1.	Sessions Court, Imphal East	Special Court (NIA), Imphal East	Imphal East & Jiribam Districts	Imphal
2.	Sessions Court, Imphal West	Special Court (NIA), Imphal West	Imphal West, Tengnoupal, Chandel, Noney & Tamenglong Districts	Imphal
3.	Sessions Court, Thoubal	Special Court (NIA), Thoubal	Thoubal & Kakching Districts	Thoubal
4.	Sessions Court, Bishnupur	Special Court (NIA), Bishnupur	Bishnupur District	Bishnupur
5.	Sessions Court, Senapati	Special Court (NIA), Senapati	Senapati & Kangpokpi Districts	Senapati
6.	Sessions Court, Churachandpur	Special Court (NIA), Churachandpur	Churachandpur & Pherzawl Districts	Churachandpur
7.	Sessions Court, Ukhrul	Special Court (NIA), Ukhrul	Ukhrul & Kamjong Districts	Ukhrul

2.        The specifying of the above Sessions Courts as Special Courts (NIA) is with immediate effect.

Sd/-  
(Nungshitombi Athokpam)  
Commissioner (Law)  
Government of Manipur"

[16] The above mentioned notification was made under Section 22 sub-section (1) of National Investigation Agency Act, 2008. For better appreciation of the above notification, Section 22 of the NIA Act is reproduced herein below:

*"22. Power of State Government to constitute Special Courts —*

- (1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.*
- (2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—*
  - (i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;*
  - (ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government";*
  - (iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General of the State".*
- (3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.*
- (4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.*



[17] On combined reading of both the above notification with Section 22, it is clear that the said notification for constitution of Special Courts was made under NIA Act. On further perusal of the Hon'ble Supreme Court's judgment **(2020) 10 SCC 616 [Bikramjit Singh V. State of Punjab]** and **(2014) 1 SCC 258 ["State of Andhra Pradesh through Inspector General, National Investigation Agency V. Mohd. Hussain @ Saleem"]** and in the matter of **"Pragya Singh Thakur V. National Investigation Agency"**], it is evident and clear that the judgment, sentence and order passed by the Special Court constituted under the Act and investigated by the Central Agency as well as the State Agency under the scheduled offences will come under Section 21 of the Act.

[18] The learned Advocate General made reference to series of Hon'ble Supreme Court's judgments, but these judgments and orders are all for consideration of the case on merit of the subject case. But, right now, the issue of maintainability as to whether the present application filed under Section 439 (2) of the Criminal Procedure Code read with Section 482 of Cr.P.C. is maintainable or not or is liable to be filed under Section 21 of NIA Act. This judgment and order of the Hon'ble Supreme Court will be considered when the matter is heard on merit.

[19] The learned Advocate General submitted that the present application with the reliefs sought for come under Section 21(1) of the NIA Act as such, as the dismissal and allowing the bail application comes



under interlocutory order as such not appealable on the other hand, the learned counsel for the respondent Mr. Gonsalves submitted that the present application comes under section 21(4) of the NIA Act.

Situated thus, it is clear and evident that the present application is covered by Section 21 of NIA Act.

[20] On combined reading of the Section 21(1) and Section 21(4) of the Act, it is evident that the present application filed by the State comes/falls under section 21(4). The Hon'ble Supreme Court in **(2014) 1 Supreme Court Cases 258 – State of Andra Pradesh through Inspector General, National Investigation Agency vs Mohd. Hussain Alias Saleem and in the matter of Pragya Singh Thakur vs National Investigation Agency** (Supra) rejected the plea of the applicant that the application for bail filed by the applicant is not maintainable before the High Court, an appeal against any order passed by Special Court shall lie only to the division bench of two judges of High Court. Further, the Hon'ble Supreme Court at para no. 17, 18, 27.2 & 27.3 observed that:-

*"17. There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4) of the NIA Act, the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). Thus it is only the interlocutory orders granting or refusing bail which are made appealable and no other interlocutory orders, which is made clear in Section 21(1), which lays down that an appeal shall lie to the High Court from any judgment, sentence or order, not being an interlocutory order of a Special Court. Thus other interlocutory orders are not*

*appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day-to-day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not therefore very much an order against which an appeal is permitted under Section 21(1) of the Act.*

*18. Section 21(2) of the NIA Act provides that every such appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court. This is because of the importance that is given by Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this Special Act has been passed. If Parliament in its wisdom has desired that such appeal shall be heard only by a Bench of two Judges of the High Court, this Court cannot detract from the intention of Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be not appeal against an order granting or refusing bail. On the other hand, sub-section (4) of Section 21 has made that specific provision, though sub-section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-section (1) are to be heard by a Bench of two Judges as provided under sub-section (2). This being the position, there is no merit in the submission canvassed on behalf of the applicant that appeals against the orders granting or refusing bail need not be heard by a Bench of two Judges.*

*27.2. And, secondly as far as Prayer (b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as the Unlawful Activities (Prevention) Act, 1967, such offences are triable only by the Special Court, and therefore application for bail in such matters will have to be made before the Special Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.*

*27.3. Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie to a Bench of two Judges of the High Court.*

[21] From the analysis and deliberation made in the preceding paras, 2 (two) facts have emerged:

It does not say that Section 21 of the NIA Act shall exclusively apply to the matter dealt with by the Central agency nor does it imply non-applicability of the said Section to the ones handled by the State agencies. Another fact is that the Constitution of NIA Courts by the State Government and investigation of the case(s) by the State agencies are done under the NIA Act as mentioned above. In the event of the NIA Act not having expressed provisions on the certain issue in this matter, the relevant provision provided therein under the Act shall be applicable to the issue in question.

[22] In view of the discussion and observations made above and on combined reading of the aforesaid Sections 21(1), (2), (3) and (4) of NIA Act with the above observations made by the Hon'ble Supreme Court, it is crystal clear that the present applications filed under Section 439(2) of the Criminal Procedure r/w 482 of the same Court are not maintainable but the present applications ought to have filed under section 21(1) of NIA Act. As such, the petitioner ought to have filed an appeal against the impugned order.

[23] For the aforementioned reasons, the present application made by the State petitioner is dismissed as not maintainable. No order as to costs.

**JUDGE**

*Bipin*