

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRMC No.71/2019

MOHAMMAD AYOUB DAR ...PETITIONER(S)

Through: Mr. S. H. Thakur, Advocate.

V/s

STATE OF J&K ...RESPONDENT(S)

Through: Mr. Usman Gani, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)(ORAL)

16.12.2022

1) The petitioner has filed the instant petition under Section 561-A of the J&K Cr. P. C challenging order dated 01.03.2019 passed by Principal Sessions Judge, Kulgam, whereby bail application of the petitioner in case FIR No.105/2018 for offences under Section 147, 148, 149, 336, 307, 302, 212 RPC, 7/27 Arms Act read with Sections 13(2), 18, 19, 20, 38, 39 of ULA(P) Act registered with Police Station, Qaimoh, has been rejected.

1) Learned counsel appearing for the respondent has raised a preliminary objection to the maintainability of this petition on the ground that the impugned order is appealable in terms of Section 21 of National Investigation Agency Act, 2008 (hereinafter referred to as the NIA Act).

2) Learned counsel for the petitioner has submitted that in the instant case, the investigation of the FIR has been conducted by local police and not by National Investigation Agency, as such, the provisions of the NIA Act are not applicable to the case at hand. He has further submitted that the order impugned has been passed by Principal Sessions Judge, Kulgam, and not by a Special Court designated under the NIA Act, therefore, the remedy of appeal provided under the NIA Act is not available to the petitioner.

3) I have heard learned counsel for the parties and perused the material on record.

4) In order to test the merits of the contentions raised by the petitioner, it would be apt to notice the relevant provisions of the NIA Act that has come into operation in this part of the Country on the same date on which it came into operation in the other parts of the Country i.e., on 31.12.2008. In this regard reference to Section 22 of the NIA Act would necessary, which reads as under:

22. Power of State Government to designate Court of Session as Special Courts.-- (1) The State Government may designate one or more Courts of Session as] 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 designated 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 is³[designated] 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 designated] 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 designated.

5) From a perusal of the aforesaid provision, it is clear that the State Government has power to designate one or more Courts of Session as Special Courts for trial of offences under any or all the enactments specified in the Schedule to NIA Act. Admittedly, as on date of passing of the impugned order, the Government of Jammu and Kashmir had not designated any Special Court in the erstwhile State of Jammu and Kashmir. However, sub-section (3) of Section 22, as quoted above, takes care of a situation where Special Court has not been designated by the State Government. It provides that jurisdiction conferred by the NIA Act shall, until a Special Court is constituted by the State

Government, be exercised by the Court of Session of the division in which such offence has been committed. It also provides that such a Court shall have all the powers and follow the procedure provided under Chapter IV of the NIA Act. Thus, for all practical purposes, in the absence of a designated Special Court, the Sessions Court of the area where the offence is committed acquires the status of a Special Court as defined in Section 2(h) of the NIA Act.

6) Clause (ii) of sub-section (2) of Section 22 of the NIA Act, as quoted hereinbefore, clearly provides that reference to “Agency” in sub-section (1) of Section 13 shall be construed as a reference to the “Investigating Agency of the State Government”, which means that every Scheduled offence investigated even by investigating agency of the State Government is to be tried only by a Special Court within whose jurisdiction it was committed. As already stated, in the absence of designation of a Special Court, the powers of a Special Court are to be exercised by the Sessions Court having jurisdiction.

7) Now coming to the facts of the instant case, the investigation of the case has, admittedly, been conducted by the local investigating agency and not by National Investigation Agency. The provisions of the NIA Act, do not prohibit the investigation of the Scheduled offences which include the offences under ULA(P) Act, by Local Investigating Agencies. It only provides that when a Scheduled offence is investigated by a local investigating agency, the same has to be tried by a Special Court constituted under Section 22 of the Act and in the

absence of a Special Court, by the Sessions Court having jurisdiction in the area, meaning thereby that the Sessions Court will act as a Special Court in such matters where the offences involved are of the nature as mentioned in the Schedule to the NIA Act.

8) The impugned order that has been passed by Principal Sessions Judge, Kulgam. In view of the foregoing discussion, the said order has to be treated as the one passed by a Special Court constituted under Section 22 of the NIA Act. Such an order is appealable in terms of Section 21(4) of the NIA Act and in terms of sub-section (2) of Section 21, the appeal has to be heard by a bench of two Judges of the High Court. But the petitioner, instead of availing the remedy of appeal provided under Section 21 of the NIA Act, has filed the present petition under Section 482 of the Cr. P. C.

9) It is a settled law that the High Court would be reluctant in exercising its jurisdiction under Section 482 of the Cr. P. C in a case where a litigant has an alternative efficacious remedy available. The petitioner definitely has an alternative efficacious remedy available to him as he has a statutory right to file an appeal against the impugned order before the High Court that is to be heard by a Bench of two Judges. The remedy available to the petitioner is not only efficacious but the same is effective as well. Therefore, on account of availability of alternative efficacious remedy, this Court would not exercise its inherent jurisdiction under Section 561-A of the Jammu and Kashmir Cr. P. C to interfere with the impugned order. In my aforesaid view I am

supported by a judgment of the Supreme Court in the case of **State of Andhra Pradesh vs. Mohd. Hussain alias Saleem**, (2014) 1 SCC 706.

10) For the foregoing reasons, the instant petition is held to be not maintainable. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Srinagar
16.12.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

