

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 471 OF 2020
[@ SPECIAL LEAVE PETITION (CRL .) NO. 2643/2020]

NATIONAL INVESTIGATION AGENCY

...APPELLANT(S)

VERSUS

GAUTAM NAVLAKHA

...RESPONDENT(S)

ORDER

Leave granted.

We have passed an order on 16.03.2020, the same is extracted hereunder :-

“However, we are satisfied that in view of the provisions contained in Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967, which exclude the operation of Section 438 of the Cr.P.C. No case is made out to exercise the powers under Section 438 Cr.P.C. Section 43D(4) is extracted hereunder:-

“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.”

We are of the opinion that it cannot be said that no prima facie case is made out. The petitions cannot be said to be maintainable in view of the bar contained in 43D(4) of the Unlawful Activities (Prevention) Act, 1967. The special leave petitions are, accordingly, dismissed. However, since the protection has been enjoyed by the petitioners approximately for 1 ½ years, three weeks time from today is granted to them to surrender. The petitioners shall surrender their passport forthwith with the Investigation Agency/Officer.

Pending application(s), if any, shall stand disposed of.”

We have extended the time for three weeks to surrender. Thereafter, further application was filed before this Court on the ground of Covid. This Court passed an order on 08.04.2020. The same is extracted hereunder :-

“Though we expected that the accused would surrender, honouring the order of this Court, they have not done so. We are told that in would Bombay, the courts are functioning. It have been appropriate for the accused to surrender as the courts are open and not totally closed. However, since the petitioners have enjoyed the protection for long, by way of last opportunity, we extend the time granted to surrender for one week. We make it clear that there shall not be any further extension of time. This order shall not be treated as a precedent. The misc. applications are, accordingly, disposed of.”

A reading of the order makes it clear that the accused was given liberty to apply before the jurisdictional court as the courts at Bombay are functioning. We have noted the same in the aforesaid order dated 08.04.2020. Thus, in view of the aforesaid clear order passed by this Court and the time of one week granted by this Court, it was the jurisdiction of the Bombay Court alone to entertain any application. By way of misconceived venture, an application was filed directly before the High Court of Delhi. In case any modification of the order dated 08.04.2020 was required, it was incumbent upon the respondent to apply to this court, which he did not do. Thus, the entire exercise taken by the High Court of Delhi was totally uncalled for as the spirit of our order is apparent. The High Court of Delhi should not have entertained the application at the threshold, the observations made are hereby ordered to be expunged.

Since the respondent has been moved to Bombay, he is at liberty to apply before the competent court in Bombay. Thus, we set aside the impugned order, including the observations and the proceedings which were initiated. It is the courts at Bombay alone having the jurisdiction, which can entertain the application. Thus, the appeal is allowed.

We make it clear that we have not commented on the merits of the case.

Pending application(s) is/are disposed of.

.....J.
(ARUN MISHRA)

.....J.
(NAVIN SINHA)

JULY 06, 2020
NEW DELHI

ITEM NO.19

Virtual Court 3

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 2643/2020

(Arising out of impugned final judgment and order dated 27-05-2020 in BA No. 986/2020 passed by the High Court Of Delhi At New Delhi)

NATIONAL INVESTIGATING AGENCY

Appellant(s)

VERSUS

GAUTAM NAVLAKHA

Respondent(s)

([APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED INTERIM ORDER])

Date : 06-07-2020 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Tushar Mehta,SG
Mr. Aman Lekhi,ASG
Ms. Swati Ghildiyal,Adv.
Mr. Kanu Agrawal,Adv.
Mr. B.V. Balram Das,Adv.

For Respondent(s) Mr Kapil Sibal, Senior Advocate
Ms Nitya Ramakrishna, Advocate
Ms Warisha Farasat, Advocate
Mr Shadan Farasat, Advocate-on-Record.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s) is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
ASSISTANT REGISTRAR

(Signed order is placed on the file)