IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.26870 OF 2024 (GM-RES)

BETWEEN:

1. SYED ABBAS
AGED ABOUT 35 YEARS,
S/O. SYED IMTIYAAZ,
NO.5, MBS MANSON, 15TH CROSS,
GOVINDAPURA, AC POST,
BENGALURU-560045.

2. HABEEB UR REHMAN
AGED ABOUT 34 YEARS,
S/O. ABDUL MAZEED,
R/AT NO.286, 14TH CROSS,
GOVINDAPURA, AC POST,
BENGALURU-560045.

3. PEER PASHA
AGED ABOUT 37 YEARS,
S/O. LATE ABDUL MAZEED,
R/O. NO.827/B, 14TH CROSS,
NEAR FARIDA SHOE FACTORY,
GOVINDAPURA MAIN ROAD,
AC POST, BENGALURU-560045.

4. ZIYA UR REHMAN
AGED ABOUT 38 YEARS,
S/O. MOHAMMED SAB,
R/O. NO.14, 4TH CROSS,
BYARAPPA LAYOUT,
GOVINDAPURA MAIN ROAD,
AC POST, BENGALURU-560045.

5. IMRAN AHMED
AGED ABOUT 42 YEARS,
S/O. ILYAS AHMED,
R/AT #28, 7TH B CROSS,
KAVERI NAGAR, RT NAGAR POST,
BENGALURU-560032.

6. SAMIUDDIN
AGED ABOUT 46 YEARS,
S/O. LATE RAFEEQ S.A.,
R/AT #294, 6TH MAIN,
3RD BLOCK, HBR LAYOUT,
BENGALURU-560043.

7. MOHAMMED SIRAJUDDIN
AGED ABOUT 49 YEARS,
S/O. SHAIK MOHIUDDIN,
R/AT #436, 6TH CROSS,
MASJID E KHAIR, VINOBHA NAGAR,
BENGALURU NORTH,
ARABIC COLLEGE,
BENGALURU-560045.

8. RABAH WAQAS
AGED ABOUT 31 YEARS,
S/O. KHALAQ SHARIFF,
R/O. NO.26/2, 12TH 'A' CROSS,
SONNAPPA BLOCK, PILLANNA GARDEN,
3RD STAGE, K.G. HALLI,
BENGALURU-560045.

9. SHABBAR KHAN
AGED ABOUT 40 YEARS,
S/O. NAWAB KHAN,
R/AT NEAR QUBA MASJID,
3RD CROSS, NEAR ANWAR LAYOUT,
D.J. HALLI, BENGALURU-560045.

10. SHAIK AJMAL
AGED ABOUT 37 YEARS,
S/O. SHAIK RIYAZ,
R/AT D.NO.62, 12TH CROSS,
VINOBHA NAGAR, PILLANNA GARDEN,
K.G. HALLI, BENGALURU-560045.

11. MOHAMMED KALEEM AHMED
AGED ABOUT 72 YEARS,
S/O. MOHAMMED JAFFAR,
PRESENT ADDRESS NO.401,
4TH FLOOR, HONEY ENCLAVE,
NEAR PETROL BUNK,
SHAMPURA ROAD, GANDHINAGAR,
K.G. HALLI, BENGALURU-560045.

12. NAQEEB PASHA
AGED ABOUT 33 YEARS,
S/O. MOHAMMED RAHAMATHULLA H.
R/AT D.NO.18, 2ND MAIN,
4TH CROSS, EZIKAL INDUSTRIAL
ESTATE, K.G. HALLI,
BENGALURU-560045.

13. IMRAN AHMED
AGED ABOUT 40 YEARS,
S/O NAZEER AHMED,
R/AT #702, 1ST MAIN, 3RD CROSS,
'B' STREET, VINOBHA NAGAR,
K.G. HALLI, ARABIC COLLEGE,
BENGALURU-560045.

14. MOHAMMED AZHAR
AGED ABOUT 32 YEARS,
S/O. MOHAMMED SHAUKAT,
R/AT NEAR NARENDRA THEATRE,
HBR LAYOUT, BENGALURU-560045.

15. KAREEM @ SADAM
AGED ABOUT 28 YEARS,
S/O. BASHEER AHAMED,
R/AT NO.7, 2ND CROSS,
KARUMARIYAMMA NAGAR,
VENKATESHPURAM,
BENGALURU-560045.

... PETITIONERS

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

NATIONAL INVESTIGATING AGENCY
REP. BY SPL. PUBLIC PROSECUTOR

OFFICE AT HIGH COURT COMPLEX
OPP. TO VIDHANA SOUDHA,
BANGALORE-560001.

… RESPONDENT

(BY SRI PRASANNA KUMAR P., SPL. PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C. PRAYING TO ISSUE WRIT OF CERTIORARI AND QUASH THE IMPUGNED ORDER DATED 05/08/2024 i.e., REJECTING DISCHARGE APPLICATION FILED UNDER SECTION 227 OF Cr.P.C. TO DISCHARGE FROM THE SCHEDULE OFFENCES, PASSED BY THE HON'BLE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (SPECIAL JUDGE FOR THE TRIAL OF NIA CASES), (CCH-50), BENGALURU IN SPL.C.NO.141/2021 FOR THE OFFENCES PUNISHABLE SECTIONS 120B, 143, 145, 147, 188, 353 AND 427, 436 R/W 34 & 149 OF IPC, SECTIONS 16, 18 AND 20 OF UA(P) ACT, 1967, AND SECTION 2 OF THE PREVENTION OF DESTRUCTION AND LOSS OF PROPERTY ACT, 1981, WHEREIN THE PETITIONERS ARE ARRAYED AS ACCUSED NO.3-6, 8-13, 19 AND 21-24 RESPECTIVELY AT ANNEXURE-A, CONSEQUENTLY; ALLOWED THE DISCHARGE APPLICATION FILED BY THE PETITIONERS UNDER SECTION 227 OF Cr.P.C. AT ANNEXURE-B.

Date on which the petition was reserved for Order	25.03.2025
Date on which the Order was pronounced	29.04.2025

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

CAV ORDER

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Accused Nos.3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 19, 21, 22, 23, and 24 are before this Court assailing the order dated 05.08.2024 of the Special Court for trial of NIA Cases in Special Case No.141/2021 rejecting their application filed under Section 227 of Cr.P.C. seeking to discharge them of the offences punishable under Sections 6, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (UAPA).

2. The case of the prosecution is that on 11.08.2020 that around 8.45 p.m., 25 to 30 people gathered around Kadugondana (KG) Halli Police Station, protesting and demanding arrest of one P. Naveen, nephew of one local MLA. They were upset over derogatory comments allegedly posted by P. Naveen which insulted a specific community. By 8.50 p.m. a group of people led by others entered the police station premises demanding registration of case against Naveen and others. The police accepted the complaint and registered it for a preliminary enquiry noting that a similar case had already been registered at D.J. Halli

police station, Bengaluru against the said Naveen on the same day. However, the protestors became increasingly violent, which prompted the Police Commissioner to impose curfew at both police station jurisdictions to bring the situation under control. The protestors became more violent, started shouting slogans and insisted that the police hand over P. Naveen to them. As the situation escalated, the police used lathi charge to disperse the crowd, but the mob grew more aggressive attempting to snatch weapons from the police and even attempting to kill officers. In an effort to protect themselves and public property, the police fired upon the crowd resulting in the death of one person. The rioters also damaged all the government and private vehicles and caused injuries to several police personnel. Following this, the police inspector of KG Halli police station filed first information report (FIR) and the case was registered for the offences punishable under Sections 143, 147, 148, 149, 332, 333, 353, 427 and 436 of IPC and Section 4 of the Prevention of Damage to the Public Property Act, 1984 against the accused persons and investigation officer took up

the accused for investigation. On 21.09.2020, the Ministry of Home Affairs, Government of India recognizing the gravity of offence directed the National Investigating Agency (NIA) to take over the investigation. Consequently, the NIA registered the case for offences punishable under various sections including Sections 16, 18, and 20 of the UAP Act along with other Sections of IPC as stated *supra*. The NIA further investigated the case and gathering evidence against the accused submitted the final report to the Court. Following this, the Court took the cognizance of the offences and the case was registered against the accused persons.

3. The petitioners herein are being prosecuted under the UAPA and also for other offences under IPC. The petitioners sought discharge for the offences punishable under UAPA investigated by the NIA. The petitioners filed an application under Section 227 Cr.P.C. seeking discharge for the offences punishable under Sections 16, 18 and 20 of UAPA contending that the prosecution lacked evidence and the charges levelled against the petitioners under UAPA were not made out. The Special Court rejected the discharge

application, stating that there is sufficient material to proceed to trial.

4. We have heard the learned counsel Sri Mohammed Tahir appearing for the petitioners and Sri P Prasanna Kumar, learned Special Public Prosecutor for the respondent.

5. Learned counsel for the NIA-respondent submits that the order of framing charges and rejection of discharge application is not an interlocutory order in nature, but part of the trial process and hence not barred under Section 21(1) of the NIA Act. Learned counsel would submit that the writ petition is not maintainable as the petitioners have alternative statutory remedy by filing an appeal under Section 21(1) of the NIA Act. It is argued that the jurisdiction of this Court under Article 227 is to be exercised against an order of discharge only in the rarest of rare cases only to correct a patent error of jurisdiction and not to appreciate the matter. Relying upon the principle that the courts should not interfere at the pre-trial stage, unless

there is a clear abuse of process as held by the Apex Court in the case of ***Asian Resurfacing of Road Agency Private Limited and another vs. Central Bureau of Investigation***[1] *(Asian Resurfacing)*.

6. Referring to the ***Asian Resurfacing*** learned counsel for the petitioner Mohammed Tahir argues that the order rejecting discharge application is not an interlocutory order, but an intermediate/quasi final order. Even if this court holds that the writ petition challenging the rejection of discharge is not maintainable as a general rule, it can still entertain the writ under extraordinary circumstances as *prima facie* no material against the petitioners and the continuation of trial is an abuse of process of law.

7. Having heard the learned counsel for the parties, the questions that fall for consideration are,

> *(1) Whether an order rejecting a discharge application under Section 227 Cr.P.C. is barred from appeal under Section 21 of the NIA Act on the ground that it is an interlocutory order?*

[1] 2018 (16) SCC 299

(2) Whether in the present case, the rejection of the discharge application by the Special NIA Court discloses such exceptional or extraordinary circumstances as to warrant interference under Article 226 of the Constitution of India despite the availability of a statutory remedy under Section 21 of the NIA Act ?

8. Section 21 of the NIA Act reads as under:

*"**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. A plain reading of Section 21(1) envisages that no 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. Section 21(1) is similar to Section 397(2) of Cr.P.C. which reads as under:

"397. Calling for records to exercise powers of revision.—*(1) x x x*

(2) The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

10. Both the sections indicate that no appeal or revision would be entertained in relation to an interlocutory order and thus, we have to consider whether the order refusing discharge is an interlocutory application or not.

11. In the landmark judgment of ***V.C. Shukla vs. State through C.B.I.***[2] *(V.C. Shukla),* the Apex Court examined the scope of expression "interlocutory order" under Section 11(1) of the Special Courts Act, 1979, which is similar in substance to Section 397 (2) Cr.P.C. and Section 21(1) of the NIA Act, all of which bar appeals/ revisions against interlocutory order. The Apex Court observed that the term "interlocutory order" must not be given an overly broad interpretation so as to exclude from appeal or revision or any order short of final disposal. The Apex Court held that "orders which are not final but yet affect the vital and

[2] 1990 Supp. SCC 92

valuable rights of the parties or which cause serious prejudice to the accused, cannot be said to be "interlocutory". The Apex Court held that an order rejecting a discharge application is not an interlocutory order because it affects the rights of the accused in a substantial manner by compelling them to undergo the rigors of a full trial and therefore it is a "quasi final" or "intermediate order" and cannot be classified as a mere "interlocutory order". The Apex Court in ***V.C. Shukla's*** case held at para Nos.23, 24, 25, 26 as under:

> *"23. We entirely agree with the approach indicated by Sastri, C.J. and which is also binding on us. Let us see what is the effect of interpreting the non obstante clause according to the test laid down by the decision, referred to above, and particularly, the observations of Sastri, C.J. Let us for the time being forget the provisions of Section 397(2) of the Code or the interpretation put by this Court on the term 'interlocutory order' as appearing in the Code because the decisions were based purely on the interpretation of the provisions of the Code. We have, therefore, first to determine the natural meaning of the expression 'interlocutory*

order'. To begin with, in order to construe the term 'interlocutory', it has to be construed in contradistinction to or in contrast with a final order. We are fortified by a passage appearing in The Supreme Court Practice, 1976 (Vol. I, p. 853) where it is said that an interlocutory order is to be contrasted with a final order, referring to the decision of Salaman v. Warner. In other words, the words 'not a final order' must necessarily mean an interlocutory order or an intermediate order. That this is so was pointed out by Untwalia, J. speaking for the court in the case of Madhu Limaye v. State of Maharashtra, as follows: (SCC p. 557, para 12)

> *Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'.*

Thus, the expression 'interlocutory order' is to be understood and taken to mean converse of the term 'final order'. Now, let us see how this term has been defined in the dictionaries and the textbooks. In Webster's Third International Dictionary (Vol. II, p. 1179) the expression 'interlocutory order' has been defined thus:

> *Not final or definitive: made or done during the progress of an action: Intermediate, Provisional.*

Stroud's Judicial Dictionary (Fourth Edition, Vol. 3, p. 1410) defines interlocutory order thus:

> *"Interlocutory order" Judicature Act, 1871 (Clause 66), Section 25(8) was not confined to an order made between writ and find judgment, but means an order other than final judgment."*

Thus, according to Stroud, interlocutory order means an order other than a final judgment. This was the view taken in the case of Smith v. Cowell and followed in Manchester & Liverpool Bank v. Parkinson. Similarly, the term 'final order' has been defined in Volume 2 of the same dictionary (p. 1037) thus:

> *The judgment of a Divisional Court on an appeal from a county court in an interpleader issue was a "final order" within the old R.S.C., Order 58 Rule 3 (Hughes v. Little); so was an order on further consideration (Cummins v. Herron), unless action was not thereby concluded.... But an order under the old R.S.C., Order 25 Rule 3,*

> *dismissing an action on a point of law raised by the pleadings was not "final" within the old Order 58, Rule 3, because had the decisions been the other way the action would have proceeded.*

Halsbury's Laws of England (Third Edition, Vol. 22, pp. 743-744) describes an interlocutory or final order thus:

> *Interlocutory judgment or order.—An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. An interlocutory order though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals....*
>
> *In general a judgment or order which determines the principal matter in question is termed 'final'.*

At p. 743 of the same volume, Blackstone says thus:

> *Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for.... Four different tests for ascertaining the finality of a judgment or order have been suggested: (1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute? (2) Was it made upon an application upon which the main dispute could have been decided? (3) Does the order, as made, determine the dispute? (4) If the order in question is reversed, would the action have to go on?*

Corpus Juris Secundum (Vol. 49, p. 35) defines interlocutory order thus:

> *A final judgment is one which disposes of the cause both as to the subject-matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which reserves or leaves some further question or direction for future determination.... Generally, however, a final judgment is one which disposes of the cause both as to the subject-matter and the parties*

> *as far as the court has power to dispose of it, while an interlocutory judgment is one which does not so dispose of the cause, but reserves or leaves some further question or direction for future determination.... The term "interlocutory judgment" is, however, a convenient one to indicate the determination of steps or proceedings in a cause preliminary to final judgment, and in such sense the term is in constant and general use even in code states. (emphasis ours)*

Similarly, Vol. 60 of the same series at page 7 seeks to draw a distinction between an interlocutory and a final order thus:

> *The word "interlocutory", as applied to rulings and orders by the trial court, has been variously defined. It refers to all orders, rulings, and decisions made by the trial court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause, deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment*

on the matter in issue.... An intermediate order has been defined as one made between the commencement of an action and the entry of the judgment.

(Emphasis supplied by me)

24. To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J. in the case of Madhu Limaye v. State of Maharashtra clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in Corpus Juris Secundum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Secundum. It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term 'interlocutory order' as used in Section 11(1) of the Act. Wharton's Law Lexicon (14th Edition, p. 529) defines interlocutory order thus:

An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."

Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act.

25. We shall, however, examine a number of English and Indian authorities that have been cited before us by the parties as to the true intent and import of an interlocutory order.

26. In the case of In re Faithful: Ex parte Moore Lord Selborne while defining a final judgment observed as follows:

> *To constitute an order a final judgment nothing more is necessary than that there should be a proper litis contestatio, and a final adjudication between the parties to it on the merits.*

Similarly, Brett, M.R. observed as follows:

> *The question is whether in the Chancery Division there cannot be a "final judgment" when everything which has to be done by the court itself is finished. Is that a final judgment which directs certain things to be done and certain inquiries to be made, and certain other things to be done on those inquiries being answered? If the court ordered the result of the inquiries to be reported to itself before the judgment was given, it would not be a final judgment. But, if the court orders something to be done according to the answer to the inquiries, without any further reference to itself, the judgment is final.*

This authority therefore clearly indicates that a final order or a judgment would be one which amounts to a final adjudication between the parties on

merits. Practically, the same view has been taken by Brett, M.R. with whom Cotton, L.J. also concurred. In the case of Salaman v. Warner Lord Esher propounded an important test to judge whether an order was interlocutory or final. In this connection, he observed as follows:

> *The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. That is the rule which I suggested in the case of Standard Discount Co. v. La Grange and which on the whole I think to be the best rule for determining these questions; the rule which will be most easily understood and involves the fewest difficulties."*
>
> *(emphasis supplied)*

12. The decision of the Apex Court in the case of ***Madhu Limaye vs. The State of Maharashtra***[3] *(Madhu Limaye)* is a foundational decision in interpreting what constitutes an interlocutory order. The Apex Court held that the term "interlocutory order" in Section 397 (2) Cr.P.C. does not include orders which are intermediate or quasi-final and which affect the rights of the accused in a substantial way. The Apex Court observed that the rejection of discharge application under Section 227 Cr.P.C. is not an interlocutory order, as it substantially affects the accused right not to face trial. The Apex Court observed in relation to the exercise of inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions -

(1) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

[3] 1977 (4) SCC 551

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

13. The Apex Court held at para No.10 as under:

"10. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is

not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very

sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

14. The Apex Court in the case of ***Madhu Limaye*** created three fold classification -

(a) final orders - conclude proceedings ;

(b) interlocutory orders - purely procedural ;

(c) intermediate orders - affects substantial rights but don't end the proceedings.

15. The order rejecting discharge is neither an interlocutory order nor a final order, but an intermediate order affecting the right of the accused and such intermediate orders have to be challenged through an appeal under Section 21(1) of NIA Act.

16. Section 21(1) of the NIA Act provides for an appeal to the High Court from any judgment, sentence or order *not being an interlocutory order of a Special Court.* The bar under Section 21 (1) of NIA Act against appeals is from interlocutory orders and does not apply to an order rejecting a discharge application.

17. Though there exists an alternative remedy, invoking writ petition under Article 226 can be in exceptional circumstances when there is lack of jurisdiction, violation of fundamental rights, no evidence at all or grave miscarriage of justice. The Apex Court in the case of ***Asian Resurfacing*** observed that jurisdiction of the High Court is not barred in respect of the label of a "petition" *putting a caveat that said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus, observed that an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter*.

18. The Apex Court in the case of ***Sanjay Kumar Rai vs. State of Uttar Pradesh and another***[4] *(Sanjay Kumar Rai)* observed that framing of charge or refusing discharge are neither interlocutory or final in nature, therefore remedy of revision under Section 397 Cr.P.C. will not be a bar to exercise inherent jurisdiction under Article 226 to prevent

[4] (2022) 15 SCC 720

abuse of process and secure ends of justice. The Apex Court reiterated that orders framing charges or refusing discharge are neither interlocutory nor final in nature and therefore not affected by the bar of Section 397(2) of Cr.P.C. The Apex Court distinguished ***Asian Resurfacing's*** case which was relied by the High Court limiting the scope of revision to jurisdictional errors on the ground that in the said case challenge was to the charge sheet under the Prevention of Corruption Act, 1988 (POCA) and held that not only POCA was a special statute, but also a special bar for exercise of revisional jurisdiction. Further the Apex Court held that when the High Court exercises an inherent jurisdiction the discretion has to be invoked carefully and judicially. However, a complete hands off approach is not recommended and the Courts have to interfere in exceptional cases in which there is likelihood of serious prejudice on the rights of the citizen when the contents of complaint or material on record is a brazen attempt to prosecute an innocent person, in which it becomes

imperative on the Courts to prevent the abuse of process of Court.

19. The Apex Court relied upon ***Union of India vs. Prafulla Kumar Samal and another***[5] *(Prafulla Kumar Samal)* and held that while deciding the discharge application, trial Courts are not supposed to merely act as a post office and have to consider the broad possibilities, total effect of evidence and documents produced and the basic infirmities on record and have to examine whether there is sufficient material on record to try the suspect. The special Court by considering the charge sheet material opined that they attract the provision of Section 15 of the UAPA which were done with an intention to strike terror at the public at large. While considering an application seeking discharge, the Court has power to sift and weigh the evidence for the limited purpose of ascertaining whether a case of charge is made out or not and the settled proposition of law is that the Court should not make a roving enquiry. The petitioners has not made out any rarest of rare case for this Court to

[5] (1979) 3 SCC 4

interfere under Article 226 of the Constitution and the writ petition is not maintainable against an order rejecting a discharge application as the rejection of discharge application is classified as not an interlocutory order but an intermediate order as it affects the rights of the accused to avoid trial and therefore challengeable under Section 21(1) of the NIA Act. For the foregoing reasons, the points framed for consideration are answered accordingly and this Court pass the following -

ORDER

The writ petition is hereby ***dismissed.***

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE

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