

Date of institution	05.12.2024
Date of registration	05.12.2024
Date of decision	25.03.2026



**IN THE COURT OF 10TH ADDITIONAL SESSIONS
JUDGE, AHMEDABAD (RURAL) AT NAVARANGPURA**

CRIMINAL MISC. APPLICATION NO. 3765 OF 2024

Applicant(s) :

(1)	Name	M/s. Shiv Meal Industries (Proprietorship Firm)
(2)	Name	Chandrakant Patel (Owner)
	Age	40 Years,
	Address	Office : 272/A, Shiv Paper Product Compounds, Chanakyapuri Road, S. G. Highway, Sola, Ahmedabad. Residence: Bungalow No.3-4, Samarpan Bungalow, Behind Jalsa Party Plot, Near Zydus Cadila Hospital, Thaltej, Ahmedabad.

V/s.

Respondents :

(1)	Name	State of Gujarat.
(2)	Name	Yashvi Corporation Through its Owner Jigarbhai Natubhai Shah
	Address	A/5/6, Devashish Apartment, Malav Talav Road, Jivraj Park, Ahmedabad.

Appearance (Learned Advocates):

For Applicants	Mr. K. B. Thaker
For State	Learned PP Mr. P. M. Trivedi.

For Respondent No.2	Mr. J. A. Pandya
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ORDER BELOW EXHIBIT ONE

1. The present Criminal Misc. Application has been filed with the averments that the applicant-original accused who is seeking to challenge the judgment and order dated 28.10.2024 passed by Ld. 3rd Additional Chief Judicial Magistrate, Ahmedabad [Rural] in Criminal Case No.9576 of 2014 [hereinafter referred to as "impugned order"], whereby, the Ld. Trial Court has convicted the accused for the offence punishable under Section 138 of N. I. Act and has ordered them to pay fine of Rs.34,54,840/- and in default of payment of fine, the applicant no.2 is directed to undergo simple imprisonment for a period 18 months. It has been submitted that on 04.12.2024, the applicants received the certified copy of the impugned order, which mainly caused delay in filing an appeal. It has been further submitted that delay was caused due to the facts beyond the control of the applicant and the delay caused in preferring an appeal is not an intentional or willful delay. **Further, it has been submitted by the Ld. Advocate for the applicants that the matter has been settled between the complainant and the accused and the accused has paid Rs.16,70,000/- to the complainant and the remaining amount will be paid according to the compromise terms. Further, the complainant has also given his consent to condone the delay.** It has been further submitted that if delay is not condoned, the applicant will suffer irreparable loss and on the contrary no

prejudice would be caused to the other side. With these submissions, he has prayed to condone delay of 7 days in filing an appeal.

2. The respondent no.1-original complainant appeared through his Ld. Advocate and has submitted that as the matter has been settled, the complainant has no objection if the delay has been condoned.
3. Ld. PP for the State has prayed to pass appropriate order in context of present application.
4. I have heard the Ld. Advocates and perused the entire case file carefully.
5. This Court has taken into consideration arguments canvassed by learned Advocate for the applicant and also gone through the record of the case. As a settled position of law at this stage, the Court is not to deeply enter into the merits and demerits of the main appeal but is only to be satisfied as to whether the applicant was prevented from filing an appeal within the period of limitation or not. This Court is conscious of the fact that while deciding the application for condonation of delay this Court is to arrive at subjective satisfaction as to whether sufficient cause is made out for condonation of delay or not.
6. At the outset, admittedly, in the case on hand, there is a delay of **7 days** in preferring an appeal. The applicant has assigned reasons for delay occurred in filing an appeal. The applicant has come with a case that delay has mainly occurred because of obtaining certified copy of the impugned judgment and order passed by the Ld. Trial

Court. Further, if we peruse the judgment of the Ld. Trial Court, the judgment has been pronounced on 28.10.2024 and on that day, the accused/applicant has not remained present before the Ld. Trial Court. Further, the accused-applicant has given the application for bail on the last day of limitation i.e. on 28.11.2024. It is also worthy to note that the accused-applicant has applied for the certified copy on 28.11.2024, which was made available to him on 04.12.2024 and thereafter, he was filed the present appeal. Thus, admittedly, the applicant-accused has filed the present appeal after appeal period is over. Admittedly, there is negligence on the part of the applicant in not preferring an appeal within limitation. It is worthy to note here that after pronouncement of the impugned order of conviction and sentence, the applicant appeared before the Ld. Trial Court and secured bail order till filing of the appeal. It is also to be noted here that the accused-applicant has not got his sentence suspended before the Ld. Trial Court and, therefore, the sentence, which has been passed by the Ld. Trial Court is in force till today. Further, it appears that after filing of the present application, the Ld. Advocate for the applicant has sought adjournments on one pretext or the other, but, he has not proceeded the matter further. Subsequently, the Ld. Advocate for the respondent no.2 has filed applications for service of conviction warrant, but, till today no report in context of service of conviction warrant is received by this Court. Further, it is worthy to note here that when the matter was not proceeded by the applicant, this Court has

taken the matter for order and on the date of order, the Ld. Advocate for the applicant has appeared and requested this Court not to pass an order and assured this Court that the applicant will surrender before the Ld. Trial Court. Thus, on request of the Ld. Advocate, this Court has not pronounced the order and kept the matter on 05.03.2026. Thereafter, on 05.03.2026, the Ld. Advocate for the applicant has appeared and gave an application to put the matter in Lok Adalat as there are chances of settlement between the parties. Thus, on request the matter was kept on 13.03.2026. On 13.03.2026, the applicant-accused was not remained present and his Advocate, along with the advocate for the complainant has appeared and filed the pursis vide Exhibit:19 and submitted that a part payment has been made by the applicant-accused and remaining part payment will be made after admitting the conviction appeal. Thus, from the above material also it seems that the applicant-accused do not want to proceed the matter in accordance with the law and wants to overcome the law. It is pertinent to know here that the applicant/accused has not suspended his conviction before the Ld. Trial Court and has filed the present application after the lapse of appeal period. Further, in this application also my Ld. Predecessor Judge has issued non-bailable warrant against the applicant. In spite of that, the applicant-accused has not complied with the order of the Court. This Court has also granted sufficient time to the applicant to surrender himself before the Court. Even the non-bailable/conviction warrant is issued against the applicant-accused is in force.

Looking to the act and conduct of the applicant, it appears that he is no more interested to proceed with this application. Under these circumstances, no further wait of the applicants is justified and, accordingly, following order is passed in the interest of justice:

7. It is worthwhile to mention here that it is settled position of law that technicalities are required to be given go-by so as to do substantial and real justice and merely on the ground of technicalities, the merits/demerits of the matter may not be brushed aside. Though there is clear negligence and inaction on the part of applicant in not preferring an appeal within time, yet, right to file an appeal is a statutory right and every party must be given an opportunity on merits rather than on technicalities. Accordingly, this Court is of the opinion that the applicant may be given an opportunity to present his case and, therefore, keeping in mind the averments made in the present application as well as pursis tendered on behalf of the original complainant that he has no objection in allowing the present application, this Court is of the view that sufficient cause is made out for condoning the delay.
8. However, looking to the conduct of the applicant, while allowing the instant delay condonation application, I think it would be proper to put some cost upon the applicant for this delay. Therefore, without going into the merits and technicalities and especially when the matter has been settled between the parties and the complainant has given his no objection to condone the delay as well as the

reasons submitted by the applicant in the application, it seems that sufficient cause has been shown by the applicant for not preferring an appeal within the prescribed period of limitation. Hence, following order is passed in the interest of justice:

:- O R D E R :-

- (1) The present Application is hereby **allowed**.
- (2) The delay in filing appeal against the order dated 28.10.2024 passed by Ld. 3rd Additional Chief Judicial Magistrate, Ahmedabad [Rural] in Criminal Case No.9576 of 2014 is hereby condoned subject to payment of cost of Rs.25,000/- which shall be deposited in DLSA, Ahmedabad [Rural] within 7 days of passing of this order.
- (3) After payment of cost, Registry is hereby directed to register the appeal in accordance with law.

Pronounced and signed in the open Court on this 25th day of March, 2026 at Ahmedabad.

Date : 25.03.2026
Place: Ahmedabad

[Hardik R. Shah]
10th Additional Sessions Judge,
Ahmedabad (Rural) at Navarangpura.
UIC No.GJ00851.