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Decided on 24.03.2026
Duration 00/09/09
YY/MM/DD

**IN THE COURT OF 3RD ADDITIONAL SESSIONS JUDGE
AT GANDHINAGAR**

Criminal Miscellaneous Application No.839 of 2025

Exh.

Sandip Kishorbhai Purani,
Age : 45, Occupation : Work on daily wages,
Residing at A/1/1, Duplex, Harivila Society,
Fatewadi, Ahmedabad.

...Applicant

Vs.

1. Hemlataben S. Purani,
Age : 45, Occupation : Service,
Residing at Sector - 26, Videocon Phase - 11,
Green City, G.I.D.C. Gandhinagar.

2. The State Government
Through Public Prosecutor,
District Court, Gandhinagar.

...Opponents

Subject : An application for condonation of delay.

Appearance :

Learned Advocate Mr. J. K. Purani for applicant.

Learned Advocate Mr. V. D. Sutariya for opponent no.1.

Learned P. P., H. N. Raval for opponent no.2

:: J U D G M E N T ::

1. The present applicant wants to prefer the Criminal Appeal against the order dated 30.09.2023 in Criminal Misc. Application No.536/2020 pronounced by the Learned 3rd Additional Judicial Magistrate First Class, Gandhinagar, wherein application was partially allowed against respondent no.1-

applicant under Section 12 of Domestic Violence Act. It is contended by the applicant that, it occurs delay of 585 days in filing the Criminal Appeal. It has been further submitted that opportunity may be given to decide the present application on merits and hence, urged to condone the delay.

2. Notice was duly served to opponents. Opponent no.1 has appeared through Ld. Advocate and Ld. P. P. appeared on behalf of Opponent no.2.
3. Ld. Advocate for applicant has stated that applicant was not aware about the order passed by Ld. Trial Court for longtime as well as during that duration opponent no.1 - original applicant had filed application for maintenance against the applicant - original opponent no.1, due which applicant was mentally disturbed and worried regarding the cases as well as taking care / responsibility of his child, he was not able to focus on the cases and remained unaware about the status of cases. However, further when the application for maintenance vide Cr.M.A. No.150 of 2020 was rejected by Family Court, present applicant want to go for appeal challenging the order passed in Cr.M.A. No.536 of 2020.
4. Further, Ld. Advocate for applicant has vehemently submitted that normally lenient approach is adopted in dealing the condonation application to give the parties justice on merits therefore, as there is sufficient grounds to condone the delay, requested to allow the application.
5. Ld. Advocate for opponent no.1 - original applicant has filed reply vide exh.5, oppose to allow this application. It is stated that applicant - original respondent no.1 was aware about the order passed by Trial Court in Cr.M.A. No.536 of 2020 though not filed appeal within time. Further, application for recovery of maintenance with interest was filed by opponent no.1 - original applicant which was also in knowledge of applicant though applicant do not remain present in the said case, wherein order to pay the

pending maintenance amount was passed but applicant original opponent no.1 failed to pay the same, hence warrant was issued and applicant - original opponent no.1 was arrested on 17.12.2024, and the application for recovery of maintenance is still pending due to absence of applicant - original opponent no.1. Thereby opposed to allow this delay application of applicant - original opponent no.1.

6. I have heard the learned advocates for the respective parties. I have also gone through the grounds mentioned in the present delay condonation application to condone some delay.
7. The present applicant wants to challenge the order dated 30.09.2023 in Criminal Misc. Application No.536/2020 pronounced by the Learned 3rd Additional Judicial Magistrate First Class, Gandhinagar. In challenging the said order, there was delay of 585 days and thus, the present application is filed to condone the delay. After considering the rival submissions & grounds of delay, and considering the judgment of Hon'ble High Court of Gujarat, reported in the case of **Hansaben Girishbhai vs. Girishbhai reported in 1984(1) G.L.R. 149** and other cases, this court is of the opinion that the delay is required to be condoned in view of the ratio laid down in the above referred judgment. The relevant paragraph is required to be reproduced herein below :

(i) *“Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

(ii) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

(iii) *“Every days delay must be condoned” does not mean that a pedantic*

unpragmatic approach should be made. Why not every hours delay, every seconds delay “The doctrine must be applied in a rational common sense pragmatic manner.

(iv) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay.

(v) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. The presumption would be just the other way round.

(vi) It is unreasonable to adopt the approach of a school master using his rod to discipline the student. One need not bend backwards in such matters. The attitude must be one informed with greatest awareness for the cause of justice.

(vii) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and expected to do so.”

8. Thus considering the above said judgment of Hon'ble High Court of Gujarat, this application for condonation of delay is required to be granted. Hence, in the interest of justice, I pass the following order.

ORDER

1. The present delay condone application is allowed.
2. The applicant is ordered to pay cost of Rs.1000/- (Rupees One Thousand only) at the District Legal Services Authority, Gandhinagar within seven days from the date of this order.

3. Registry is directed to register the Criminal Appeal after verifying the payment of cost of Rs.1000/- (Rupees One Thousand only) paid before the District Legal Services Authority, Gandhinagar..

Signed and pronounced today on this 24th day of March, 2026.

Date : 24.03.2026
Place: Gandhinagar

[Piyush Mahendrabhai Unadkat]
3rd Additional Sessions Judge
Gandhinagar (GJ00716)