

Exh. :- _____

Criminal Misc. Application No. 484 of 2026

At present:
District Jail,
Junagadh

VERSUS

2 The State of Gujarat

Summons Through: The Government Pleader

Appearance :-

Ld. Advocate **Shri D. S. Parmar** for applicant.
Ld. Advocate **Shri A. M. Vavecha** for opponent No.1.
Ld. Adl. P.P. **Shri V. G. Donga** for opponent No.2.

-:: J U D G M E N T ::-**Facts of the original case :-**

1. The opponent No.1 had filed complaint under section 138 of the Negotiable Instruments Act, 1881 being Criminal Case No.7686/2021 whereby the applicant was convicted by the Ld. 2nd Addl. Chief Judicial Magistrate, Junagadh on 05.02.2025 and being aggrieved and dissatisfied with the said order, the present applicant who was accused in the said case, intends to challenge the said order by way of appeal and hence, the present application.

Facts of the present application:-

2. It is stated in the application that the said order was passed in the absence of the applicant and warrant u/s.70 of Cr.P.C. was issued and execution of the said Warrant, the applicant was produced before the Court on 27.10.2025 and since then he is judicial custody. It is further submitted that the applicant had to file the appeal by 07.03.2025 but there was sudden death of his minor son on 22.08.2023 and therefore, the applicant was under depression and his treatment and medicine was going on and therefore, could not remain present before the Trial Court and case had proceeded ex-parte and the applicant was unaware of the outcome of the case and the applicant is having ignorance of the provisions of Law. Thus, delay of 496 days has been caused in preferring an appeal and thus, prayed to condone the said delay.

Reply of other side and arguments :-

3. The opponent No.1 has appeared through his Ld. Advocate whereas the Ld. Ad.P.P. has appeared on behalf of the opponent No.2. Ld. Advocate the applicant has raised the argument repeating the facts stated in the petition and has further submitted that the delay be condoned considering the facts and circumstances of the case.

REASONS :-

4. So far as condonation of delay is concerned, the judgment of Hon'ble Apex Court in the case of **B. Madhuri Goud V/s. Damodar Reddy** which is reported in **2012 CJ (SC) 1413** comes into way and wherein the Hon'ble Apex Court has laid down the ratio that;

- (a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- (b) 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.
- (c) Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.
- (d) 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 right in injustice being done because of a non-deliberate delay.
- (e) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
- (f) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

5. Therefore, considering the above dicta in the case of ***B. Madhuri Goud*** of the Hon'ble Apex Court and to have result on merits and in the interest of substantial justice, the delay which is caused is required to be condoned. Moreover, granting of delay won't prejudice the rights of the otherside as they will get an opportunity to led their case. Moreover, the applicant was not present at the time of pronouncement of the Judgment and in compliance of the execution of the Warrant he was arrested on 27.10.2025 and since then he is in judicial custody and therefore, the applicant is in judicial custody since 27.10.2025 till date i.e. more than seven months and therefore, deducting the period of such judicial custody (217 days approximately) from 496 days delay, there is delay of 279 days. Moreover, the applicant is having ignorance of provisions of law and had been in depression due to sudden death of his minor son and was under treatment and therefore it cannot be said that the applicant is not conversant with the period of limitation and therefore cost is required to be imposed. Therefore, considering all the said circumstances and considering said delay, some amount is required to be imposed because the applicant has knocked the doors of appeal Court after delay of 279 days which are stated above and considering the same, I pass the following order which is as under:-

ORDER

1. The delay which is caused to file this appeal is hereby condoned and the applicant shall pay **Rs.5,000/- (Rupees Five Thousand Only)**, to the opponent No.1/complainant, within 7 (Seven) days from today and the payment of costs is sine-qua-non

to get delay condoned and appeal be registered accordingly.

Pronounced in the open Court today
on this 17th day of June, 2026.

Date : 17.06.2026
Junagadh.

(B. G. Dave)
Sessions Judge
Junagadh
[GJ00469]