

GJLV010013512026



Received on : 05 / 06 / 2026

Registered on : 05 / 06 / 2026

Decided on : 20 / 08 / 2026

Duration : YY MM DD
00 02 15

Exh. :- _____

**BEFORE THE HON'BLE SESSIONS JUDGE
MAHISAGAR AT LUNAWADA.**

Criminal Misc. Application No. 346 of 2026

Applicants :-

The State of Gujarat
Gandhinagar.

V E R S U S

Opponents :-

Mohamad Sajid @ Nisar Khan Pathan
Age – 27 years,
R/o. Arabvada, Santrampur, Dist. Mahisagar.

Appearance :-

Ld. PP Mr. S. R. Damor for the State

Ld. Advocate Mr. S. B. Dani for opponent

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

- (1) That the Criminal Case No.299/2018 has been filed against the present opponent for the offence punishable u/Sec.354(a)(1), 354(b) of the Indian Penal Code wherein the Ld. Additional Chief Judicial Magistrate, Santrampur has acquitted the accused (*present opponent*) and against that judgment the State has decided to file an appeal but it

caused delay and therefore this application is preferred to condone delay of 5 days which has been caused to file appeal.

- (2) It is stated by the Ld. PP that the judgment pronounced on 10.02.2026 but the applicant – State cannot file an appeal within time. It is submitted that after declaration of the judgment by the trial court, the prosecution had collected certified copies of the judgment as well as all the relevant documents of the case including depositions of witnesses and exhibited documents in the case and thereafter the prosecution had forwarded all the certified copies to the Collector to obtain opinion for filing the appeal and hence, in all this procedure, could not filed an appeal within time limit and therefore requested to condone the delay caused in filing the appeal.
- (3) On being served, the opponent appeared through his advocate but has not filed reply in this application.
- (4) I have given my thoughtful consideration to the submissions made by the Ld. PP as well as lawyer for the opponent. Ld. PP has reiterated the facts mentioned in the application and further submitted that the delay caused on administrative ground, for getting permission to file an appeal from the Collector after availing certified copies of concerned documents.
- (4.1) As against the Ld. Advocate for the opponent has argued that the State was having 90 days to file appeal even though failed to do so. Also the state has not produced any evidence

to show that when the opinion or proposal to file an appeal has been forwarded to Legal Department and when the permission was granted. Also day to day explanation for causing delay has not been mentioned in this application and therefore it deserves to be dismissed and requested that the delay may not condone.

(5) 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.

(6) 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, as per the legal statute, the State has also legal right to file an appeal and to put their case before the Appellate Court also and considering such aspect and reasons assigned by the State, delay of 5 days is required to be condoned and therefore I pass the following order.

-: ORDER :-

The delay caused in filing an appeal, against the judgment passed by the Ld. Additional Chief Judicial Magistrate, Santrampur in Criminal Case No.299/2018, is hereby condoned.

The registry is directed to register the Criminal Appeal accordingly.

Copy of this order be kept with Criminal Appeal.

No order as to costs.

Pronounced in the open court today.
on this 20th day of August, 2026.

Date : 20.08.2026
Lunawada.

(M. N. Gadkari)
Sessions Judge,
Mahisagar at Lunawada.
[GJ00425]