

GJVL010006642026



Presented on : 01-06-2026

Registered on : 01-06-2026

Decided on : 06-06-2026

Duration : 05 Days

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, VALSAD
AT : VALSAD**

[Presided Over by D.J. Shah]

Criminal Misc. Application (For Condonation of Delay) No. 325 of 2026

Exhibit No. ____

Aashif Rashidkhan Pathan

**R/o. Sipaiwad, Beside of Prajapati Hall,
Valsad, Tal. & Dist. Valsad**

: : : Applicant

VERSUS

**(1) Vils Ashishkumar Gohil Proprietor of
Maa Enterprise**

**R/o. Rohit Street, Lilapore, Valsad
Tal. & Dist. Valsad**

(2) The State of Gujarat

: : : Opponents

Appearance:-

Mr. D.P. Parmar, Ld. Dy. Chief LADC for the applicant

Ld. Adv. Mr. J.C. Mehta for the Opponent No.1

Ld. Addl. P.P. Mr. N.D. Prajapati for the Opponent No.2 – State.

**Delay Condone Application under Section 5 of the Limitation
Act.**

: : : ORDER : : :

(1) The present Criminal Misc. Application has been filed by the applicant under Section 5 of the Limitation Act, 1963, praying to condone the delay of **115 Days** caused in filing the Criminal Appeal against the judgment and order dated

07.01.2026 passed by the Ld. 2nd Addl. Judicial Magistrate First Class, Valsad in Criminal Case No. 172/2025 filed under Section 138 of the Negotiable Instruments Act, whereby the applicant/original accused came to be convicted and sentenced to undergo simple imprisonment for a period of two years and further directed to pay compensation of Rs.70,000/- to the complainant, with a further direction to undergo simple imprisonment for a period of three months in default of payment of compensation.

(2) On filing of the present application, notice was issued to the opponents and the same was served upon them. On service of notice, Ld. Advocate Mr. J.C. Mehta appeared on behalf of Opponent No.1, whereas, Ld. Addl. Public Prosecutor appeared on behalf of Opponent No.2 – State. The Ld. Addl. Public Prosecutor opposed the present application and submitted that the applicant has failed to show sufficient cause for condonation of delay. It was contended that the reasons advanced by the applicant are not satisfactory and, therefore, the application deserves to be rejected

(3) The Ld. Advocate for the applicant has submitted that the Opponent No.1 had filed Criminal Case No.172/2025 against the present applicant under Section 138 of the Negotiable Instruments Act before the Court of the Ld. 2nd Addl. Judicial Magistrate First Class, Valsad. It was submitted that after completion of the trial, the Ld. Trial Court, vide judgment and order dated 07.01.2026, convicted the applicant/original accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple

imprisonment for a period of two years and further directed him to pay compensation of Rs.70,000/- to the complainant, with a further sentence of three months simple imprisonment in default of payment of compensation. It is further submitted that the appeal against the said judgment and order was required to be filed on or before 06.02.2026. However, a delay of approximately 115 days has occurred in filing the present appeal as the impugned judgment came to be passed in the absence of the applicant. It is further submitted that the applicant could not remain in contact with his advocate and was not aware about the legal remedy available against the said judgment. It is further submitted that the applicant is an illiterate person and is not conversant with legal procedures and therefore, could not file the appeal within the prescribed period of limitation. The delay caused is neither intentional nor deliberate but has occurred due to bona fide and unavoidable circumstances. It is further submitted that if the delay is not condoned, the applicant would be deprived of an opportunity to challenge the impugned judgment on merits and would suffer irreparable loss and hardship. On the other hand, no prejudice would be caused to the opponents if the delay is condoned. Therefore, it is prayed that the delay of approximately 115 days caused in filing the present Criminal Appeal may kindly be condoned in the interest of justice.

(4) In this regard, it is to be mentioned that every matter is to be decided on its own merits and rejecting the application on the technical ground is to be avoided and so far as possible, the matter is to be decided on merits of the case and it should not be

thrown away on technical ground.

(5) In the present matter, it appears that the delay is not willful and applicant was not able to file Criminal Appeal in time due to the circumstances which are beyond his control. Generally, the Court should take lenient and pragmatic view for doing substantive justice to condone the delay. Further, the legislature has conferred power to condone the delay by enacting Section 5 of the Limitation Act, 1963, in order to enable the Courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Court to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of Courts. Moreover, dismissing the complaint on technical ground of limitation would not in any way advance the interests of justice but admittedly result in failure of justice.

(6) In **N. Balakrishnan v M. Krishnamurthy reported in (1998) 7 SCC 123**, it was inter alia observed by the Apex Court that if explanation given does not smack mala fide or is not shown to have put as dilatory strategy, the Court should show consideration to the suitor and the discretion has to be exercised leaning towards the condonation of delay. It was observed that "length of delay is not matter, acceptability of the explanation is the only criteria". It was observed that unless the exercise of discretion is to be based on wholly untenable grounds or perverse, the delay should be condoned with liberal approach to enable the litigant to pursue his rights on merits. It is also observed that, while law of limitation is to be viewed in public

policy, right to seek substantial justice is also a part of the public policy. Both have to be balanced in a given case. It is, therefore, held by the Court as a trite principle that if some cause is shown which is not coupled with negligence or lack of bona fide, such cause will have to be viewed liberally to treat it as sufficient cause.

(7) In view of the above discussion with regards to the law laid down in above settled legal position, this Court has come to the conclusion that the cause shown by the applicant is sufficient for condonation of delay and therefore, in the interest of justice, following order is passed:-

::: O R D E R :::

(i) The application of the applicant for condonation of delay is **allowed** and the delay in question to file the appeal is hereby **condoned**, subject to deposit the costs of **Rs.10,000/-** by the applicant, to DLSA, Valsad, within 10 days from the date of this order.

(ii) The Registry is hereby directed to register the appeal preferred by the applicant thereafter.

Signed & pronounced in the open Court today on **June 06th, 2026**.

Date : 06.06.2026

Place : Valsad

[D.J. Shah]
Additional Sessions Judge,
Valsad
(Code No. GJ00392)