

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR CONDONATION OF DELAY) NO.
3477 of 2026**

**In F/CRIMINAL MISC.APPLICATION/5396/2026
In R/SPECIAL CRIMINAL APPLICATION/3455/2016**

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ABHESING RUMALBHAI PARGHI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MS. DIPAB ZALA(6937) for the Applicant(s) No. 1

MR CHINTAN DAVE, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 10/03/2026

ORAL ORDER

1. By way of filing present Criminal Misc. Application u/s 5 of the Limitation Act, the applicant prays to condone the delay of 173 days in filing the restoration application to restore captioned Special Criminal Application.

2. Heard learned counsel for the applicant and learned APP Mr. Chintan Dave for the respondent State.

3. For condonation of delay, learned advocate for the petitioner has averred following reasons:-

"5. That, however, on 14.07.2025, when the matter was listed before this Hon'ble Court, due to

unavoidable circumstances, the learned advocate for the applicant could not remain present despite the matter being called out twice. Consequently, the captioned Special Criminal Application once again came to be dismissed for default.

6. That, the absence of the advocate on 14.07.2025 was neither deliberate nor intentional, but purely due to circumstances beyond the control of the applicant. The applicant has always been diligently pursuing the matter and has no intention whatsoever to abandon the proceedings."

4. Ordinarily, this Court would condone the delay of 173 days caused in preferring restoration application. However, the peculiar facts of the present case are required to be noticed.

5. The captioned Special Criminal Application u/s 226 and 227 of the Constitution of India was filed to quash and set aside FIR being I - C.R. No.12 of 16 registered with Virpur Police Station, Dist: Mahisagar on 28.4.2016. On 17.6.2016, the Coordinate Bench of this Court passed an order directing the investigating officer not to file charge sheet in the present case without prior permission of this Court. Since, the petitioner was enjoying interim relief and did not appear in the Court, the matter continued to hover on the board. Thus, the intention of the petitioner was to linger the matter, as interim relief is granted in his favour. In the aforesaid circumstances, the Coordinate Bench of this Court on 3.4.2024 granted last chance despite learned advocate for the petitioner did not remain present in both the calls. Same story continued to operate. Ultimately, the Coordinate Bench

of this Court vide order dated 2.12.2024 dismissed the Special Criminal Application for non-prosecution. Thereafter, the matter was restored and in restoration application, again learned advocate for the petitioner did not remain present and therefore, vide order dated 24.1.2025, again the Coordinate Bench of this Court dismissed the petition for non-prosecution. Again the matter was restored on the request of the petitioner. Yet the petitioner continued his act of not remaining present and enjoyed the interim relief. Thus, on 14.7.2025, this Court has passed following order:-

“On previous two times, learned advocate for the applicant did not remain present, which constrained the Court to dismiss the matter and thereafter, it was restored.

Today when the matter is taken up for hearing, learned advocate for the petitioner did not remain present.

Hence, the petition is dismissed for non prosecution.”

6. Thus, the petitioner approached this Court for restoration of the matter fourth time after 173 days pleading aforesaid reasons for condonation of delay.

7. Perusal of the aforesaid reasons, it appears that the entire blame has been thrown upon the head of the advocate, who was appearing for the petitioner in the matter.

8. The Hon’ble Apex Court in case of **Rajneesh Kumar & Anr v. Ved Prakash**, reported in **2024 (14) SCALE 406**, noticed over a period of time a tendency on the part of the

litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. The observation of the Hon'ble Apex Court reads as under:-

"[10] It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial Court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief."

*[11]. In the aforesaid context, we may refer to a decision of this Court in the case of **Salil Dutta v. T.M. & M.C. Private Ltd. reported in (1993) 2 SCC 185** , wherein this Court observed as under:-*

8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final

hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted. (Emphasis supplied)

[12] As regards the law of limitation, we may refer to the decision of this Court in *Bharat Barrel & Drum MFG Co. v. The Employees State Insurance Corporation*, reported in 1971 2 SCC 860, wherein this Court held as under:-

‘The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.’ (emphasis supplied).’

9. In view of above, present Criminal Misc. Application, whereby the petitioner has thrown the entire blame on the head of the advocate and thereby disown him at any time and seek relief is not permissible. Rather, it appears that the petitioner is enjoying the interim relief since 2016 in the form of direction to the investigating officer not to file charge sheet without prior permission of the Court. The offence against the petitioner is u/s 409 of the IPC. The petitioner accused is a police constable and he has kept the papers with him despite he has been transferred from one station to another station. Looking to these aspects, according to this Court, the petitioner has failed to establish his germane conduct and thus, this Court is not inclined to exercise discretion and to condone the delay.

10. Accordingly, present Criminal Misc. Application stands dismissed. Consequently, registration of Criminal Misc. Application for restoration is refused.

SHEKHAR P. BARVE

(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 10/03/2026 17:14:09