

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 13796 of 2022****In R/CRIMINAL APPEAL NO. 1473 of 2022****With****R/CRIMINAL APPEAL NO. 1473 of 2022**

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GULABBHAI NANABHAI PATEL**Versus****STATE OF GUJARAT**

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Appearance:**MS KIRAN D PANDEY(3337) for the Applicant(s) No. 1****MR. HARDIK SONI, APP for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**and****HONOURABLE DR. JUSTICE A. P. THAKER****Date : 11/10/2022****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)****ORDER IN CRIMINAL MISC. APPLICATION:**

1. This application is filed under Section 5 of the Limitation Act for condonation of delay of 726 days caused in preferring Criminal Appeal No. 1473 of 2022.

2. Heard Ms. Kiran Pandey, learned advocate for the applicant and learned APP, Mr. Hardik Soni for the respondent-State.

3. Learned advocate for the applicant has referred to the averments made in this application and, thereafter, submitted that the applicant has shown sufficient cause for not filing appeal within reasonable time and the applicant has not gained

any benefit because of the delay in filing the appeal and he is in jail since 2015 and, therefore, this application be considered. Learned advocate has placed reliance upon the judgment of the Hon'ble Supreme Court in case of **State of Odisha Vs. Surendra Munda**, reported in **(2020) 16 SCC 443**.

4. On the other hand, learned APP has opposed this application and contended that the applicant has failed to point out any sufficient cause for not filing appeal within time and, therefore, this application may not be entertained.

5. We have considered the submissions canvassed by learned advocates for the parties. We have also perused the averments made in this application. We are of the view that sufficient cause is shown by the applicant for not filing appeal within reasonable time.

6. At this stage, we would like to refer to the judgment of the Hon'ble Supreme Court in case of **Surendra Munda (supra)**, wherein the Hon'ble Supreme Court has observed in Paragraph Nos.3, 4 and 5 as under:

"3. The original appellant before this Court was convicted for the offence punishable under Section 302 IPC and was sentenced to suffer life imprisonment. The appeal preferred by him was dismissed by the High Court on the ground of delay of 1192 days in preferring the appeal. The matter was thus not considered on merits. That order was set aside by this Court and the matter was remitted to the High Court to consider the appeal on merits.

4. In a criminal matter, where the life and liberty of a person is in question, one right of appeal has always been accepted and appropriate steps must be taken

to effectuate that right. The considerations on account of delay and limitation ought not to negate the right of appeal inhering in an accused. In the circumstances, the order passed by the High Court was set aside and the matter was remitted. In the present Review Petition, the ground taken is as under:-

- 4. That the State-petitioner believes that the view taken by this Hon ble Court in the impugned judgment will have far reaching consequences on the outcome of other cases, and thus petitioner intends to review of the order passed by this Hon ble Court.*
- 5. We do not find any merit in the submission so advanced. We, therefore, dismiss this Review Petition and affirm the Order under review."*

7. In the facts and circumstances of the present case, we are of the view that the appeal filed by the applicant is required to be heard on its own merits. The applicant has shown sufficient cause for not preferring the appeal within the period of limitation. Hence, present application is allowed and delay of 726 days caused in preferring Criminal Appeal is hereby condoned. Rule is made absolute.

ORDER IN CRIMINAL APPEAL:

Admit.

(VIPUL M. PANCHOLI, J)

(DR. A. P. THAKER, J)

SAJ GEORGE