

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED
BY SUBORDINATE COURT) NO. 1812 of 2026**

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BHAVESH RAJENDRABHAI SHARMA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR NAYAN L GUPTA(11798) for the Applicant(s) No. 1

MR BHAVIN S RAIYANI(3855) for the Respondent(s) No. 2

MR KRUTIK PARIKH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO****Date : 28/07/2026****ORAL ORDER**

1. Rule. Learned APP Mr. Krutik Parikh waives service of notice of rule for the respondent no.1 – State and learned advocate Bhavin Raiyani waives service of notice of rule for the respondent no.2.

2. By way of present application, the applicant has prayed to quash and set aside the order dated 03.06.2026 passed by the learned 14th Additional Sessions Judge, Vadodara in Criminal Misc. Application No. 1823 of 2026, whereby, the application for condonation of delay of 251 days in preferring the criminal appeal was rejected.

3. Heard learned advocate Mr.Nayan L. Gupta for the applicant and learned APP Mr.Krutik Parikh for the respondent no.1 – State and learned advocate Mr.Bhavin Raiyani for the respondent no.2.

4. Learned advocate Mr. Nayan L. Gupta for the applicant submits that the respondent no.2 - original complainant filed Criminal Case No. 20612 of 2024 before the Court of Additional Chief Judicial Magistrate, Vadodara and after completion of the trial, the learned 10th Additional Chief Judicial Magistrate, Vadodara convicted the present applicant and sentenced him to simple imprisonment of two years and to pay double amount of Rs.2,50,000/- as compensation to the respondent no. 2 within a period of six months from the date of the order and in default, simple imprisonment of three months for the offence under Section 138 of the N.I.Act.

5. The applicant intended to challenge to order of conviction before the learned Sessions Court, Vadodara but a delay of 251 days had occurred and hence, the applicant had filed the application for condonation of delay but the same was

rejected by the learned Sessions Judge, Vadodara by the impugned order.

6. Learned advocate for the applicant submits that the impugned order passed by the learned Sessions Judge rejecting the application for condonation of delay and, consequently, dismissing the criminal appeal is illegal, arbitrary, and contrary to the settled principles of law. It is submitted that the learned Appellate Court adopted an unduly hyper-technical approach and failed to exercise its jurisdiction in a justice-oriented manner by refusing to condone a short delay of 251 days, despite the applicant having satisfactorily explained the same by disclosing sufficient cause under Section 5 of the Limitation Act. It is further submitted that the refusal to condone the delay has deprived the applicant of the valuable statutory right of first appeal, caused grave prejudice to the applicant is in custody undergoing the sentence without his appeal being examined on merits, and the rejection of the application for condonation of delay has resulted in a serious miscarriage of justice, particularly when no prejudice would have been caused to the complainant had the delay been condoned.

7. Learned APP Mr.Krutik Parikh for the respondent – State and learned advocate Mr. Bhavin Raiyani for the respondent no.2 jointly submit that the accused had neither surrendered nor obtained the order of suspension of sentence and therefore, the Appellate Court has rejected the application and hence, the order passed by the Appellate Court rejecting the application for condonation of delay is just and proper. Therefore, no interference of this Court is required; however, considering the fact that the applicant is in custody and undergoing the sentence without exercising the valuable right of appeal, appropriate order may be passed.

8. The Hon'ble Apex Court, in the case of **State (NCT of Delhi) Vs. Ahmed Jaan** reported in **AIR 2009 SC (Supp) 695**, has observed in Para 11 and 12 as under:

“11. In *O. P. Kathpalia v. Lakhmira Singh* (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector Land Acquisition v. Katiji* (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful

manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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 vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant. The delay was accordingly condoned.

12. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit

is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Prabha v. Ram Parkash Kalra* (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law."

9. Having heard the learned advocate for the applicant and upon perusal of the material available on record, it is true that the applicant had neither surrendered for execution of sentence nor obtained the order of suspension and therefore, the application for condonation of delay was rejected. However, keeping aside this aspect, this Court is of the considered opinion that the learned Appellate Court ought to have adopted lenient view but has adopted an unduly technical approach while considering the application for condonation of delay. The delay involved was only of 251 days, and the explanation offered by the applicant prima-facie discloses sufficient cause within the meaning of Section 5 of the Limitation Act. The learned Appellate Court failed to bear in mind the settled principle that a liberal approach is required while considering

an application for condonation of delay, particularly in criminal matters where the valuable statutory right of first appeal and the personal liberty of the accused are involved. Refusal to condone such a short delay has resulted in denial of the applicant's right to have the appeal adjudicated on merits, whereas no serious prejudice would have been caused to the complainant had the delay been condoned. Moreover, at present, the applicant has been arrested and is undergoing the sentence and has been deprived of his valuable statutory right of appeal and this has caused a grave prejudice to applicant. In the opinion of this Court, the learned Appellate Court has failed to exercise the discretion vested in it in a judicious manner, and the impugned order, therefore, cannot be sustained in law.

10. The impugned order dated 03.06.2026 passed by the learned 14th Additional Sessions Judge, Vadodara in Criminal Misc. Application No. 1823 of 2026 deserves to be quashed and set aside and accordingly, the same is quashed and set aside. The delay of 251 days in preferring the criminal appeal stands condoned.

11. The learned Sessions Court is directed to register the criminal appeal of the applicant, if otherwise in order, and decide the same on its own merits, in accordance with law, without being influenced by any observations made in the present order.

12. It is clarified that this Court has not expressed any opinion on the merits of the conviction or on the contentions that may be raised by other side in the appeal.

13. Rule made absolute. Direct service is permitted.

F.S. KAZI

(S. V. PINTO,J)