

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrIM No. 719/2024 in
CrIA(D) No. 35/2024

Reserved on: 13.10.2025
Pronounced on: 16.10.2025
Uploaded on: 16.10.2025
Whether the operative part or full
judgment is pronounced: Operative

Union Territory Th. SHO Police Station Tral ...Petitioner(s)/Appellant(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with Ms. Maha Majeed, AC

Vs.

Shahid Nazir Bhat & Ors. ...Respondent(s)

Through: Mr. A. R. Trali, Adv.

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

Per Shahzad Azeem, J:

1. There is a delay of 146 days in filing the appeal in terms of Section 21 of National Investigation Agency Act, 2008 ["NIA Act"] against the order dated 30th November 2023 passed by the learned Additional Sessions Judge (Special Designated Court under NIA Act), Pulwama, in case titled Shahid Nazir Bhat & Ors. vs. UT of JK whereby the learned trial court has granted bail to the accused-respondents.

2. The grounds urged by the applicant for condoning the delay mainly revolves around the point that delay occasioned in filing appeal is neither intentional nor deliberate, in that immediately after passing of the order under challenge, matter was taken up with the Administrative Department, whereafter same was referred to the Law Department for opinion/sanction for filing of the appeal. It has been further submitted that after the matter was referred to Mr. Mohsin Qadiri, learned Sr. AAG for filing of the appeal, same took sometime in getting the record and other necessary documents from the trial Court, however, immediately on completion of all administrative and legal formalities, the appeal came to be filed.

3. It has been further submitted by the applicant that given the question involved in the matter, if delay is not condoned and matter is not considered on merits, same would result in serious prejudice.

4. Apart from the above submissions, the applicant has also filed affidavit wherein the minute detail of each and every step taken by the Government functionaries with its dates has been delineated right from communication of bail order upto the codal formalities and then finally filing of application.

5. On the other hand, non-applicants have filed the objections and resisted the application on the ground that the applicant has miserably failed to explain the delay and the grounds taken by the applicant do not stand the scrutiny of law. It has been further submitted by the respondents that by now, the prosecution has examined as many as six witnesses out of listed 8 witnesses, therefore, no purpose is going to be served by condoning the delay and considering the matter on its merits.

6. The main plank of argument of learned counsel for the respondents is that since the delay in filing the application exceeds 90 days, therefore, in view of 2nd proviso to Section 21(5) of NIA Act, the application is not maintainable and delay cannot be condoned.

7. Heard and considered.

8. At the outset, we wish to add that the question of non-maintainability and condonation of delay beyond 90 days in filing the appeal in terms of Section 21 of NIA Act, is no more res-integra, therefore, in this regard, what is held by the Division Bench of this Court in CrIa(D) No. 46/2022 titled, **National Investigation Agency Through Its Chief Investigating Officer, Jammu vs. 3rd Additional Sessions Judge, District Court Jammu** is noteworthy:

“23. In view of the above, we are of the considered view that the word “shall” used in second proviso to sub-Section 5 of Section 21 of the Act must be read as “may” and that the High Court shall have the discretion to condone the

delay even beyond the period of 90 days in appropriate cases, provided the appellant satisfies the Court that he had sufficient cause for not preferring the appeal even after expiry of period of 90 days as provided in the second proviso to sub-Section 5 of Section 21 of the NIA Act.

24. The application of the appellant seeking condonation of delay is held maintainable and the same, for the reasons stated therein, is allowed.

Delay in filing appeal is, thus, condoned.”

9. In view of the judgment supra, the plea of non-maintainability of the application in condoning the delay beyond 90 days, does not hold water, therefore, same is rejected.

10. Now coming to the merits of the case, as we have noticed hereinabove, the applicant has explained the delay by detailing date wise the steps being taken for filing of the appeal as delineated in the affidavit.

11. It is settled law that where Government is a litigant, then we should not be ignorant of the fact that file has to be routed through different departments of the State which requires some time to take a final decision and further we must be alive to the practical reality of the bureaucratic delays and slow pace in reaching a Government decision and the routine way of deciding the State to prefer an appeal against the judgment or not. In this regard, reference can be made to the judgment of Hon'ble Supreme Court in **State of Manipur vs. Koting Lamkang**, AIR Online 2019 SC 1292, wherein delay of 312 days was condoned.

12. It would be travesty of justice if the application for condonation of delay is not accepted as same would result in meritorious matter being thrown out at the very threshold and cause of justice being defeated and further every days delay must be explained does not mean that a pedantic approach should be made.

13. It is trite that condonation of delay is a matter of discretion and length of delay is immaterial as it depends on the acceptability of the explanation tendered in explaining the delay. Since we have taken note of

the steps being taken on each and every day, therefore, the interest of justice demands that in the given set of facts, the matter may be permitted to be examined on its merits, thereby, affording the opportunity to the State to address its grievance and even otherwise, we are of the opinion that the applicant has explained the sufficient cause for not preferring the appeal within limitation period.

14. In view of the above discussion, we are of the opinion that sufficient cause is made out for indulgence. Therefore, the delay of 146 days in filing the appeal is condoned.

15. CrIM No. 719/2024 is allowed.

16. List the main appeal on 3rd November 2025.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR:

16.10.2025

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Whether approved for reporting? Yes/No