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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPLICATION NO.623 OF 2016
IN
CRIMINAL APPEAL (ST) NO.363 OF 2016***

Rahmatali Mohammed Umar Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.Sushma Nair, for the Applicant.

Ms.S.D.Shinde, APP for the Respondent-State.

***CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.***

DATE : 20th DECEMBER, 2016

P.C. :

1. Heard learned counsel for the applicant and the learned APP.
2. The applicant is seeking condonation of delay of 8 years and 28 days in filing the aforesaid appeal.

3. The applicant has also placed on record his affidavit dated 23rd September, 2016 and affidavit of his father dated 2nd September, 2016. The applicant has made an averment in his affidavit that he was arrested in the year 2005 and the impugned Judgment and Order was passed in the year 2008, by which he was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment. He has also made an averment that he had engaged one Advocate Mr.Sameer Pradhan in the trial Court. He has also stated that after his conviction order, the said Advocate Mr.Sameer Pradhan was requested to file an appeal and that the said Advocate Mr.Sameer Pradhan had assured the applicant that he will file an appeal. The applicant has stated that he was under a bonafide belief that his Advocate Mr.Sameer Pradhan had filed an appeal and on enquiry was told that his appeal would come up for Final Hearing after 7 to 8 years. It is further stated that when he learnt that the appeals for the year 2008 are listed for final hearing, he enquired with the Jail Authorities, as to what happened to his appeal and whether it was listed. It is stated that the applicant was informed that his Advocate Mr.Sameer Pradhan had not filed any appeal and therefore the present appeal alongwith an application for condonation of delay has been filed.

4. We find that the applicant is in custody for the last 11 years. The applicant cannot be punished for the fault of his lawyer. Therefore, we find, that a case for condonation of the said delay of 8 years and 28 days is made out.

5. Application is accordingly allowed in terms of prayer clause (a). The said delay is condoned.

6. Registry is directed to number the Appeal and place the same for 'admission' on 9th January, 2017.

7. Copy of the above order be placed on record of the Criminal Appeal.

REVATI MOHITE DERE, J.

RANJIT MORE, J.