

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**14 CRIMINAL APPLICATION NO. 1609 OF 2017
IN
CRIMINAL APPEAL STAMP NO. 149 OF 2017**

THE STATE OF MAHARASHTRA

VERSUS

AJAY RAMESH THAKUR

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Mr. S.Y.Mahajan, A.P.P. for Applicant – State.

Mr. N.S.Ghanekar, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.

DATE : 17th JULY, 2017

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ORDER :

1. The applicant i.e. State Govt. has moved this application seeking condonation of 522 days delay in filing the Appeal against the impugned order dated 19/09/2015 passed by the learned Special Judge [MCOC], Aurangabad.

2. Heard learned counsel for the applicant/appellant and respondent and perused the impugned order.

3. The facts giving rise to filing of Appeal can be summarized as under.

The respondent/accused was arrested for committing offence u/s 395,397,342 of the Indian Penal Code. Later-on, the offence u/s 3 (1) (ii), 3 (2), 3 (4) of MCOC Act, 1999 were added during the course of investigation. The remand of the accused was obtained time to time. On 19/09/2015, the application came to be moved u/s 21 of the MCOC Act to extend the period to complete the investigation as the period of filing charge sheet was to expire on 20/09/2015. In stead of issuing notice to the respondent and deciding the application, learned Special Judge passed the order " seen and filed ". On expiry of statutory period of 90 days, the accused moved an application seeking release on bail. The application was granted. Being aggrieved, the State has moved an application against the order dated 10/12/2015 granting bail in default of filing charge sheet within the stipulated period of 90 days. During the course of hearing of the said application, the Court has passed order on 21/02/2017 and called upon to obtain the explanation of the Joint Secretary, Land and Judiciary department and also called the report from the Principal District and Sessions Judge, Aurangabad. While passing the order, the

Court was surprised to note the manner in which the application was dealt by the learned Special Judge of the MCOC Court, Aurangabad. After the order dated 21/02/2017, it was realized to the prosecution that the order dated 19/09/2015 passed in the matter needs to be challenged. Accordingly, the present application is filed.

4. Learned A.P.P. submits that the delay caused in filing Appeal was not deliberate and intentional. He submits that as the order granting bail was challenged and there was no speaking order as such passed on 19/09/2015 in respect of the application, separate Appeal was not filed. He, therefore, urge to condone the delay.

5. On the other hand, learned counsel for the respondent/accused opposed the application with contention that no sufficient cause is assigned to condone the delay. He submits that the cause assigned for condoning delay is after-thought. He, therefore, urge to reject the application.

6. Having appreciated the submissions advanced, I am of the view that the delay deserves to be condoned and matter needs to be decided on merit. Perusal of the

order reflect the casual approach on the part of the learned Special Judge of the Special Court in deciding such important application. As per section 12 of the MCOC Act, the investigating agency can seek extension of time to file charge sheet if they are not in a position to complete the investigation within the statutory period of 90 days as provided u/s 167 of the Code of Criminal Procedure. The period can be extended up to 180 days. The provision has been incorporated in the statute by considering the magnitude of the investigation to be conducted in such matter. It was expected on the part of the learned Special Judge to have considered the application on its own merit and to dispose of the same by speaking order after giving opportunity of hearing to both sides. In stead of passing order either to allow or reject the application, a cryptic order has been passed as "seen and filed". Because of the casual approach and non application of mind, the complications were cropped up in the matter. Default bail came to be granted to accused. Order granting default bail came to be challenged before this Court. At the stage of hearing of tht application, it was realized that the order dated 19/09/2015 required to be challenged. In this view, the Appeal has been filed along with application seeking condonation of delay. I am,

therefore, of the view that the delay was not deliberate or intentional. It was due to the confusion created in view of a peculiar type of non speaking order passed by the learned Special Judge. In order to decide the matter on merit, I am of the view that delay be condoned. No prejudice would cause to the respondent if Appeal is decided on its own merit. I am, therefore, inclined to allow the application. Delay is condoned. Appeal be registered and place for hearing along with Criminal Application No. 1163 of 2017.

7. Stand over to 26/07/2017.

[V.L.ACHLIYA, J.]