

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION(APPA) NO.52 OF 2017

(Shiva Ashok Sarode..vs..State of Maharashtra, through PSO.P.S.Yashodharanagar,Nagpur)

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Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.S.Akbani, Advocate for applicant
Miss T.H.Udeshi,A.P.P. for State.

CORAM : V.M. DESHPANDE, J

DATED : JULY 13, 2017

This is an application for condonation of delay in preferring the appeal. According to applicant the delay is of 59 days.

This Court on 6/7/2018 after hearing learned counsel for applicant issued notice and learned A.P.P. waives the service of notice and sought time. It was also directed by this Court to learned A.P.P. to know whereabouts of the applicant.

The learned counsel for applicant submits that after filing of the application and appeal the applicant is not in touch with the counsel nor he has given any instructions.

The applicant is convicted by the learned Additional Sessions Judge,Nagpur in S.T.No.245/2015 dated 23/09/2016. He is convicted for the offence punishable under Section 324 of the Indian Penal Code and was directed to suffer R.I. for one year and to pay fine of Rs. 5000/- and in default of payment of fine further to suffer S.I. for two

months. Since the sentence was below 3 years , the learned Court below exercised his power under Section 389 of Code of Criminal Procedure and suspended the substantive jail sentence till the appeal period is over.

According to learned A.P.P., as per her instructions which she obtained from the investigating officer since nothing was placed before the learned Additional Sessions Judge,Nagpur after expiry of the appeal period on 09/1/2017 the learned Judge of the Court below issued notice to the applicant. The said notice was served upon the applicant on 16/1/2017,however he failed to appear before learned Additional Sessions Judge,Nagpur. She submits that records shows that on 19/01/2017 the present application alongwith the appeal is filed. The substantive jail sentence was suspended till the period of appeal is over. Thereafter, it was obligatory on the part of the applicant to file appeal within a stipulated period Today, the applicant is not protected by any Court. In that view of the matter the present application alongwith appeal is dismissed. The learned Court below is directed to issue non-bailable warrant against applicant to procure his presence. However, it will be open for the applicant to approach again before this Court if he choose to file application and appeal fresh.

JUDGE