

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1102 OF 2019
IN
CRIMINAL APPEAL NO. 907 OF 2019

Amol Ashok Mali ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr.Ashok Mundergi, Sr. counsel a/w Mr. PM. Arjunwadkar for the applicant.

Dr. F.R. Shaikh, APP for the State.

CORAM : B.P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.
DATE : NOVEMBER 27, 2019

P.C.:

Applicant has filed statutory appeal under section 14-A(2) of Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act for short) vide Criminal Appeal (St) No. 907 of 2019 on 3/7/2019. As the proviso to above section permit 90 days for filing of appeal and expressly stipulates that the delay upto further 90 days can be condoned, the present application has been filed with a prayer to condone 209 days.

2. Submission is as the liberty of the individual is at stake, ceiling on power to condone the delay is unsustainable as it

violates Article 21 of the Constitution and is also against Article 14 thereof. The judgment of the Full Bench of Allahabad High Court reported at 2018 0 Cr.LJ 5010 (Re : Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 & Ors. Vs. Nil & Ors) is relied upon for this purpose.

3. In the alternative, it is submitted that if the period during which the applicant was prosecuting his application for bail before the learned Single Judge vide Criminal Bail Application No. 2993 of 2018 is excluded in terms of section 14 of the Limitation Act, present proceedings are within time.

4. Learned APP relies upon language of section 14A of the SC ST Act to urge that as the appeal has been filed after expiry of period of 180 days, the prayer cannot be looked into since this court has not been given that power.

5. The fact shows that the order rejecting bail was passed by the trial court on 4/9/2018. The applicant then approached learned Single Judge of this Court in Bail Application No. 2993 of 2018 on 3/11/2018 and that application has been disposed of after noticing the availability of statutory appeal on 27/6/2019. The present proceedings are then filed on 9th July, 2019. Thus excluding the period during which proceedings were being prosecuted before the learned Single Judge, limitation of 90 days

cannot be said to have been exceeded.

6. There is no question of lack of bona fides since the applicant is in jail and his liberty is at stake. He was also acting under legal advice and prosecuting remedy before learned Single Judge.

7. We also note that the Full Bench of Allahabad High Court (supra) has found this fetter placed on the powers of High Court to condone the delay, to be unconstitutional.

8. In this situation, we condone the delay and direct the registry to register the appeal. Criminal Application is accordingly allowed.

9. After the appeal is registered, place it for consideration within two weeks.

(SMT. SADHANA S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)