

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

**CRIMINAL APPLICATION NO. 1105 OF 1019
IN
CRIMINAL APPEAL (ST.) NO. 908 OF 2019**

Hemant Raman Patel @ Hetal ...Applicant

Versus

Union Territory of Daman & Diu & Anr. ...Respondents

**WITH
CRIMINAL APPLICATION NO. 1104 OF 1019
IN
CRIMINAL APPEAL (ST.) NO. 908 OF 2019**

Hemant Raman Patel @ Hetal ...Applicant

Versus

Union Territory of Daman & Diu & Anr. ...Respondents

Vivek Gore – Advocate for the applicant.
A. S. Patil – APP for the Respondent – State.
H. S. Venegaonkar - CBI

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 9th AUGUST 2019.

P.C. :

The applicant was initially charged with the offences

under Section 307 and 506 of IPC. But later, after trial, the District and Sessions Court at Daman, through its judgment dated 18.11.2017, convicted the applicant under Section 326 for three years' rigorous imprisonment.

2. During the trial, the applicant had been on bail, save for four days when he was in judicial remand. When the Sessions Court at Daman rendered the judgment on 18th November 2017, it granted the applicant an interim bail to enable him to file the statutory appeal. But there is a delay of one year and 139 days in his filing the appeal.

3. To explain the delay of one year and 139 days, Shri Vivek Gore, the applicant's counsel, submits that initially the applicant has given the case file to one advocate at Mumbai, through his counsel in the trial Court. When contacted, the counsel told the applicant that he had filed the appeal, though he had not.

4. Eventually, the applicant was arrested on 12th April 2019 because the appeal had never been filed and, in the meanwhile, the interim bail the trial court granted ended. From then onwards, the applicant has been serving the sentence. In that context, Shri Vivek Gore urges this Court to condone the delay.

5. Shri H. S. Venegaonkar, the learned Standing Counsel for the respondent Union Territory, submits that the respondent desires to contest the case on merits. As to the delay, he wants the Court to take an appropriate decision.

6. Heard Shri Vivek Gore, the learned counsel for the applicant, And Shri H. S. Venegaonkar, the learned Standing Counsel for the Union Territory.

7. First, the Court cannot appreciate the applicant's simply blaming his previous counsel for the lapses in his filing the appeal on time. That said, second, I may also note that the applicant was arrested on 12th April 2019 and has been in jail, though the sentence is for three years.

8. This Court on earlier occasion condoned the delay, after recording the circumstances under which the applicant could not file the appeal on time. Now for the last four months the appellant has been serving the sentence.

9. In response to the submissions made by the applicant's counsel, the learned Standing Counsel for the Union Territory has, however, submitted that the respondent is worried about securing the applicant's presence when this Court may finally hear the appeal. According to him, his past conduct does not inspire confidence, for only after the police had arrested him on the strength of a non-bailable warrant, did he come before this Court with the Appeal.

10. Under these circumstances, I intend to impose stringent condition to ensure the applicant's presence during this Court's hearing of the appeal.

11. As a result, I allow the Criminal Application No. 1105 of 2019; I suspend the sentence and enlarge the applicant on bail subject to these conditions:

ORDER

(i) The Criminal Application No. 1105 of 2019 is allowed.

(ii) The substantive sentence imposed on the applicant/accused is suspended, and he is directed to be released on bail on his executing P.R. Bond for Rs.30,000/- and on his furnishing two sureties for the like amount, by each.

(iii) Pending the appeal, the applicant should not contact the first informant, or any other witness; nor should he abuse the liberty now granted to him.

(iv) The applicant's failure to abide by these conditions will entail the prosecution to apply for cancellation of bail now granted to the applicant.

[DAMA SESHADRI NAIDU, J.]