

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 143 OF 2021**

Dadan Chotelal Yadav	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ashokvardhan Purohit for the Applicant.

Mr. A.R.Patil, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the applicant and the learned APP for the State.

2. By this application, the applicant has impugned the order dated 21st November, 2017 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, below Miscellaneous Application No.1034 of 2016 (for condonation of delay) in Criminal Appeal No.---/2016, by which the applicant's application seeking condonation of delay of 7 days in filing the appeal was rejected.

3. Learned Counsel for the applicant states that the applicant vide Judgment and Order dated 3rd March, 2016 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai in C.C.No.580/PW/2010, was convicted for the offence punishable under Section 420 read with 34 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month.

4. The said Judgment and Order of conviction and sentence was challenged by the applicant in appeal, in the Sessions Court. Alongwith the appeal, the applicant filed a Miscellaneous Application No. 1035 of 2016 (for suspension of sentence) and another Miscellaneous Application No. 1034 of 2016 (for condonation of delay of 7 days in filing the appeal). It appears that inadvertently, the learned Sessions Judge without condoning the delay of 7 days i.e. without deciding the Criminal Miscellaneous Application No. 1034 of 2016, proceeded to admit the appeal vide order dated 27th April, 2016 and vide order dated 27th April, 2016, released the applicant on bail. The said order was passed in Criminal Bail Application No. 905 of 2016.

5. It appears that subsequently, the delay condonation application

was placed before the learned Sessions Judge. The learned Sessions Judge after observing that the Advocate of the applicant and the applicant were absent for a long time and that they had not taken any steps to argue the matter, rejected the said application i.e. Miscellaneous Application No. 1034 of 2016 filed for condonation of delay of 7 days caused in filing the appeal and vacated the interim relief.

6. First and foremost, the learned Judge could not have admitted the appeal, without condoning the delay. Be that as it may, once having admitted the appeal, the learned Judge ought to have condoned the delay of seven days in filing the appeal.

7. Considering the aforesaid, in the interest of justice, the application is allowed and the impugned order dated 21st November, 2017, passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Miscellaneous Application No. 1034 of 2016 in Criminal Appeal No. --/2016 in C.C.No. 580/PW/2010 is quashed and set aside and the delay of 7 days caused in filing the said appeal, is condoned.

8. The interim relief granted earlier i.e. the orders dated 27th April, 2016 admitting the appeal as well as granting bail to the applicant are

restored.

9. The Registry of the Sessions Court is directed to number the appeal.

10. Learned Counsel for the applicant states that the applicant will take all steps to remain present before the Appellate Court either personally or through his Advocate; and that he will co-operate with the learned Sessions Judge in the final disposal of his appeal which is pending. Statement accepted.

11. The application is accordingly allowed and disposed of on the aforesaid terms.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.