

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

CRIMINAL APPLICATION [APPA] NO. 449 OF 2021.

Ram Babanrao Dhamkondwar

-Versus-

The State of Maharashtra, through P.S. Awdhootwadi, District Yavatmal.

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

Court's or Judge's orders

Shri S. Ansari, Advocate h/f. Shri T.J. Patil, Advocate
for the Applicant.

Shri H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 20, 2021.

Heard.

2. This is an application seeking condonation of delay of 490 days caused in filing the appeal to challenge the order of conviction dated 04.11.2019, passed by the trial Court in Special POCSO Case No.26/2018.

3. The applicant/appellant contended that since the date of conviction and even prior to that, he was and is in jail. Due to financial constraints, his family members were not in a position to file appeal within the stipulated period, and therefore, the delay had occurred.

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4. The State has objected this application by contending that the delay is inordinate, hence, it cannot be condoned.

5. The applicant/appellant came to be arrested on 25.04.2018 and during trial he was in jail. After a full fledged trial, he was convicted for the offence punishable under Sections 376[3], 354-B and 506 of the Indian Penal Code. The trial Court awarded maximum sentence to undergo rigorous imprisonment for a period of 10 years along with total fine of Rs.4,500/-. Admittedly the applicant/appellant is in jail till date. Unless there exists some malafides, the contention of the applicant has to be accepted, since it would be at his detriment, if he fails to file appeal.

6. The reason of financial constraint and particularly, the accused is in jail are sufficient to condone the delay to sub-serve his right to contest the order of conviction before the superior Court. The matter pertains to right and personal liberty of a convict. In that case technical objections would not prevail as compared, when the substantial cause is to be tested on merits. In the circumstances, the delay caused in filing the appeal stands condoned.

Order

2010appa449.21

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Criminal Application is accordingly allowed and disposed of.

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Criminal Appeal No. _____/2021.

Heard.

2. **Admit.** Call for R & P.

Learned A.P.P. waives notice for the respondent.

JUDGE

Rgd.