

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

CRIMINAL APPLICATION (APPA) NO. 455/2021 IN
CRIMINAL APPEAL (ST) NO. 5145/2021

Abul S/o Mehboob Patel Vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A. Subhan, Advocate for applicant/appellant.
Shri M. J. Khan, APP for non-applicant/Respondent (sole)

CORAM : VINAY JOSHI, J.
DATE : 12.08. 2021.

Heard.

2. This is an application for condonation of delay of 652 days caused in filing criminal appeal challenging the order of conviction dated 28.08.2019 passed in Special (POCSO) Case No. 322/2014 by the Additional Sessions Judge, Amravati. The reason canvassed for delay is that after convicting, the appellant has handed over the papers to his counsel of Solapur to prefer appeal. Therefore, he was unaware regarding filing or non-filing of appeal. The applicant/appellant came to know that his counsel has not filed appeal when the Police has approached for execution of conviction warrant. Learned APP for the non-applicant/State resisted the application by stating

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that the delay is huge of nearly two years and the applicant was enjoying liberty without filing appeal.

3. There can be no dispute that the applicant has got his sentence suspended from the Trial Court under pretext that he desires to file appeal. However, basically the applicant is challenging the order of conviction by which the trial Court directed him to suffer rigorous imprisonment for two years for commission of offence under Section 363 of the Indian Penal Code. The appellant has statutory right to question the order of conviction which according to this Court cannot be taken away only on account of technicality. In order to give fair chance to the appellant to test the order of conviction on merits which bares concern about his liberty, the delay caused in filing appeal stands condoned.

4. Application stands allowed and disposed of.

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1. Heard.

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2. **Admit.**

3. Call R. and P.

4. Learned APP waives service of notice for respondent/State.

CRIMINAL APPLICATION (APPA)ST. NO.
5148/2021/2021

1. The applicant is seeking for suspension of sentence in terms of Section 389(1) of the Code of Criminal Procedure.

2. It is submitted that the applicant was on bail and post conviction, Trial Court has suspended the execution of sentence. The applicant has deposited the entire fine amount in the Trial Court. It is submitted that the incident was out of lover affair and therefore, the appellant has fair chance to succeed. Fixed term of imprisonment of two years has been imposed and therefore, appellant seeks for suspension of sentence during the pendency of trial. Learned APP has pointed that the Trial Court has suspended sentence on 28.08.2019 but till date, the appeal has not been filed, meaning thereby the appellant has made miss statement before the Trial Court while getting

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the sentence suspended.

3. Learned counsel for the applicant would submit that applicant is an illiterate person and after suspension of sentence, he has handed over the papers to his counsel of native place Solapur, but latter he did nothing. According to the learned counsel for the applicant he is doing private job and if he is put in Jail, he may loose his livelihood. Upon instruction, the learned counsel for the appellant makes a statement that for lapses on his part, he is ready to deposit Rs. 10,000/-.

4. Since the substantive sentence is term of two years imprisonment and there is no possibility of appeal reaching for hearing in near future, execution of sentence can be suspended. In view of that, the execution of substantive sentence stands suspended till final disposal of appeal.

5. In the meantime, the applicant is released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

6. The applicant shall deposit Rs. 10,000/- to the office of Legal Aid Services Sub-Committee, High Court, Nagpur within two weeks from today and file pursis to that effect.

JUDGE