

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

CRIMINAL WRIT PETITION NO.111 OF 2022

Nilesh Jaganrao Kamble,
 Age: 19 years, Occ: Labour,
 R/o Tarfail Ward no.29, Wardha,
 Tq. And District Wardha. **PETITIONER**

...V E R S U S...

1. State of Maharashtra through Police Station Officer, Wardha City, Tq. And District Wardha.

Amended as per
order dt.
25/03/2022

2. XYZ, Aged about Minor, through her legal guardian/complainant Crime No.1235/2017,
 PS. Wardha City. **RESPONDENTS**

 Mrs. Prajakta Chaudhari, Advocate h/f Mr. Abhay Sambre,
 Advocate for Petitioner.
 Mr. S. M. Ukey, APP for Respondent No.1/State.
 Mrs. Deepa I. Charlewar, Advocate for Respondent No.2.

CORAM: **VINAY JOSHI, J.**
DATE: **15th JUNE, 2022.**

ORAL JUDGMENT:

Heard learned Counsel for the parties. With their consent matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner who is facing prosecution before the

Children Court's for the offence punishable under section 376 of the IPC and section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), has challenged the order dated 23.12.2021 passed in Other Misc. Case No.49/2021, by which the prayer of the petitioner for condonation of delay in filing appeal was came to be rejected.

3. It reveals that the learned counsel for the petitioner submitted that the Juvenile Justice Board, Wardha has passed an order of preliminary assessment in terms of Section 15 read with Section 18 of the Juvenile Justice Act, 2015, expressing that the petitioner shall be tried before the Children's Court. Being aggrieved by the said order dated 15.03.2018, the petitioner has preferred an appeal in terms of Section 101 of the Juvenile Justice Act. However, as there happened to be delay of near about three years. The petitioner has urged for condonation of delay and to entertain the appeal. The learned District Judge-1, Wardha vide impugned order declined to exercise grant of discretionary relief of condoning the delay.

4. The learned counsel for the petitioner has submitted that the procedure adopted by Juvenile Justice Board while

making preliminary assessment was defective. It is argued that the order which is sought to be challenged in appeal was illegal and therefore, the petitioner shall be allowed to test the same in the appeal. On the point of delay it is argued that the petitioner was minor at the relevant time and there was nobody to look after legal proceedings. Moreover, the reason of financial constrain has been raised. The respondent has objected to condone the delay by stating that due to sheer negligent attitude delay has been caused.

5. Having regard to the fact that the petitioner was a minor at the relevant time and the other reasons stated in the application, the delay deserves to be condoned. It is settled that the Courts shall be liberal while deciding the application for condonation of delay. If delay is condoned at the most the cause would be decided on merits, rather than throwing on the technicalities.

6. In view of that petition stands allowed. The impugned order dated 23.12.2021 passed in Other Misc. Case No.49/2021, is hereby quashed and set aside. The delay caused in filing appeal is hereby condoned. The Appellate Court shall decide the appeal on merits.

7. Writ Petition is accordingly disposed of. Rule is made absolute in the aforesaid terms with no order as to costs.

8. The fees of the appointed counsel be quantified and paid in accordance with the rules.

JUDGE

NSN