

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

CRIMINAL WRIT PETITION NO.529 OF 2022

Mohd. Sajid Shri Kallu
Aged 45 years, Occ: Business,
R/o 245, Mohd. Ibrahimpur, Tah. Billari,
Dist. Muradabad [U.P.] through his Power
of Attorney, Saver Ansari s/o Iftekar Ansari
Aged 28 years, Occ: Business,
R/o Dashmesh Nagar, Gupta Colony,
Ashoka Garden, Bhopal [M.P.]

... PETITIONER

---VERSUS---

1. The State of Maharashtra,
Through Police Station Officer,
P.S. Kelwad, Tah. Saoner,
Dist. Nagpur
2. Smt. Asha Mahendra Dave
Aged 54 years, Occ: Private,
R/o 124, Ward no.24, Waghdera, Babale
Layout, Wanadongari, Nagpur
3. Seth Ramlal Malu Gaushala Gawatha,
Through its Secretary, Shri Purushttam
Ramal Malu R/o Nagpur

...RESPONDENTS

Shri O.K. Masurke, Advocate for petitioner.
Shri H.D. Dubey, Advocate for respondent no.1.
Shri A.H. Joshi, Advocate for respondent no.2.
Shri N.B. Naidu, Advocate for respondent no.3.

CORAM : G.A. SANAP, J.
DATED : NOVEMBER 30, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. In this petition, the prayer is made to quash and set aside the order dated 07.03.2022 passed by the learned Additional Sessions Judge, Nagpur in Miscellaneous Criminal Application No.2512 of 2021, whereby the learned Additional Sessions Judge was pleased to reject the application for condonation of delay of 169 days caused in filing the revision application against the order dated 07.11.2020 passed by the learned Judicial Magistrate First Class, Court No.2, Saoner.

3. Vide order dated 07.11.2020, learned Magistrate was pleased to handover the custody of 65 cattle seized in the crime to Seth Ramlal Malu Gaushala, Kawatha. Learned Magistrate also granted the application made by the petitioner for release of the vehicle used in the commission of the crime to the applicant subject to appropriate conditions. The petitioner as can be seen from the record felt aggrieved by this order and therefore wanted to file revision application against this part of the order. The delay of 169 days was caused in filing the revision application. The petitioner,

therefore, made the application for condonation of delay. The learned Additional Sessions Judge by order dated 07.03.2022 rejected the said application. Against this order, the petitioner has come before this Court.

4. The learned advocate for the petitioner submits that the petitioner has a good case on merits. In the revision application, which was filed with delay condonation application, valid grounds of challenge to the impugned order were pleaded. It is submitted that learned Additional Sessions Judge has not taken into consideration the facts pleaded in the delay condonation application and has wrongly rejected the same.

5. The learned advocate for the respondent no.2 submits that there cannot be a serious objection to the condonation of delay. However, he submits that the learned Magistrate wrongly quantified the daily maintenance charge of each cattle at ₹50/-. In the submission of the learned advocate as per the Maharashtra Animal Board notification dated 02.07.2019, the daily maintenance charges should be ₹200/- per day per cattle.

6. The learned advocate for the respondent no.3, in whose custody the cattle have been given, submits that for want of the

deposit of sufficient amount towards maintenance charges the maintenance of the cattle has become difficult task before the respondent no.3.

7. As far as the submissions advanced by the learned advocates for respondent nos.2 and 3 are concerned, the remedy available to them would be to approach the learned Magistrate with an appropriate application. If they are aggrieved by the order passed by the learned Magistrate with regard to the quantification of the daily maintenance charge, it would be open for them to take recourse to the remedy available under law. It is to be noted that while deciding this writ petition no directions on that count can be issued. However, it is made clear that as and when a grievance is made before the concerned Court by respondent nos.2 and 3 their grievance shall be considered according to law.

8. Coming back to the delay condonation application, it is seen that the reasons have been stated in the application. There is delay of 169 days caused in filing the revision application. The vehicle used in the commission of the crime is still in the custody of the police. The petitioner is aggrieved by the conditions imposed by the learned Magistrate at the time of the release of the vehicle.

9. It is to be noted that while deciding the delay

condonation application a liberal view is required to be adopted. It is needless to state that the decision or adjudication of a matter finally by granting an opportunity of hearing to the parties is always in the interest of both parties. Such approach in the opinion of this Court can avoid the multiplicity of the proceedings. Considering the reasons stated in the application made for condonation of delay, in my view, the same can be allowed. I must state that the learned Additional Sessions Judge on the basis of the facts stated in the application and with a view to subserve the cause of justice in all respect, keeping in mind the nature of the matter, ought to have granted the application for condonation of delay.

10. The learned advocate for the respondent no.2 pointed out that in this writ petition, the petitioner has claimed substantive relief challenging the order of the learned Magistrate. The prayer clause (iii) indicates that this prayer would not be maintainable in this writ petition.

11. In view of this position, the writ petition deserves to be allowed.

12. The impugned order dated 07.03.2022 passed by the learned Additional Sessions Judge, Nagpur in Miscellaneous Criminal Application No.2512 of 2021 is set aside.

13. The application for condonation of delay is allowed. Delay of 169 days caused in filing of the revision application is condoned.

14. The petitioner shall take steps for getting the revision application registered before the learned Additional Sessions Judge, Nagpur.

15. It is made clear that in the revision application filed by the petitioner he shall implicate all the necessary parties as respondents so as to enable the learned Additional Session Judge to decide the matter finally and completely in all respect.

16. Rule is made absolute in above terms.

JUDGE

Wagh