



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPLICATION NO. 960 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
VIHABHAI NARSINGBHAI UDHAREJIYA (DECEASED) AND OTHERS

...
910 CRIMINAL APPLICATION NO. 1846 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
AMOL NAVNATH PANDIT AND OTHERS

...
911 CRIMINAL APPLICATION NO. 1917 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SHAIKH RASHID ABDUL AZIZ @ RASHID DANDA AND OTHERS

...
912 CRIMINAL APPLICATION NO. 2132 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
TUSHAR MARTAND ZANZAD

...
913 CRIMINAL APPLICATION NO. 2236 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SHANTABAI W/O. SHAHAJI JADHAV

...
914 CRIMINAL APPLICATION NO. 2337 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
TUSHAR S/O. GORAKH GAIKWAD AND OTHERS

...
915 CRIMINAL APPLICATION NO. 2436 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SURESH EKNATH @ KAKASAHEB JADHAV AND OTHERS

...
916 CRIMINAL APPLICATION NO. 2475 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SACHIN S/O. VITHAL SURYAWANSHI AND OTHERS

...
917 CRIMINAL APPLICATION NO. 2495 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SAIYAD SHAKIL SAYED CHHOTU AND OTHERS

...
918 CRIMINAL APPLICATION NO.2506 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
NITIN CHANDRASHEKHAR KALE AND OTHERS

...
919 CRIMINAL APPLICATION NO.2552 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
DWARAKABAI MACCHINDRA JARE

...
920 CRIMINAL APPLICATION NO. 2694 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SATILAL SUBHAN KHARDE AND ANR

WITH

CRIMINAL APPLICATION NO. 2695 OF 2018

WITH

CRIMINAL APPLICATION NO. 2698 OF 2018

WITH

CRIMINAL APPLICATION NO. 2699 OF 2018

...

921 CRIMINAL APPLICATION NO. 2847 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

DEVIDAS S/O. LAXMAN BANASKAR AND OTHERS

...

922 CRIMINAL APPLICATION NO.3049 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

SURESH S/O. DATTARAO SABLE AND OTHERS

...

923 CRIMINAL APPLICATION NO. 3312 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

BALAJI S/O. DATTA GARAD AND ORS

...

924 CRIMINAL APPLICATION NO.3441 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

MAHENDRA RAJARAM GIRI

...

925 CRIMINAL APPLICATION NO.3858 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

BALAJI UTTAM MANDVE

...

926 CRIMINAL APPLICATION NO.3859 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

MUKESH PRAKASH CHAUDHARI AND OTHERS

...

927 CRIMINAL APPLICATION NO.3866 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

SHIVNATH NARAYAN DEVDHE AND OTHERS

...

928 CRIMINAL APPLICATION NO.75 OF 2020

THE STATE OF MAHARASHTRA

VERSUS

RADHAKISAN BALASAHEB NAGARGOJE

...

929 CRIMINAL APPLICATION NO.464 OF 2020

THE STATE OF MAHARASHTRA

VERSUS

RAJU @ RAJA S/O. RAGHUNATH GADEKAR AND OTHERS

...

Mr. A. M. Phule, Mr. S. D. Ghayal, Mr. S. J. Salgare and Mrs. V. S. Choudhari, APP for the applicant – State in respective matters.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 3rd November, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. All these applications have been filed by the State i.e. prosecution for condonation of delay caused in filing applications for leave to appeals under Section 378(1)(b) of the Code of Criminal Procedure to challenge the acquittal of the respondents.

2. We have heard the concerned Additional Public Prosecutors in each matter.

3. Each of the application has been filed for condoning the delay caused in filing leave to appeals challenging the acquittal of the respondents. Here, we are not concerned with the duration of the delay, but we are mainly on the point of the procedure that is adopted and the drafting. Of course all the learned APP's strongly submitted that the accused i.e. respondents faced trial in respect of serious offence, however, they came to be acquitted and, therefore, injustice has been done to the prosecution, especially the victim. The delay was on account of administrative grounds which have been mentioned. After the judgments were pronounced; within a reasonable time, applications were made by the concerned Additional Public Prosecutors before the Trial Court for getting certified copies. After the certified copies were received, proposals were sent to the Law and Judiciary Department. After the matters were scrutinized by the Law and Judiciary Department, decision was taken to file the appeals challenging the acquittal. After the resolution directing the office of Public Prosecutor High Court Bench at Aurangabad was given, the matter was allotted for drafting to one of the APP's and thereafter the appeals have been preferred along with applications for condonation of delay, as in these matters delay has been caused, but there was no deliberate intention to cause the delay.

It was absolutely on the administrative reasons and, therefore, those delays are required to be condoned.

4. We have examined each and every matter. The first and the foremost objection is in respect of the way it is drafted and it is not accompanied by any document to show that the delay is on account of administrative cause. Of course from the certified copies we could get the days of making an application for the certified copies and when it was issued, but the letter or copy of the proposal sent by the concerned APP of the Trial Court, resolution/order by the Law and Judiciary Department to the Public Prosecutor to file an appeal and then order by the learned Public Prosecutor allotting the matter to learned APP, all these documents are not attached. The application is also not accompanied with affidavit in support of application. What has been attached is the verification, that too of a government servant working as Supervisory Senior Clerk in the office of Public Prosecutor, High Court of Bombay Bench at Aurangabad. That means the person who was responsible to cause delay has not explained the delay on his part. The learned APP's are relying on a communication by Solicitor-Cum-Deputy Secretary, Law and Judiciary Department, Aurangabad dated 19/23-03-2015, which appears to be in response to the letter given by the Government Pleader, High Court, Bench at Aurangabad on 30.01.2015 seeking directions as to swearing of affidavits of criminal applications. It

was communicated by the Solicitor-Cum-Deputy Secretary, Law and Judiciary Department, Aurangabad that since the leave to appeals are drafted, settled and finalized by the concerned APP and/or the Public Prosecutor so as to get filed before the High Court, it is expected, feasible and proper to swear the said application of leave to appeal by the concerned employee of the concerned Branch of the office of the Government Pleader, but it is made clear in the said letter itself that delay in preferring the appeal and/or application needs to be explained by the concerned employee/officer of the Government, on whose part such delay has occasioned. We failed to understand as to whether in his own wisdom, the Solicitor-Cum-Deputy Secretary, Law and Judiciary Department, Aurangabad has issued the said letter as he has only forwarded the copy of the said letter to the Principal Secretary and RLA, Law and Judiciary Department, Mantralaya, Mumbai. Whether it was the policy of the government, especially the concerned department taking a policy decision as to who should swear the affidavit accompanying such applications, but certainly it cannot be the Supervisory Senior Clerk of the Public Prosecutor. The practice adopted at the office of Public Prosecutor, High Court Bench at Aurangabad appears to be totally wrong. Here, sometimes the delay is running in three digits, then who is supposed to explain the said delay. Again, at the cost of repetition, certainly the Supervisory Clerk is not the appropriate person and in fact what he has given is the verification and not

the affidavit. Certainly, verification differs from affidavit in support of the contents of application. The affidavit should accompany the documents on which the applicants intend to rely. Here, neither those documents have been produced, nor affidavit of appropriate person has been filed and, therefore, irrespective of even small delay, all the applications deserve to be rejected, as they are not in proper format, not supported by documents and affidavit. Hence, all the applications stand rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm