

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.49 OF 2023
IN
CRIMINAL WRIT PETITION NO.2912 OF 2005**

V. K. Jain & Anr.

.... Applicants

versus

Pratap Padode & Anr.

.... Respondents

.....

- Mr. Meghashyam Kocharekar, Advocate for Applicant.
- Mr. Rahul Gaikwad a/w Aman Jhawar i/b. Gravitas Legal, Advocate for Respondent No.1.
- Mr. Arfan Sait, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 22nd JUNE, 2023**

P.C. :

1. Learned counsel for the Petitioner seeks leave to amend to make a prayer for condonation of delay in filing this application for restoration of the Criminal Writ Petition No.2912 of 2005. Leave is granted. The amendment shall be carried out forthwith.

2. Heard Mr. Meghashyam Kocharekar, learned counsel for the Applicant, Mr. Rahul Gaikwad, learned counsel for Respondent No.1 and Mr. Arfan Sait, learned APP for the State.
3. The Criminal Writ Petition No.2912 of 2005 was admitted by this Court on 08/12/2005. While admitting the Petition this Court had made strong observations that prima facie, it found substance in the arguments that the case on hand was one of grave miscarriage of justice as the Revisional Court had not considered the core issue that was raised before it. It was observed that arguable questions were raised and hence Rule was issued and by way of ad-interim order, stay was granted.
4. After this order dated 08/12/2005 was passed, the Petition was pending for quite some time and ultimately on 15/02/2021 when it was listed, it was dismissed for non-prosecution.

5. Learned counsel for the original Petitioners and the Applicants herein submitted that the Petitioners were not aware of the dismissal of the Petition. They came to know about such dismissal only when non-bailable warrant was issued against them. Thereafter they made enquiries and they filed this application for restoration of the Writ Petition. He submitted that they have good case on merit. The Applicants are more than 70 years of age and therefore on humanitarian grounds also, the Petition deserves to be restored so that it can be decided on the merits of the matter.

6. Learned counsel for the Respondents submitted that the original Petition was filed by four Petitioners. However, this application is filed by only two Petitioners. Therefore the entire Petition cannot be restored. He opposed restoration of the Petition.

7. I have considered these submissions. While it is true that the Petition was dismissed for non-prosecution and

thereafter the Applicants/Petitioners have not approached this Court immediately, however, this Court had observed that there was grave miscarriage of justice against them. On that ground the Petition was admitted. The Petitioners are more than 70 years of age.

8. Considering all these aspects, in the interest of justice, the Petition deserves to be restored. It can be decided on merits of the matter. However, considering the delay in preferring this application some reasonable cost can be imposed on the Petitioners.

9. Hence, the following order :

ORDER

- (i) The delay in filing this application is condoned.
- (ii) The Criminal Writ Petition No.2912 of 2015 is restored to its file, subject to payment of cost of Rs.5,000/- to the counsel of the Respondent

No.1 within a period of four weeks from today and learned counsel for the Applicant producing the receipt in the office.

- (iii) The Interim Application No.49 of 2023 is disposed of.
- (iv) The Writ Petition be added to the final hearing board commencing from 21/08/2023.

(SARANG V. KOTWAL, J.)