

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

CRIMINAL APPLICATION (APPA) NO. 660/2023
IN
CRIMINAL APPEAL STAMP NO. 4632/2023.

ROSHAN S/O. RUPRAO BANDRE
VS
STATE OF MAH. THR. PSO, PS M.I.D.C., NAGPUR.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr A.M.Balpande, counsel for the applicant. (Appointed)
Mr I.J.Damle, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/06/2023.

1. Heard.
2. This is an application for condonation of delay in filing the appeal.
3. Learned APP waives service of notice on behalf of non-applicant/State.
4. Mr A.M. Balpande, learned counsel for the applicant submitted that he is appointed counsel through legal aid and the appellant is in jail. He received the documents on 08/06/2023 and thereafter, he preferred this appeal as necessary documents and necessary instruction was not with him, he could not file the appeal within time. The appellant who is the convict

also not aware about his legal right regarding the filing of the appeal. Therefore, the delay is caused. Delay is not an intentional one. The appellant has every chance of success in the present appeal, however, if opportunity is not granted to him for the technical reason then he has to undergo the sentence.

5. Learned APP opposed the present application on the ground of delay is not properly explained.

6. Having heard both the sides and on perusal of the application, it reveals that the learned counsel who is appointed through legal aid has received the documents recently. Thereafter, he received the necessary instructions from the accused and thereafter, preferred the appeal. The delay is explained properly in the application. The appellant is convicted for the offence punishable under Section 376 of the Indian Penal Code.

7. As per the grounds raised by the appellant, the learned Trial Court had not considered the variance which came in the prosecution evidence and erroneously convicted the present appellant. The ample grounds are raised by the appellant to show that he has every chance of success in the present appeal. While considering the fact that the delay condonation application, a liberal approach is to be taken and not the

pedantic approach is not appreciated. The delay is properly explained and the criminal application deserves to be allowed by condoning the delay. Accordingly, I proceed to pass the following order.

- a) Criminal Application is allowed.
- b) The delay of 196 days in filing the appeal is condoned.

Criminal Appeal Stamp No. 4632/2023

- 1. Heard.
- 2. **Admit.**
- 3. Call for record and proceedings.
- 4. Appeal be placed before the Court after receipt of the record and proceedings.

JUDGE