

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

902 CRIMINAL APPLICATION NO.1673 OF 2024
IN APEALST/4431/2024

Halim Hanif Qureshi

.. Applicant

Versus

The State of Maharashtra and Another

.. Respondents

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WITH CRIMINAL APPLICATION NO. 1676 OF 2024 IN APEALST/4438/2024
WITH CRIMINAL APPLICATION NO. 1677 OF 2024 IN APEALST/4440/2024

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Shri. Pralhad D. Bachate, Advocate for the Applicants in all the matters
Smt. S. N. Deshmukh, APP for the Respondent / State in Criminal
Applications No.1673 of 2024 & 1676 of 2024

Shri. B.B. Bhise, APP for the Respondent / State in Criminal Application
No.1677 of 2024

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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : APRIL 19, 2024

PER COURT :-

. These are the Applications for condonation of 2054 days
delay in preferring the Appeals against acquittal. These Applications are
filed by the first informant in Crime No.19/2012 registered with
Begumpura Police Station, Aurangabad. In the said crime, which was
registered as the Special Case (MCOC) No.17/2012, the Respondent
No.2 herein all the applications were acquitted.

2. It is submitted by the learned Advocate for the Applicants
that the delay has been explained in the Applications. The reasons given
in the Applications are that the informant decided to file the Appeal as
the State has not preferred the Appeal against acquittal. He fairly

submits that the informant got the knowledge of the judgment of acquittal on the date of judgment itself i.e. on 27.08.2018.

3. The crime was registered under the provisions of the Indian Penal Code and the Maharashtra Control of Organised Crime Act. The provisions of Section 12 of MCOC read as under:

“12. Appeal.- (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgement, sentence or order.”

4. Learned Advocate for the Applicants cited judgment of this Court delivered at the Principal Seat in Interim Application No.2375 of 2022 on 14.09.2023 and he relies on the paragraph no.46 which reads as under:

“46. A careful perusal of the Schedule specified in the NIA Act, would show that the offences enumerated in the said Schedule are serious in nature and most of the offences are punishable with imprisonment for life and considering the seriousness of the offences, the jurisdiction to try the offences under the NIA Act has been vested with the Designate Special Court, constituted under Section 11 of the NIA Act. Thus, it is all the more necessary to ensure that an accused/the prosecution gets a right to test the correctness of the order passed by the Special Court in appeal, lest, injustice is caused to either of the parties, due to an unmerited order. Not only the accused, but even the prosecution should be able to approach the Appellate Court after expiry of 90 days, on sufficient cause being shown for delay, as even closing the doors to the prosecuting agency can also lead to serious consequences, as the NIA Act is concerned with the national sovereignty, security and integrity of India, friendly relations with foreign State and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other International organizations.”

5. He further relied on the order of the Hon’ble Apex Court dated

10.01.2022 which was passed extending the limitations for preferring the Petitions / Applications / Suits / Appeals / all other *quasi judicial* proceedings due to outbreak of the COVID-19 pandemic.

6. There can be no dispute in respect of the legal position set out in the aforementioned Judgment. However, in the case in hand, admittedly, the Applicants were aware of the Judgment of the acquittal when it was pronounced. The reasons mentioned in the Applications are that the Applicants were under *bonafide* belief that the State has preferred the Appeal against the acquittal, but recently they enquired with the said authorities whether it has preferred Appeal against the acquittal, they came to know that the State has not preferred the Appeal. The said contention is completely vague cannot be termed as sufficient reason.

The other grounds mentioned in the Applications are as follows:

“6. The applicant states that, the applicant was under *bonafide* belief that the State has preferred appeal against the acquittal of the respondent no. 2 — accused no. 8 against the judgment and order dated 27/08/2018 passed by the Ld. Special Judge (MCOC), Aurangabad in Special Case (MCOC) No.17/2012. The applicant recently enquired with the State authorities whether it has filed appeal against the acquittal of the respondent no.2 - accused no. 8 and came to know that the State has not preferred appeal before this Hon'ble Court against the acquittal of respondent no.2 - accused no. 8.

7. The applicant states that, the convicted accused persons in Special Case (MCOC) No.17/2012 has filed appeal before this Hon'ble Court wherein son of the deceased has filed application for assisting the prosecution and the same is allowed by this Hon'ble Court. The applicant has also taken information from the son of the deceased who is assisting the prosecution in the appeals filed by the convicted accused regarding the fact that whether State has filed any appeal against the acquittal of the respondent no. 2 - accused no. 8 or not.

8. The applicant states that, the applicant is the real twin brother of the deceased and at his instance the criminal law was set into motion as he had lodged the First Information Report with the Begumpura Police Station, Aurangabad. The applicant is also one of the key witness of the

prosecution who was duly examined in the Trial before the Ld. Special Judge (MCOC), Aurangabad in Special Case (MCOC) No. 17/2012.

9. The applicant states that, the applicant desired to file appeal against the acquittal of the respondent no.2 - accused no.8 before this Hon'ble Court but he was under *bonafide* belief that the State has preferred an appeal against the acquittal of the respondent no.2 - accused no.8 before this Hon'ble Court. Thereafter, in the month of March, 2020 due to the wide spread of Covid-19 Corona Virus across the globe, there was lock-down throughout the country due to which the applicant was not in a position to take the further steps regarding filing of appeal against the acquittal of the respondent no.2 - accused no.8 before this Hon'ble Court."

10. The applicant states that, after getting knowledge from the son of the deceased that the appeals filed by the convicted accused are listed for hearing before this Hon'ble Court the applicant approached his Advocate and instructed him to draft the appeal in the last week of March, 2024. The Advocate for the applicant has gone through the necessary documents for drafting the appeal and thereafter the same is filed before this Hon'ble Court and due to this aspect some minor delay is caused for filing appeal before this Hon'ble Court."

7. Even if we deduct the period of COVID-19 pandemic, the grounds mentioned in the Applications cannot be said to be sufficient cause / reasons. Considering the contentions of the Applicants as seen from the Applications, we do not see any merit in the Applications and proceed to pass the following order:

ORDER

(i) The Criminal Application Nos.1673 of 2024, 1676 of 2024 and 1677 of 2024 are rejected.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

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