



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

**INTERIM APPLICATION NO. 1323 OF 2024
IN
REVISION APPLICATION NO. 172 OF 2024**

ARBAAZ SAMEER KHAN	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Vikas Shivarkar for the Applicant.
Mr. Swapnil V. Walve, APP for the State.
Anil R. Rikibe, PSI, Khadki Police Station, Pune City.

CORAM : M. S. KARNIK, J.

DATE : APRIL 03, 2024

P.C. :

- 1.** This is an application for condonation of delay for filing of Revision Application No. 172 of 2024 which challenges the impugned order dated 01/01/2019 passed below Exhibit 3 in Sessions Case No. 583 of 2018 by the learned Additional Sessions Judge rejecting the application for discharge.
- 2.** Learned APP opposed the application. It is submitted that there is a gross delay in challenging the impugned order.
- 3.** The applicant had filed Criminal Writ Petition No. 1300 of 2022 in this Court making a grievance regarding the

investigation and also prayed for quashing of the proceedings being Sessions Case No. 583 of 2018 pending before the trial Court arising out of C.R. No. 203 of 2018 registered with Khadaki Police Station, Pune at the behest of the respondent-State for the offence punishable under Sections 399, 402 read with 34 of the Indian Penal Code.

4. The Writ Petition came up before the Division Bench of this Court on 05/10/2023. This Court vide the order dated 05/10/2023 has observed that:

“As the trial Court has already rejected the Application for discharge filed by the Petitioner, Mr. Shivarkar, learned Advocate for Petitioner on instructions seeks leave to withdraw the Petition with liberty to pursue his remedy to challenge the Order rejecting the Application for discharge filed by Petitioner, by adopting appropriate legal remedy.” Thereafter the present Revision Application came to be filed.

5. No doubt, there is a delay in challenging the impugned order. Learned APP does have some substance in raising the objection that there is a delay in filing the present Revision. The explanation offered is that the applicant was pursuing his

remedy under Article 226 of the Constitution of India. The Criminal Writ Petition was filed much after the impugned order was passed.

6. However, I am also informed that the charge has not yet been framed so far. Considering that what is under challenge is the impugned order dated 01/01/2019 passed by the trial Court rejecting the application for discharge filed by the applicant and that some time was spent by the applicant in pursuing the remedy under Article 226 of the Constitution of India seeking appropriate relief for quashing of the C.R., in my opinion, in the facts and circumstances of the present case, the applicant should not be deprived of an opportunity to mount a challenge to the impugned order on merits.

7. In this view of the matter, the interim application is allowed. The delay is condoned.

8. List Revision Application No. 172 of 2024 on 10/04/2024.

(M. S. KARNIK, J.)