



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

CRIMINAL APPLICATION NO. 1075 OF 2025 IN APEALST/2884/2025

SAYYAD FAISAL SAYYAD KHALEEL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
WITH
CRIMINAL APPLICATION NO. 1055 OF 2025 IN APEALST/2839/2025

SHAIKH IRFAN SHAIKH SALIM @ IRFAN MILLI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocates for Applicants : Mr. Javed R. Shaikh h/f.
Mr. Shaikh Nasimoddin Rafiyoddin and Mr. Faisal N. Shaikh
Addl.PP for Respondent : Dr. Kalpalata Patil Bharaswadkar
...

**CORAM : NITIN B. SURYAWANSHI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 02-05-2025

PER COURT:-

1. Heard learned Advocates for the applicants and the learned Additional Public Prosecutor for the State.
2. Applicants' prayer for bail made in Special Case No.58 of 2023 is rejected by the learned Sessions Judge, Aurangabad. Applicants have preferred appeal against the said order. There is delay of one year nine days in filing the appeals. By these applications, applicants pray for condonation of said delay.

3. The reason assigned by the applicants for condonation of delay is that since they are in jail they could not prefer appeals within the period of limitation prescribed under the National Investigation Agency Act, 2008 (for short, "**NIA Act**"). By relying on the decision of Division Bench in ***Faizal Hasamali Mirza versus State of Maharashtra and another, 2023 SCC OnLine Bom 1936***, rendered at Principal Seat, learned Advocate for the applicants submits that the delay deserves to be condoned.

4. Learned Additional Public Prosecutor strongly opposed the applications contending that there are divergent views taken by various High Courts in respect of interpretation of Section 21 of the NIA Act which prescribes outer limitation of 90 days for preferring appeal and mandates that appeal filed beyond period of limitation of 90 days, shall not be entertained. She further submits that this issue is pending before the Apex Court and the matter is kept on 06.05.2025.

5. In ***Faizal Hasamali Mirza*** (*supra*), this Court has held that;

"63. Having regard to the discussions as stated aforesaid, we are firmly of the opinion that the 2nd proviso to sub-section (5) of Section 21 of the NIA Act, will have to be read down, so as to read 'shall' as 'may', and as such directory, so as to vest discretion in the Appellate Court, to condone delay, beyond the 90 days period on sufficient cause being shown. If the provision were to be held mandatory, despite sufficient cause being shown by accused, the doors of justice will be shut, leading to travesty of justice, which cannot be permitted by Courts of Law."

6. In the light of aforesaid observations and considering the fact that the applicants are in jail, the applications are allowed by condoning the delay. Appeals be registered.

[MANJUSHA DESHPANDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE

rrd