



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

CRIMINAL WRIT PETITION NO. 461 OF 2025

1. Akhtar Khan s/o Masood Khan,
Age : 48 Years, Occu : Agril & Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
2. Khalid Khan s/o Masood Khan,
Age : 50 Years, occu : Agril & Business,
R/o. Silk Mill Compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
3. Ajaz Khan s/o Hafiz Khan,
Age : 61 Years, Occu : Agril & Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
4. Nazam Khan s/o Hafiz Khan,
Age : 59 Years, Occu : Agril & Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
5. Eliyas Khan s/o Hafiz Khan,
Age : 59 Years, Occu : Agril & Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
6. Adnan Khan s/o Maqsood Khan,
Age : 24 Years, Occu : Education,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
7. Uzair Khan s/o Maqsood Khan,
Age : 21 Years, Occu : Education,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)
8. Hamzha Khan s/o Akhtar Khan,
Age : 21 Years, Occu : Education,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajinagar (Aurangabad)

9. Soheli Khan s/o Nazam Khan,
Age : 38 Years, Occu : Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)
10. Anjum Begam w/o Maqsood Khan,
Age : 46 Years, Occu : Agriculturist,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)
11. Farha Begam w/o Khalid Khan,
Age : 47 Years, Occu : Agriculturist,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)
12. Amira Bano w/o Akhtar Khan,
Age : 45 Years, Occu : Housewife
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)
13. Fauzia Begam w/o Ajaz Khan,
Age : 55 Years, Occu : Housewife
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Satara Police Station,
Tq. & Dist. Chhatrapati Sambhajnagar
(Aurangabad)
2. Azahar Khan w/o Masood Khan
Age : 40 Years, Occu : Business,
R/o. Silk Mill compound, Paithan Road,
Chhatrapati Sambhajnagar (Aurangabad)

...RESPONDENTS

Mr. V. L. Bhangé h/f Mr. K. D. Jadhav, Advocate for the Petitioners.
Mr. S. S. Dandé, APP for Respondent No.1 – State.
Ms. Sakshi Agale h/f Mr. S. G. Ladda, Advocate for Respondent No.2.

CORAM : ABHAY J. MANTRI, J.
DATE : NOVEMBER 19, 2025

JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith with the consent of learned counsel for the parties and heard finally at the stage of admission.

2. The petitioners, being aggrieved by the order dated 19th November 2024, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Miscellaneous Application No.133 of 2023, whereby the application for condonation of delay in filing the Criminal Revision Application was rejected, have preferred this petition.

FACTS OF THE CASE IN BRIEF ARE AS UNDER :

3. Respondent No.2 / original complaint has lodged the complaint bearing Crime No.293 of 2018 against the petitioners for the offences punishable under Sections 307, 452, 143, 147, 148, 149 of the Indian Penal Code (hereinafter referred to as the "*IPC*").

4. Police have conducted an investigation and submitted a 'B' summary report before the learned Judicial Magistrate First Class, Aurangabad (for short, the "*Magistrate*"). The petitioners were unknown to the 'B' summary report. However, after hearing respondent No. 2 on 09th October 2021, the learned Magistrate refused to accept the 'B' summary

report and issued a summons against the petitioners for the offences as alleged above.

5. Feeling aggrieved by the said order, the petitioners preferred a Criminal Revision application along with an application for condonation of delay in filing the said Revision Application. The learned Additional Sessions Judge, after hearing the parties, held that the petitioners failed to explain the inordinate delay satisfactorily and consequently rejected the application. As such, the petitioners have preferred this petition.

SUBMISSIONS OF THE PARTIES :

6. The learned counsel for the petitioners vehemently contended that the Criminal Miscellaneous Application was registered during the COVID-19 pandemic. Thereafter, on 09th October 2021, an order for the issuance of a process was passed. The petitioners were unaware of the passing of the said order, nor were they called before or after the issuance of the process order. Upon becoming aware of the order, they immediately applied for certified copies and thereafter filed the Criminal Revision Application, along with an application for condonation of delay. Therefore, it is contended that no delay has been caused in filing the revision application.

7. The learned counsel for the petitioners further submitted that the delay caused was neither deliberate nor intentional. But, the same was caused due to genuine and *bona fide* reasons, as the petitioners were

unaware of the passing of the order for the issuance of process. Hence, the learned counsel for the petitioners submitted that the delay deserves to be condoned, and if the delay is condoned, it would not cause any prejudice to the rights of the other side. However, refusal to condone the delay would certainly cause prejudice to the petitioners by depriving them of their rights to challenge the order of issuance of process. Thus, he urged that the petition may kindly be allowed.

8. To buttress his contentions, he relied upon the judgments of the Hon'ble Apex Court in *Maniben Devraj Shah V. Municipal Corporation of Brihan Mumbai*¹ and *Collector, Land Acquisition, Anantnag Vs. Mst. Katiji*² and submitted that in view of the law laid down in the above judgments and the facts of the present case, in the interest of justice, the delay caused in filing the revision application may kindly be condoned.

9. On the other hand, learned counsel appearing for respondent No.2 strenuously opposed the application and canvassed that the petitioners failed to satisfactorily explain the delay caused in filing the revision application. No sufficient cause was stated in the application to justify the delay. Therefore, the learned Additional Sessions Judge has rightly held that the petitioners failed to explain the inordinate delay and accordingly rejected the application. Hence, no interference is warranted in the

1 AIR 2012 SC 1629

2 AIR 1987 SC 1353

impugned order in the writ jurisdiction. As such, he prayed for the dismissal of the petition.

CONSIDERATION :

10. Having heard the rival contention of the learned counsel for the parties and having gone through the impugned order and record as well as the judgments relied upon by the learned counsel for the petitioners, the short but crucial question that arises is

i) *Whether the petitioners are entitled to condone the delay in filing the revision application?*

and

ii) *Whether any interference is required in the impugned order?*

11. While considering the above controversy, I would like to reproduce the law laid down in ***Collector, Land Acquisition, Anantnag*** (supra) :

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on “merits.” The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being*

thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. *“Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense, pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
6. *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

12. In order to deal with the issue under consideration, it would be apposite to take into account the law laid down by the Hon'ble Apex Court in the judgments referred to hereinabove.

13. On careful perusal of the application filed by the petitioners before the learned Additional Sessions Judge, it is revealed that the petitioners, in paragraph Nos. 3, 5 and 10, have categorically stated the reasons for the delay caused in filing the revision application before the Court. The petitioners have explicitly stated that they were unaware of the passing of the order of issuance of process. On 13th January 2023, petitioner No.1 came to know of the impugned order, and thereafter, on 17th January

2023, he immediately applied for certified copies, which were obtained on 30th January 2023. On 10th April 2023, the petitioners filed the revision application within the limitation period from the date of their knowledge. However, to avoid further complications and to obviate any technical objections regarding the period of limitation, the petitioners filed the revision application along with an application for condonation of delay.

14. Upon perusal of the impugned order, it appears that the learned Additional Sessions Judge has neither considered the aforesaid reasons nor dealt with them while passing the impugned order. However, the learned Additional Sessions Judge has erred in observing that *“applicant No.1, while searching another case on his mobile, at that time he got the knowledge of this pending criminal case against them. That means the applicants are habitual offenders.”* The said finding appears to be contrary to the case the petitioners have put forth. It does not appear that, after the passing of the order of issuance of process, summons were served upon the petitioners and that, despite the service of summons, they failed to prefer any application within the time. Therefore, the said findings cannot be sustained in the eyes of the law. In fact, the learned Additional Sessions Judge was required to consider the averments made by the petitioners in the application in its proper perspective, instead of drawing an inference as stated above.

15. On perusal of the law laid down by the Hon’ble Apex Court in *Collector, Land Acquisition, Anantnag* (supra), wherein the Hon’ble Apex Court

has categorically held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause justice to be defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. So also, there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. Lastly, it is observed that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

16. In the case in hand, admittedly, nothing has been brought on record to show that the petitioners were aware of the passing of the order of the issuance of process by the Trial Court or that the summons was served on them. It is to be noted that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. Similarly, it does not appear that the delay caused in filing the revision application was intentional or deliberate. In the absence of the same and the facts that an investigation officer submitted a 'B' summary report before the learned Magistrate, in my view, it would be appropriate to afford an opportunity to the petitioners to contest their case on merits instead of being thrown out at the very threshold. Thus, in order to do substantial justice, technicalities will have to be ignored. I feel that the facts of the case at hand command a delay being condoned.

17. To sum up the above discussion, it appears that the petitioners made out sufficient cause to condone the delay. However, the learned Additional Sessions Judge has erred in not considering the facts on record in the light of the law laid down by the Hon'ble Apex Court and therefore, interference is warranted in the impugned order in the writ jurisdiction.

Hence, I answer point Nos. 1 and 2 in the affirmative.

18. At the same time, it should not be ignored that due to the filing of the petition belatedly, the matter has been prolonged, and for that purpose, the petitioners are liable to pay the costs.

19. Consequently, the petition is allowed in terms of prayer clause (b), subject to a cost of ₹ 20,000/-. The petitioners are directed to deposit the costs before the learned Sessions Court within a period of six (06) weeks from the receipt of a copy of this order. On deposit of the costs, the delay would be condoned, and a Criminal Revision Application shall be registered.

20. Upon deposit of the said costs, out of the said costs, an amount of ₹ 10,000/- be paid to respondent No.2 and ₹ 10,000/- be credited to the Government.

21. Rule is made absolute in the above terms.

22. Inform the learned Additional Sessions Judge accordingly.

(ABHAY J. MANTRI, J.)