

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

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**CRIMINAL APPEAL (ST) NO. 16448 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 3108 OF 2024
IN
CRIMINAL APPEAL (ST) NO. 16448 OF 2024**

Abhishek Ramkumar Dubey

...Appellant

Vs.

The State of Maharashtra and Anr.

...Respondents

Ms. Neha Bhavsar a/w Ms. Aditi Chaurasia h/f V.K. Dubey Associates	Advocate for the Appellant.
Mr. A. S. Gawai	APP for State/Respondent.
Mr. Nilesh Navale	Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.

DATE : 25th SEPTEMBER 2025

P. C. :-

1. Heard Learned Counsel for the Appellant/Accused, Learned APP for the State and Learned Counsel for the First Informant.
2. The only issue is whether the delay beyond the period of 180 days caused in preferring an Appeal as per provisions of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

(“SCST” Act) can be condoned. Learned Counsel for the Appellant relied upon following judgments :-

(i) *Gulam Rasool Khan and Others vs. State of U.P.*

*and Others*¹

(ii) *Kamla Devi vs. Raj Kumar and Another*²

(iii) *Pawan Kumar Dokania and Others vs. State of Jharkhand and Another*³

(iv) *Amol Ashok Mali vs. The State of Maharashtra*⁴

3. In view of law interpreted by the Full Bench of Allahabad High Court the limitations laid down as per Section 14 of SCST Act was considered as restrictions on the powers of High Court and that provisions was held in unconstitutional. This was reiterated by the Division Bench of this Court in case of *Amol Ashok Mali* (Supra). Similar are the observations in above two judgments by other High Court. So if the sufficient cause is shown certainly delay after 180 days can also be condoned. To justify condonation of delay, learned Counsel for the Appellant has submitted following events :-

1 Criminal Appeal No. 1000 of 2018

2 Cr. M.P. (M) No. 1210 of 2023

3 2024 SCC OnLine Jhar 3500

4 Criminal Application No. 1102 of 2019

(a) First Anticipatory Bail Application was rejected by the Court of Additional Sessions Judge, Kalyan on 28th February 2023.

(b) Second Anticipatory Bail Application was filed before the same Court on account of subsequent development. However, it was withdrawn on 9th February 2024.

(c) Instead of filing Criminal Appeal, the Appellant has filed Anticipatory Bail Application No. 579 of 2024 and it was disposed of as not maintainable. Liberty was granted to file appropriate proceeding.

(d) That is how Criminal Appeal No. 350 of 2024 was filed. However, in that Appeal instead of challenging the order dated 28th February 2023 they have challenged the order dated 9th February 2024, that is why said Appeal was withdrawn on 8th July 2024. **That is how the present Criminal Appeal is filed.**

4. There is strong opposition on behalf of Learned Counsel for the First Informant. It is for the reason there was no change in circumstances while again approaching the Sessions Court. In fact, the

Appellant ought to have file Criminal Appeal at first instance instead of filing Anticipatory Bail Application. Thereafter also the Appellant ought to have challenged the order dated 28th February 2023 instead of order dated 9th February 2024. According to Learned Counsel for the First Informant these are all unjustifiable reasons and on facts delay cannot be condoned. Learned APP also supported his submissions.

5. It is true that the Appellant has chosen wrong remedy while filing Anticipatory Bail Application. It is also true the Appellant has wrongly challenged the order dated 9th February 2024 instead of the first order because the second order is only on the basis of withdrawal of that Application and it is not on merits. But the issue is a person who is desirous of seeking Anticipatory Bail, he is not expected that he will intentionally chose the wrong remedy and will chose the wrong forum. Ultimately, the Appellant is depending upon legal advice. For these reasons the delay cannot be said to be intentional. It was due to the wrong selection of forum.

6. At this stage, Learned Counsel for the First Informant invited my attention to the averments in Paragraph Nos. 2, 3, 4, 5 and 6 of the delay condonation application. There was averments about ill health

of his mother as she was suffering from cancer. There is pleading about Psychotic disorders of the Appellant. There is pleading about inability of the Appellant to contact his Advocate. Learned Counsel for the First Informant heavily relied upon the observations in case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others*⁵ and more specifically the principles culled out and reproduce in Paragraph No.15 of the said judgment.

7. It is true during the whole arguments Learned Counsel for the Appellant has not quoted the medical ailment of the Appellant and of his mother that is why I have not dealt with the same. I only restricted myself to the delay caused while adopting different proceedings. It is true the observations in case of *Esha Bhattacharjee* (supra) are arising out of the civil litigation. There cannot be any dispute about the principles culled out in the said judgment. But there is vast difference in between civil proceedings and criminal proceedings.

8. This is particularly so when the Appellant is apprehending the arrest. There are lot of restrictions on his movement and it also includes taking legal advice. In fact, the reasons quoted in Paragraph

⁵ Civil Appeal Nos. 8183-8184 of 2013

Nos. 2 to 4 supports the case of the Appellant for condonation of delay. There is recognized principles of law. It says the litigant should not suffer for the wrong forum or wrong remedy on legal advice. He can pray for condonation of delay caused in prosecuting those remedies. Hence, on the basis of these above reasons, I am inclined to condone the delay. Hence the following order :-

ORDER

- (i) The Application is allowed in terms of prayer clause (a).
- (ii) Interim Application No. 3108 of 2024 is disposed of.

9. Appeal be registered.

10. Learned Counsel for the First Informant waives notice of this Appeal. He has already received the papers. Let Learned APP to take instructions.

11. This matter be kept on 7th October 2025.

[S. M. MODAK, J.]