

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

**INTERIM APPLICATION NO.5074 OF 2024
WITH
APPLICATION FOR LEAVE TO APPEAL (PVT.) (ST) NO.25185
OF 2024**

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Ajay Rameshwar Agarwal (HUF)
Through its Karta Mr.Ajay Rameshwar
Agarwal

...Applicant/Appellant

V/s.

Ramesh Radhakishan Agrawal and Ors.

...Respondents

Ms.Nikita Mandaniyan a/w Mr.Dileep Satale and Ms.Padma Chinta:-	Advocates for Applicant/ Appellant.
Ms.Komal Salvi:-	Advocate for Respondent Nos.1 &2.
Ms.R.S.Tendulkar:-	APP for Respondent No.3-State.

CORAM : S. M. MODAK, J.

DATE : 11th JUNE 2025

P. C. :-

INTERIM APPLICATION NO.5074 OF 2024

1. Heard learned Advocate for the Applicant/Complainant and learned Advocate for Respondent Nos.1 and 2.
2. Both the Respondents are acquitted by the Court of Metropolitan Magistrate – Mazgaon on 22nd August 2023 for the

offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Complainant is desirous of challenging the said judgment by preferring an Appeal. He does prefer an Appeal by way of e-filing. The necessary document is annexed at Exhibit-B. Somehow, he could not pursue the Application. Then, he came with the present Interim Application. However, there was delay of 1 year and 35 days and that is why, the present Application.

3. The delay is strongly opposed on the ground that Annexure-B cannot be said to be sufficient to show e-filing of Appeal earlier. Even, the conduct of the Applicant is objected. In the earlier Leave Application, the present Respondent No.2 Manju was not party but she is joined as party in the present Application to remove lacuna. Even, an attempt is made to submit about the reasons for acquittal given by the trial Court.

4. It is true, merits of the main case cannot be considered just now. The only issue is, whether there is a sufficient cause for condonation of delay. The Annexure-B suggest e-filing and the number is also there. So, I find there is sufficient reason. When earlier e-filing was done, there was no notice issued to the Respondent Nos.1 and 2. It got dismissed at initial stage. As such, there is no vested right created in

favour of the Respondent Nos.1 and 2. I am inclined to accept the reason offered. In view of that, the Application is allowed in terms of prayer clause (a) and the delay is condoned.

5. The Application is disposed of accordingly.

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6. Matter be kept on **9th July 2025**. Copies are served. Learned Advocate for Respondent Nos.1 and 2 assure to waive the notice.

[S. M. MODAK, J.]