

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

**INTERIM APPLICATION NO. 1097 OF 2025
IN
CRIMINAL APPLICATION NO. 1213 OF 2021**

Madhusudan Brijlal VakhariaApplicant
Versus
The State of Maharashtra and Ors.Respondents

Ms. Aparna Wagle - Advocate for the Applicant.
Mr. Y. M. Nakhwa - APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 23rd APRIL 2025

P.C. :

1. This is an application for restoration of the Criminal Application No. 1213 of 2021, which was dismissed for non-prosecution vide the order dated 28.08.2024. Another prayer is for seeking condonation of a delay of 165 days in filing the appeal.
2. Heard learned Advocate Ms. Wagle for the Applicant and learned APP Shri Nakhwa for the Respondent No. 1-State.
3. The original application was admitted by the Division bench of this Court vide the order dated 27.07.2023, and an ad-interim order

staying the trial against the Applicant was also passed. Thereafter, the matter was listed for final hearing on 28.08.2024, but nobody appeared for the Applicant and therefore, it was dismissed for non-prosecution.

4. Learned Counsel for the Applicant submitted, as stated in the application, that the learned Advocate who had filed the original application lost track of the matter due to oversight and, therefore, could not remain present when the criminal application was listed for final hearing. The Applicant himself was not aware that the matter was listed for final hearing and therefore, the application was dismissed. The Applicant came to know about dismissal of the application when he checked the status of the application recently in March 2025. After that he has preferred this application for restoration of the said original application after condonation of the delay of 165 days in filing the application.

5. Learned Counsel for the Applicant submitted that the Applicant has now engaged a new advocate. The Applicant is 85 years of age. He has a good case on merits which can be seen from the order passed at the time of admission of the appeal. She submitted that, in the interest of the justice, the original application

be restored.

6. Considering this submission and that the Applicant is 85 years old person, the original application was already admitted and vide the order dated 27.07.2023, there was stay operating in his favour. Nobody appeared for the Respondent No. 3 when the application was rejected/dismissed. In this background, we are inclined to allow this application. Hence, the following order:-

ORDER

- (i) Delay of 165 days in filing the present application is condoned.
- (ii) The Criminal Application No. 1213 of 2021 is restored to its original file.
- (iii) The interim order passed on 27.07.2023 while admitting the said application is also restored.
- (iv) The said Criminal application be listed for final hearing in due course in the category of matters pertaining to Senior citizens.
- (v) The present Interim application no. 1097 of 2025 is disposed of in the aforesaid terms.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)