



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 717/2025

Kiran S/o Bhaskar Padhye,
Aged 66 yrs., Occ. Retired,
R/o. Plot No.57, Flat No.201,
Sindhu Residency, Central Excise
Layout, near Telecom Nagar,
Nagpur – 440025.

...PETITIONER

VERSUS

Avinash S/o Bhaskar Padhye,
Aged 68 yrs., Occ. Retired,
R/o. Plot No.57, Flat No.101,
Sindhu Residency, Central Excise
Layout, near Telecom Nagar,
Nagpur – 440025.

...RESPONDENT

Mr. G.D. Dani, Advocate for petitioner.
Mr. B. W. Patil, Advocate for respondent-sole.

CORAM : M. M. NERLIKAR, J.

DATE : 03.11.2025

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. Mr. B. W. Patil, learned counsel waives service for respondent. With consent of learned counsel for the parties, the petition is taken up for final hearing.

3. By the present petition filed under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita (“BNSS”) challenges the order passed below Exh.1 dated 17.07.2025, wherein the application for condonation of delay of 200 days in preferring the criminal revision challenging the order of issuance of process was rejected by the Special Court for Differently-able Persons, Senior Citizens and Marginalized Sections of the Society, Nagpur and District Judge-10 & A.S.J., Nagpur.

4. Brief facts:-

The respondent filed a private complaint against the petitioner before the learned Judicial Magistrate First Class, Nagpur for the offence punishable under Sections 500 of the Indian Penal Code which was registered as Summary Criminal

Case No. 12567/2021. Learned Magistrate by its order dated 15.11.2022 issued process against the petitioner and his son. After passing the order dated 15.11.2022 of issue process, it appears that the summon was issued and the same was served on the petitioner on 20.03.2023. Accordingly, the petitioner appeared on 21.03.2023. It further appears from the record that the petitioner has filed an application for discharge under Section 227 of the Code of Criminal Procedure (“Code”) on 24.04.2023. However, the discharge application was withdrawn by the petitioner on 14.08.2023. Thereafter, a revision was preferred along with an application for condonation of delay on 02.09.2023. However, by the impugned order, the said application was rejected by the Special Court for Differently-able persons, Senior Citizens and Marginalized Sections of the Society, Nagpur and District Judge-10 & A.S.J., Nagpur. Against which order, the present petition is filed.

5. The learned counsel for the petitioner submits that the delay is not intentional and deliberate. However, it is purely circumstantial. He has invited my attention to the application

filed by the petitioner under Section 227 of the Code for discharge. He submits that the petitioner was pursuing wrong remedy. The application was filed by the petitioner himself as a party in-person and therefore, he was not aware of the fact that the order of issue of process cannot be challenged therein. However, after engaging the Advocate on his behalf, it was realized that the application under Section 227 of the Code is not maintainable and therefore, the said application filed by the petitioner was withdrawn and thereafter, the order dated 15.11.2022 was challenged in revision along with an application for condonation of delay. He further submits that the application filed by the petitioner would indicate sufficient cause shown by the petitioner and as the petitioner was pursuing a wrong remedy, in which time has been consumed. He has invited my attention to the contents of the application filed before the Revisional Court for condonation of delay, wherein it is specifically stated that the petitioner did not engage the services of any Advocate to contest the case and appeared in-person, therefore on 24.04.2023, the application

was filed under Section 227 of the Code for discharging him from the case. It is further stated that the petitioner is a layman and does not understand intricacies of the procedural aspects of law and from starting it was the intention of the petitioner to challenge the order of issuance of process, however he has pursued the wrong remedy. It further appears from the contents in the petition that the petitioner owing to his job in Delhi and thereafter in Mumbai was not able to look after his case and lastly due to lack of knowledge of procedure, he was not able to file revision within time. The learned counsel for the petitioner further submits that the Court below ought not to have taken hyper-technical view and ought to have considered the case on merits. Lastly he prays to allow the petition by setting aside the impugned order.

6. The learned counsel for the petitioner has relied on the judgment of the Supreme Court in case of ***N. Balakrishnan Vs. M. Krishnamurthy***, (1998) 7 SCC 123, wherein the Hon'ble Supreme Court has observed in paragraph Nos. 12 and 13 which read as under:-

“13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

14. In this case, explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court) within one month from this date.”

Further, the learned counsel for the petitioner also relied on the decision of the High Court of Judicature for Rajasthan at Jodhpur in case of ***Jitendra Singh S/o. Mahendra Singh, Vs. State of Rajasthan, through Pp*** (S.B. Criminal Revision Petition No.265/2023, decided on 16.05.2023), wherein the High Court has observed in paragraph Nos. 21 and 22 which read as under:-

“21. Forcing a person to go through the rigor of trial without there being apt prima facie material or evidence would surely be direct infringement of his fundamental rights. Of course, if a person has to do nothing in connection with the alleged offence but is still forced to remain on bail and to attend the court proceedings, then restraining his liberties would tantamount to breach of his fundamental rights.

22. Framing of charge is a determinative action taken by the judge as subject to the decision of framing of the charge against an accused or discharging an accused of the charges leveled against him, two outcomes are generated; either the prosecution (State or complainant) gets a point to moot, i.e. to challenge the order of discharge or the accused is made to face the trial. If the charges are framed without there being even a scruple of the ingredients or circumstances required to constitute an offence under the

Sections alleged against the accused, then the accused is made to face the rigour of the trial which may prove to be deleterious to him as he may finally be acquitted of the charges so framed against him.”

7. On the other hand, the learned counsel for the respondent vehemently opposed the petition and submits that there are no sufficient reasons and sufficient cause shown by the petitioner in the application filed before the Court below. He has invited my attention to the reply filed by him contending that there was a huge delay in preferring the revision before the Court below. He further submits that there is no justification, though present respondent has filed the application at Exh.11 praying to direct the applicant to lead the evidence on affidavit to explain delay, however by filing pursis, the petitioner stated that he does not want to file any affidavit or lead evidence justifying the delay. The learned counsel for the respondent submits that the delay has not been explained properly and therefore, the Court below has rightly passed an order rejecting his application for condonation of delay in preferring the revision. Lastly, he relied on the judgment of the

Supreme Court in case of *Basawaraj and anr. Vs. The Spl. Land Acquisition Officer, (2013) 14 SCC 81*.

8. Upon hearing the rival submissions, it is not in dispute that the present respondent has filed a private complaint against the petitioner and his son, wherein the order of issue process was passed on 15.11.2022. It is also not in dispute that the summons was issued and served on the petitioner on 20.03.2023. It is also not in dispute that the petitioner appeared in the matter on 21.03.2023. Thereafter, it appears from record that the application under Section 227 of the Code was filed by the present petitioner for discharge on 24.04.2023. It is also not in dispute that the said application was withdrawn by the petitioner on 14.08.2023 on legal advise. It is also not in dispute that the petitioner filed the revision application along with condonation of delay on 02.09.2023.

9. Considering the above undisputed facts in the given set of facts, it is necessary to consider whether the delay is required to be condoned or not. Before going into the merits, it would be useful to refer to the judgment of the Supreme Court

in case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*, (2013) 12 SCC 649, wherein the Supreme Court after considering various authorities has culled out the following principles:-

“21.1.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2.(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3.(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4.(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5.(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6.(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so

that in the ultimate eventuate there is no real failure of justice.

21.7.(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8.(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9.(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10.(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11.(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12.(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13.(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

10. Keeping in mind the above principles, let's deal with the present situation as observed (supra). Admittedly, 90 days period is provided to prefer the revision before the Revisional Court in order to challenge the order of issue of process. It is important to note that though the order was passed on 15.11.2022, however the petitioner got knowledge of the said order on 20.03.2023, when he was served with the summons. Therefore, if the case is considered from the date of knowledge to the petitioner then from the date of knowledge till the filing of revision i.e. 02.09.2023 and if 90 days are deducted then approximately delay of 75 days can be said to be caused in preferring the revision even, if it is to be calculated from the date of order, then the delay would be 290 days and after deducting 90 days, the delay would be around 200 days. The petitioner has filed the application in person for discharging

him from the case under Section 227 of the Code. This fact is necessary to be taken into consideration. However, after considering the application filed by the petitioner for condonation of delay before the Court below, it could be gathered that the attempt was not deliberate or intentional. It is a matter of record that the petitioner appeared immediately as soon as he received summon and he appeared on 21.03.2023. This itself demonstrates that the petitioner is a law abiding citizen and he has promptly put his appearance. The petitioner has filed the application, though it was stated in the application that due to lack of knowledge of procedure, he has filed wrong application under Section 227 of the Code for discharge, in-fact he was intending to challenge the order dated 15.11.2022, wherein the process was issued against the petitioner. Therefore, the fact remains that as soon as the application for discharge was withdrawn by the petitioner on 14.08.2023, he immediately filed the revision along with an application for condonation of delay on 02.09.2023. These factors, after getting certified copies of order dated 15.11.2022

demonstrate that the petitioner is not negligent, however he has come with clean hands and therefore, the Court below ought to have considered the liberal and pragmatic approach.

11. It is a cardinal principle of law that the course of justice cannot be thwarted by the procedural aspects. The procedure is man made, however it is expected that the rights of the party should be crystallized on the basis of merits when it involves substantial rights of the parties. As observed by the Supreme Court in case of Esha Bhattacharjee (*supra*), I am of the opinion that the petitioner has shown sufficient cause and therefore, the petitioner cannot be deprived of his rights to prefer the revision which is to be decided on the basis of merits of the case. The Supreme Court time and again has reminded that the substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled emphasis. Delay may be less or more, however when sufficient cause is shown and the delay has been explained properly, it is duty of the Court to condone the same. Similarly, one of the important factors which was laid down by the

Supreme Court in the aforesaid case is the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors which is needed to be taken into consideration. As observed in earlier paragraphs that the petitioner has come with clean hands itself shows that the conduct and behaviour of the petitioner cannot be doubted. Had it been the case that it is deliberate or intentional act, under such circumstances, the application could be rejected, however considering reasonable explanation and sufficient cause which is shown in the application before the Court below, I am of the opinion that the delay deserves to be condoned. Even the judgment as relied by the learned counsel for the respondent in the case of Basawaraj and anr. (*supra*) para 15 of which read as under:-

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified

ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

So far as the above observations are concerned, in this case the Supreme Court has observed that the party if found negligent or for want of bonafide on his part, under such circumstances, the delay cannot be condoned.

12. Considering the above facts and circumstances, the Revisional Court ought to have accepted the explanation given by the applicant as it demonstrates sufficient cause for condonation of delay, however the Revisional Court have taken a very hyper technical view and committed error in not accepting the explanation submitted by the applicant, therefore I am of the opinion that the petitioner has explained the delay, shown sufficient cause and the petitioner has come with the

cleans hands. Accepting the explanation and sufficient cause, it is necessary to condone the delay of 200 days in preferring the criminal revision application. However, the delay is condoned subject to costs, hence the following order:-

- I. The present petition is allowed.
- II. The order dated 17.07.2025 passed below Exh.1 is hereby quashed and set aside.
- III. Criminal Miscellaneous Application No.418/2023 filed by the petitioner for condonation of delay is allowed subject to cost of Rs. 10,000/-.
- IV. The cost be paid to the present respondent within two weeks from the date of uploading of this order.

13. Petition stands disposed of in above terms.

(M. M. NERLIKAR , J.)