

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2964 OF 2024

Shreehari Madhav Kulkarni & Ors. ... Petitioners.

V/s.

Chandrashekhar Madhav Kulkarni & Anr. ... Respondents.

Mr. A. S. Rao a/w. Mr. Mahesh Arjun i/b. Mr. Vikrant V. Phatate,
Advocate for Petitioners.

Mr. Kiran Shinde, APP for Respondent/State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 30th JANUARY, 2026.

P.C. :

1. By the present Petition under Article 226 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioners assail the order dated 2nd November, 2023, passed by the Additional Sessions Judge, Greater Mumbai in Misc. Application No. 149 of 2023 by which an Application seeking condonation of delay filed by the Petitioners, in preferring the Revision Application under section 397 of the

Code of Criminal Procedure, 1973, is rejected.

2. Notice was issued to the Respondents on 7th August, 2024. As per the office note dated 22nd January, 2025, the notice was served on Respondent No. 2. Notice was reissued on 12th March, 2025. Said notice was also served on the Respondent No.2 as indicated in the office note dated 9th May, 2025.

3. Today, when this petition was called out in the morning session, neither Respondent No. 2 nor the Advocate for Respondent No. 2 were present in Court, either physically or through V. C. mode. As such, the matter was kept post lunch. Again, when the petition was called in the post-lunch session, neither Respondent No. 2 nor the Advocate for Respondent No. 2 were present in court, either physically or through V.C.

4. Upon query to Mr. A. S. Rao, as to the status of the trial Court proceedings, he submits that though the order issuing process is dated 22nd November, 2021, to date, trial in C.C. No. 139/SW/2021 has not commenced. It is based on the said

statement of Mr. A.S. Rao that this Court is considering the request made by the Petitioners in the present petition.

5. Mr. A. S. Rao, learned Advocate for the Petitioners, submits that the reasons given by the Petitioners in the application for seeking condonation of delay constitute sufficient cause. He submits that the reasons for seeking condonation are the exclusion of the COVID-19 Pandemic period, the Petitioner's suffering of ligament tear, and the other difficulty as stated in the application, in approaching the Court prior to the date of filing of the application for condonation of delay. He submits that grave prejudice would be caused to the Petitioners if the delay is not condoned as it would result in the Petitioners being denied an opportunity in agitating their case in the proposed Revision application. He submits that the Sessions Court has taken a pedantic approach and rejected the application.

6. Mr. Kiran Shinde, learned APP for the State, submits that, though the explanation given by the Petitioners does not inspire confidence, in the interest of justice, the request made by

the Petitioners can be considered, subject to the imposition of costs of not less than Rs. 10,000/-.

7. Respondent No. 2, despite the service of notice, has chosen not to appear. As such, the Petitioners' statement made on oath in the petition, and the contentions urged by Mr. A. S. Rao have gone un rebutted. There is no material placed on record to indicate or suggest that the Petitioners herein would have gained by causing a delay in filing the Revision Application. No malafides are alleged against the Petitioners. Considering the pronouncement of the Hon'ble Supreme Court in the case of *Esha Bhattacharjee v/s. Raghunathpur Nafar Academy*¹ and *Collector, Land Acquisition, Anantnag & Anr. v/s. Mst. Katij & Ors.*² (para- 3), I find that the cause shown by Petitioners is sufficient to condone the delay in filing the Criminal Revision Application.

8. In view of the above, the Application for condonation of delay bearing Misc. Application No. 149 of 2023 is allowed, impugned order dated 2nd November 2023, passed by the

1. (2013) 12 SCC 649.

2. (1987) 2 SCC 107.

Additional Sessions Judge, Greater Mumbai, in Misc. Application No. 149 of 2023 is set aside, delay of 317 days in filling the Criminal Revision Application is condoned, subject to costs of Rs. 10,000/- being paid by the Petitioners to the Respondent No. 2 as a condition precedent. Said costs to be paid to Respondent No. 2 or deposited before the Sessions Court, within four weeks from today and a receipt acknowledging payment / deposit of the payment be produced before the Registry of the Sessions Court. If payment of costs is made within the stipulated time and proof of payment is produced before the Sessions Court, the Revision Application accompanying the application for condonation of delay be registered and taken up for consideration. The Criminal Revision Application be decided on its own merits and in accordance with the law.

9. Petition allowed.

(ASHWIN D. BHOBE, J.)