

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR CONDONATION OF DELAY) NO.
1104 of 2026**

**In
F/CRIMINAL APPEAL/80/2026**

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ANKUSH KAPOOR S/O, VIPAN KAPOOR

Versus

NATIONAL INVESTIGATION AGENCY THRO SUPERINTENDENT OF
POLICE AND CHIEF INVESTIGATION OFFICER & ANR.

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Appearance:

MR I H SAIYED SENIOR COUNSEL WITH MR AADITYA D BHATT(8580) for
the Applicant(s) No. 1

MR ANKIT SHAH(6371) for the Respondent(s) No. 1

MR L B DABHI APP for the Respondent(s) No. 2

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**CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI**

Date : 04/05/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

By way of present application, the applicant – Ankush Kapoor s/o Vipin Kapoor has sought to condone the delay of 146 days caused in preferring the Criminal Appeal under Section 21 of the National Investigation Agency Act, 2008 (for short the NIA Act) read with Section 483 of the Bhartiya Nagrik Suraksha Sanhita (BNSS) against the order dated 09/07/2025 passed by the learned Special Judge (NIA), Ahmedabad in NIA Special Case No.6 of 2024 in connection with the NIA Case No.RC-26/2020/NIA/DLI, whereby the application seeking extension of the period of investigation / judicial custody under Section 43(D)(2)(b) of the Unlawful Activities (Prevention) Act, 1967 and under Section 36A(4) of the NDPS Act, 1985 came to be allowed.

2. The short facts leading to the filing of the present application is that in connection with the case registered as NIA Case No.RC – 26/2020/NIA/DLI by the respondent No.1, an application seeking extension of the judicial custody of the arrested accused – applicant herein from 90 days to 180 days under the provisions of Section 43D(2) (B) of the Unlawful Activities (Prevention) Act, 1967 and under Section 36A(4) of the NDPS Act, 1985 has been moved mainly contending that considering the facts and circumstances stated in the application, it was not possible for the NIA to complete the investigation against the applicant – accused herein within the period of 90 days to be completed on 10/07/2025 and to file supplementary charge-sheet against him within the stipulated time and therefore, it was prayed to extend the judicial custody of the applicant – accused from 90 days to 180 days as per the provisions of Section 43D(2)(B) of the Unlawful Activities (Prevention) Act, 1967 and under Section 36A(4) of the NDPS Act, 1985.

2.1 Upon filing of such application, as is reflected from the order dated 09/07/2025, Notice was sent to the applicant – accused herein through the Central Jail, Sabarmati, Ahmedabad; however the applicant – accused alleged to have refused to accept the said notice and considering the report of the Jail authority and after hearing the learned Special Public Prosecutor, the said application came to be allowed by an order dated 09/07/2025.

2.2 Aggrieved by the said order dated 09/07/2025, the applicant herein – accused has preferred an appeal before this Court wherein the delay of

146 days has been caused and by filing the captioned application, the applicant herein – accused has sought to condone the delay caused in preferring the appeal.

3. Learned Senior Advocate Mr. I H Saiyed appearing with Mr. Aditya Bhatt, learned Advocate for the applicant – accused has mainly contended that the delay caused in preferring the appeal is neither deliberate nor intentional and it was caused on account of the reasons which are beyond the control of the applicant. Learned Senior Counsel Mr. I H Saiyed would further submit that applicant was in continuous judicial custody since 19/04/2025 and has not been supplied with the copy of application seeking extension. Learned Senior Counsel Mr. I H Saiyed would further submit that neither any advance notice was given to him; nor he was produced either physically or virtually before the learned Competent Court to raise any such objections which has resulted into deprivation of his indefeasible right to default bail; without being heard.

3.1 It was further contended by learned Senior Counsel Mr. I H Saiyed that mainly the cause of delay is on account of non-supply of connected material and delayed receipt of the impugned order as the applicant herein – accused moved application on 30/07/2025 seeking all the relevant applications, including the order impugned to enable him to file a default bail application which was ultimately received by him on 24/11/2025 and thus the delay was caused in preferring the appeal in challenging the impugned order.

3.2 In support of the above submissions, learned Senior Counsel Mr. I

H Saiyed has placed reliance upon the order of the Hon'ble Apex Court dated 11/12/2025 passed in *Writ Petition (Criminal) No.114 of 2024 and other allied matters (Sushila Devi & Anr. vs. Union of India Through NIA & Ors.)* as well as the order dated 05/04/2024 passed in *Special Leave Petition (Criminal) Diary No.5217 of 2024 (The State of Uttar Pradesh vs. Sarfaraz Ali Jafri)* and submitted that in view of the said orders, more particularly, when the similar issue is pending for consideration before the Hon'ble Apex Court wherein after observing the divergence views of the different High Courts, the Hon'ble Apex Court have been pleased to condone the delay and since the facts of the case on hand also stands on similar footing and the denial of such request as sought for by the applicant herein would deprive the applicant to place his case; without being thrown at the threshold, which otherwise to be appreciated judiciously.

3.3 Learned Senior Counsel Mr.I H Saiyed would submit to allow the present application and to condone the delay caused in preferring the appeal.

4. By vehemently opposing the application seeking to condone the delay, learned Advocate Mr.Ankit Shah appearing for the respondent No.1-NIA has mainly contended that after filing of the application seeking extension of the custody of the applicant, notice was served upon the applicant – accused through the Central Jail, Sabarmati, Ahmedabad where he refused to accept the said notice and therefore, it cannot be said that the applicant – accused was not served. He would further submit that no such averments and contentions have been made by the applicant –

accused for causation of the delay in preferring the appeal, as also no such satisfactory cause has been set out by the applicant to condone the delay and therefore, he would submit to dismiss the present application.

4.1 In support of his application, learned advocate for the respondent No.1 would rely upon the following decisions:

1. Mahairing Hungyo @ Achan vs. National Investigation Agency rendered in MC (Crl.A) No.20 of 2024 by the Hon'ble High Court of Manipur.
2. Union of India vs. Abdul Razaak & Anr., rendered in CRL.A No.1224 & 1225 of 2024 by the Hon'ble High Court of Madras.
3. The State of Uttar Pradesh vs. Sarfaraz Ali Jafri rendered in Special Leave Petition (Criminal) Diary No.5217 of 2024 by the Hon'ble Apex Court.
4. Sushila Devi & Anr., vs. Union of India through NIA in W.P. (Criminal) No.114 of 2024 by the Hon'ble Apex Court.
5. Samiuddin vs. State [2024 SCC OnLine TS 2066] by the Hon'ble High Court of Telangana at Hyderabad.
6. Faizal Hasamali Mirza vs. State of Maharashtra & Anr., [2023 SCC On Line Bom 1936].
7. Sheikh Rahamtulla & Ors. vs. NIA [2023 SCC OnLine Cal 493].

4.2 By making the above submissions and relying upon the decisions as stated herein above, which solely rests on the aspect of delay wherein divergent views has been taken by the different High Courts, the learned

Advocate for the respondent No.1 would straneously submitted that the grounds agitated by the applicant do not inspire any confidence and the factum of extesnion has been sought for by the respondent No.1 herein was well within the knowledge of the applicant who in turn deliberately sought to refuse to accept the process sought to be served through the Jail Superintendent as reflected from the very endorsement of the process server or the Jail authority and therefore, the applicant is not expected to blow hot and cold together and attemp to take the benefit of his own wrong.

5. Learned APP appearing for the respondent No.2 – State would submit to pass necessary order in the facts and circumstances of the case.

6. Having heard the learned Advocates appearing for the respective parties and examining the facts of the case on hand, as also considering the order passed by the Hon'ble Apex Court in *Special Leave Petition (Criminal) Diary No.5217 of 2024 (The State of Uttar Pradesh vs. Sarfarz Ali Jafri)* dated 05/04/2024 which is sought to be relied upon by the applicant, it would appear that admittedly there is a divergence of views between different High Courts as the High Courts of Allahabad, Bombay, Jammu & Kashmir & Laddakh and Delhi have held that the 90 day time limit is directory, whereas a contrary view has been taken by the High Courts of Calcutta and Kerala. However, while observing the aforesaid, the Apex Court has made it clear that the pendency of the proceedings before the Court shall not operate as a stay in any proceedings before the High Court and the High Court may consider rather deal with the issue on its own merits.

7. In light of the aforesaid position of law, now the question which would require to be determined as to whether the period of limitation as contemplated under Section 21 (5) of the NI Act can be interpreted differently, one in favour of the accused and another against the prosecution. Simultaneously, the question which would also require to be weighed as to whether the High Court is empowered to condone the delay, if any, in preferring the appeal under Section 21(5) of the NI Act. Since both the questions are inter-linked to each other, they are being discussed accordingly herein after.

8. At this juncture, let us refer to Section 21(5) of the NI Act which reads as under:

“(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

Thus, proviso to Section 21(5) provides that the High Court may entertain the appeal after expiry of the said period of thirty days if it is satisfied that the sufficient cause for not preferring the appeal is made out.

9. Now, reverting to the facts of the case on hand, it would appear that by filing the appeal, the applicant has sought to challenge the grant of

extension from 90 days to 180 days on the grounds agitated in the memo of appeal and the consequence thereof flaws the personal liberty of the accused guaranteed under the statute which imposes drastic punishment as the right to default bail as has been correctly held by the plethora of judgments of the Hon'ble Apex Court, are not the mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India which is a fundamental right granted to the accused persons to be released on bail if the condition of the first proviso to Section 167(2) are fulfilled.

10. The embargo of limitation of 90 days virtually renders an aggrieved person remediless which in the matter of rights guaranteed under Article 21 of the Constitution of India through procedure is not the purpose of law and the right to life and personal liberty in ordinary circumstances cannot be irrationally barred even for a sufferer who seems indolent and the same cannot be rejected solely on the technical ground.

11. Furthermore, the default bail in comparison to the application filed for regular bail stands squarely on a different footing and therefore, the delay sought to be condoned in preferring the appeal at this juncture is not condoned would amount to deprive the applicant from his statutory right; at least to place his case, which otherwise would be determined on its own merits and therefore, condoning the delay in preferring the appeal would not have any bearing rather direct impact on the merits of the appeal in question.

12. Thus, in light of the aforesaid discussion, when there is a divergence of views amongst the different High Courts and the Hon'ble Apex Court being seized with the similar issue on hand, in WP (C) No.1076 of 2019, W.P. (Crl.) No.114 of 2024 and WP (C) No.1167 of 2021 and until the authoritative view is pronounced by the Hon'ble Apex Court, so also without much delving on technicalities, the order to condone the delay finds a good law. The applicant has set out the sufficient cause as observed herein above and therefore, in view of the discussions made in preceeding paragraphs, the present application deserves consideration. Delay of 146 days caused in preferring the appeal is condoned. Registry is directed to register the appeal and to assign the regular number.

13. It would be appropriate to note that the co-ordinate Bench of this Court has condoned the delay of 40 days caused in filing the appeal being F/Criminal Appeal No.86 of 2026 in respect of the present applicant – accused in connection with the similar such offence where the application seeking default bail in the event of non-filing of the charge-sheet within statutory period of limiation came to be rejected by the Special Court and the said appeal is pending for adjudication.

14. Before parting with the order, needless to say that the reasoning assigned in this application are confined to decide the present application only which does not have bearing on the merits of the main matter since number of contentions have been raised by the learned advocates appearing for the respective parties which would ultimately go to the root of the main matter and therefore, the said aspect is kept open to be

decided in accordance with the law at appropriate stage.

(ILESH J. VORA, J)

(R. T. VACHHANI, J)

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