

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY**

ON THE 13th OF OCTOBER, 2025

CRIMINAL REVISION NO.4165 OF 2025

HIRDESH LAKHERA

VERSUS

STATE OF MADHYA PRADESH

Appearance:

Shri Ghanshyam Pandey – Advocate for the petitioner.

Shri Kamal Nath Naik – Panel Lawyer for the respondent/State.

ORDER

This revision petition under Section 438 read with Section 442 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for brevity "B.N.S.S., 2023.") has been filed by the petitioner/accused being aggrieved by the order dated 19.06.2025 passed by the Additional Sessions Judge, Pawai, District Panna (M.P.) in MJC No.143/2025 whereby the learned Additional Sessions Judge has dismissed the application under Section 5 of the Limitation Act and also the Criminal Appeal filed by the petitioner/accused. The petitioner has also challenged the judgment dated 24.06.2023 passed by the Judicial Magistrate First Class, Pawai, District Panna in Case No.526/2022 whereby the learned trial Court has convicted the petitioner/accused for the offence punishable under Sections 457 of IPC and sentenced to undergo R.I for three years with

fine of Rs.5000/- and Section 380 of IPC and sentenced to undergo R.I for two years with fine of Rs.5,000/- with default stipulations.

2. The short facts of the case are that on 25.08.2020 the complainant Ved Narayan and his wife have locked their home and went to Sunehi village. On 27.08.2020 at morning the neighbour Vishnu Pandey had informed to the complainant through telephone thereafter he came back to home and found that the locks and bolts of the doors are broken. Gold jewellery, cash amount, which was kept in the Almirah was found stolen. An FIR was lodged to the Police Station Pawai, which was registered as Crime No.412/2020 for the offence punishable under Sections 457 and 380 of IPC.

3. During the investigation the petitioner and one another accused person were taken into custody, they made disclosure about the theft in the memorandum under Section 27 of the Evidence Act and on the basis of that, stolen property was recovered from the possession of the petitioner/accused and one another. After completion of the investigation the final report was submitted to the concerned Judicial Magistrate First Class, Pawai. The petitioner and co-accused person have pleaded no guilt. After completion of the trial the learned JMFC vide judgement dated 24.06.2023 convicted the petitioner and co-accused and sentenced them as mentioned above.

4. Petitioner has preferred an appeal being aggrieved by the judgment dated 24.06.2023 passed by the learned trial Court on 19.06.2025, after delay of one year eleven months and twenty six days. The petitioner has also filed an application under Section 5 of the Limitation Act for condonation of delay in filing of the said criminal appeal. Learned Additional Sessions Judge vide impugned order dated 19.06.2025 dismissed the

application under Section 5 of the Limitation Act and consequently dismissed the Criminal Appeal filed by the petitioner being time barred, hence this revision.

5. Learned counsel for the petitioner submitted that the petitioner was in Pawai jail from the date of his arrest. His counsel had assured him that he would file appeal, but did not file any appeal. It is further submitted that since the petitioner was in jail, it was the duty of the jail authority to send a memo of appeal from jail, under these circumstances the petitioner could not file appeal within time, therefore, the delay caused in filing the appeal should have been condoned and appeal could have been admitted for hearing on merits.

6. *Per contra*, learned counsel for the respondent/State submitted that the Criminal Appeal was filed after the lapse of one year eleven months and twenty six days and no documents was filed in support of the application filed under Section 5 of the Limitation Act, therefore, learned Additional Sessions Judge has rightly dismissed the application as well as the appeal being time barred.

7. Heard the learned counsel for the parties at length and perused the record of the Courts below.

8. It is revealed from the record of the trial Court that at time of passing of the judgment dated 24.06.2023 the petitioner was in jail and he is continuously in jail till date, therefore, the requirement of the documents in support of the application filed under Section 5 of the Limitation as observed by the learned Additional Sessions Judge is improper. Since the petitioner

was continuously in jail in this case, it was expected from the jail authority to send the appeal memo from jail as per Section 383 of Cr.P.C.

9. The learned Additional Sessions Judge has placed reliance on the judgment of the Supreme Court in the case of ***Balwant Singh Vs. Jagdish Singh, AIR 2010 SC 3043***, which is a case pertaining to Order XXII Rule 9 of CPC wherein the application for setting aside the abatement was filed after the delay of 778 days. Refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated, therefore, a liberal approach is required to be adopted, particularly in the matter of filing of Criminal Appeal. The Supreme Court in ***State of Nagaland V. Lipok Ao (2005) 3 SCC 752*** has been held that the focus should be on the sufficiency of the cause, not the length of the delay and directed the Courts to be liberal and pragmatic to ensure substantial justice is done, provided the delay is not deliberate or due to gross negligence.

10. In the case in hand, since the petitioner was continuously in jail and the jail authority has not send his appeal memo under Section 383 of Cr..P.C., he was deprived of being filing of appeal against the judgment of conviction and order of sentence passed by the trial Court. Therefore, petitioner's inability of filing appeal within time can be termed as sufficient cause.

11. The impugned order is not sustainable, therefore, petition is allowed, impugned order dated 19.06.2025 is set-aside. The application under Section 5 of the Limitation Act filed by the petitioner for condonation of delay causing in filing the criminal appeal against the judgment dated 19.06.2025 passed by the trial Court is hereby allowed and delay is condoned.

The appellate Court, Additional Sessions Judge Pawai is directed to restore the case on its original number and register as regular Criminal Appeal and decide the same on merits in accordance with law. Looking to the custody period of the petitioner, it is expected from the appellate Court that the appeal shall be decided expeditiously.

12. Let the record of the Courts below along with the copy of this order be send back to the appellate Court immediately.

(RAMKUMAR CHOUBEY)
JUDGE

Vin*