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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 29.01.2025*+ **CRL.REV.P. 302/2024**

THE STATE (GNCT OF DELHI)Petitioner

Through: Mr. Naresh Kumar Chahar,
APP for the State, with Insp
Pankaj Gulliya.

versus

SHAKEEL AHMED @ DURRANIRespondent

Through: Mr. M.A. Inayati & Mr.
Shoaib Khan, Advocates.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J****CRL.M.A. 6955/2024 (For Condonation of Delay)**

1. The State has approached this Court, by way of the above-captioned revision petition filed under Sections 397/401 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], seeking setting aside of the order dated 09.02.2023, passed by the learned Additional Sessions Judge-02, North East District, Karkardooma Courts, Delhi [hereafter '*Sessions Court*'], in case arising out of FIR No. 480/2020, dated 13.09.2020, registered under Sections 302/307/120B/34 of Indian Penal Code, 1860 [hereafter '*IPC*'] read with Sections



25/27/54/59 of the Arms Act, 1959, at Police Station Dayalpur, Delhi. By way of the said order, the learned Sessions Court, while framing charges against co-accused persons, had discharged the respondent Shakeel Ahmed in the present FIR.

2. However, the present application under Section 5 of the Limitation Act, 1963 read with Section 482 of Cr.P.C. has been filed, seeking condonation of delay of 272 days in filing the present revision petition.

3. On the issue of condonation of delay, the learned APP for the State submitted that the State could not file the present petition before this Court within stipulated period, as the file pertaining to the present case had to pass through the various authorities, and after passing through various channels, the file of the case along with the opinion regarding the case being fit for challenging the impugned order, was sent to the Department of Law and Justice and Legal Affairs. It was stated that the acquittal report was prepared on 22.07.2023 and forwarded to the Chief Prosecutor, and after discussion with the learned APP, the Chief Prosecutor had forwarded the same. Thereafter, the Director of Prosecution had dealt with the file and had forwarded the same to Deputy Secretary, Law and Justice on 22.08.2023. It was further submitted that thereafter, the Legal Assistant and Section Officers had dealt with the file and the same was sent by Deputy Secretary to Special Secretary on 01.09.2023, who in turn had sent the file to Principal Secretary on



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04.09.2023. The file was then sent to the Director of Prosecution on 06.09.2023. It is stated that the file was received in the Office of Standing Counsel (Criminal) on 11.09.2023 and thereafter the file was marked to the learned APP on 14.09.2023.

4. It was argued by the learned APP for the State that due to the above mentioned circumstances, administrative process and the movement of file from one table to another for requisite formalities, the limitation period had expired and therefore, there was a delay in filing the present petition. It was contended that the delay in filing the present petition was neither intentional nor deliberate, and thus, the same be condoned. Reliance, in support of these arguments, was placed on following decisions: (i) ***Sheo Raj Singh v. Union of India***: (2023) 10 SCC 531; (ii) ***State of Nagaland v. Lipok AO***: (2005) 3 SCC 752

5. On the other hand, the learned counsel appearing on behalf of the respondent/accused opposed the prayer made in the present application. He argued that there was no plausible reason shown by the State for such inordinate delay in preferring the present petition. In support of his contentions, the learned counsel appearing for the respondent placed reliance on the following decisions: (i) ***Officer of the Chief Post Master General and Ors. v. Living Media India Ltd. and Anr.***: (2012) 3 SCC 563; (ii) ***State v. Ashish Kumar***: 2024:DHC:5979.

6. Having **heard** the learned counsel for both the parties and



having perused the record, this Court is of the opinion that the Hon'ble Supreme Court, and even this Court, has time and again emphasized that unexplained delay by the State may not be condoned as a matter of right only because it is the State filing a petition, and the delay has to be explained on day-to-day basis. This Court, therefore, being guided by the said principles, notes that the delay of 272 days in filing the present petition has been explained by the State, in a nutshell, in the following manner:

- (a) The acquittal report was prepared on 22.07.2023 and forwarded to the Chief Prosecutor.
- (b) After discussion with the learned APP, the Chief Prosecutor had forwarded the report.
- (c) The Director of Prosecution had examined the file and forwarded it to the Deputy Secretary, Law and Justice, on 22.08.2023.
- (d) The Legal Assistant and Section Officers had processed the file, and it was sent by the Deputy Secretary to the Special Secretary on 01.09.2023.
- (e) The Special Secretary had forwarded the file to the Principal Secretary on 04.09.2023.
- (f) The Principal Secretary had sent the file back to the Director of Prosecution on 06.09.2023.
- (g) The file was received in the Office of the Standing Counsel (Criminal) on 11.09.2023.
- (h) The file was marked to the learned APP on 14.09.2023.



7. While adjudicating this application, this Court remains cognizant of the fact that the present revision petition assails the order on charge dated 09.02.2023, *vide* which the respondent herein has been discharged, *inter alia*, for commission of offences under Section 302/207 of IPC and offences under Arms Act. The primary allegations against him were that the respondent herein had hatched a criminal conspiracy with all the accused persons to kill the victim, and in pursuance of the said criminal conspiracy, the respondent herein had supplied two country made pistols and 40 live cartridges to co-accused and the said pistols, along with 05 cartridges, were recovered from the possession of co-accused persons.

8. Therefore, the allegations against the respondent, in relation to which the captioned revision petition has been filed, are very serious i.e. pertaining to offence of murder, in which charge stands framed against all co-accused persons, and in case the delay – which stands explained by the State – is not condoned, it may, instead of doing justice, may result in causing great injustice to the victim and to the State in a case of offence of murder.

9. This Court's attention was also drawn to the decision of Hon'ble Supreme Court in case of ***Sheo Raj Singh v. Union of India*** (*supra*), wherein it was observed that power of condonation of delay is a discretionary power available to courts, and exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay



being immaterial. While upholding the decision of the concerned High Court in condoning the delay of 479 days in filing of appeal by the State, the Supreme Court observed as under:

“37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first Respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. **As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.**”

(Emphasis added)

10. Therefore, while balancing the rights of the accused, who shall get an opportunity to oppose the revision petition filed by the State and argue that the impugned order suffers from no infirmity, and the right of the State to challenge an order of discharge of an accused in a case of murder, and taking into account the factors which caused the delay in filing the revision petition, and also remaining cognizant of the larger interest of the community and society in a case of heinous offence as murder, this Court is inclined to allow the application filed by the State for condonation of delay of 272 days in filing the present revision petition.

11. In view thereof, the delay of 272 days in filing the present



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revision petition stands condoned. Accordingly, the present application stands disposed of.

12. It is however clarified that the observations made in this order shall not be construed as this Court's opinion on the merits of the case.

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13. Issue notice. Mr. M.A. Inayati, learned counsel accepts notice on behalf of the respondent.

14. Let reply be filed by the respondent within four weeks, with advance copy to the other side.

15. List on 25.03.2025 for final disposal.

16. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2025/zp