

GAHC010012482023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/116/2023

SANKAR PATOR
S/O SRI CHAMPAK PATOR, RESIDENT OF GERUWAGAON, ATABARI, PS
DHARAMTUL, DIST MORIGAON ,ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SRI AJIT KUMAR BARMAN
SON OF LATE BIRENDRA BARMAN

RESIDENT OF DRY FISH MARKET JAGIROAD
DIST MORIGAON
ASSA

Advocate for the Petitioner : MR. B HALDAR (LEGAL AID COUNSEL)

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20-09-2023

(KR Surana, J)

Heard Mr. B. Haldar, learned counsel for the applicant and Ms. B. Bhuyan, learned senior counsel as well as learned APP for the State assisted by Ms. P. Bora, learned counsel.

2. This IA is filed under section 5 of the Limitation Act for condoning the delay of 1234 days beyond the period of limitation in filing the connected appeal against the impugned judgment dated 17.07.2017 and sentence dated 18.07.2017 passed by the learned Sessions Judge, Morigaon in Sessions case no.39/2017, amongst others, imposing a sentence of imprisonment of life for committing offence under section 4 of the Explosive Substance Act, 1908 on plea of guilty.

3. The learned counsel for the applicant has referred to the additional affidavit filed on behalf of the applicant and it has been submitted that the applicant was represented by a legal aid counsel appointed by the District Legal Service Authority for conducting the trial before the learned Sessions Judge, Morigaon. It has been submitted that the District Legal Service Authority, Morigaon did not take any steps to prefer an appeal against the impugned judgment and only on 15.11.2022, the applicant made an application before the Secretary, District Legal Service Authority (DLSA) through the Jailor, District Judge, Morigaon for preferring an appeal before this Court and accordingly, the Secretary, District Legal Service Authority, Morigaon wrote a letter dated 19.11.2022 to the Secretary, Gauhati High Court Legal services Committee for filing of an appeal and accordingly the matter was processed and the connected appeal was filed before this Court on 16.02.2023 and by that time a period of

1234 days had already occurred.

4. The learned APP has referred to the objection filed by the State to oppose this application on the ground that appropriate explanation has not been rendered in this IA for condoning the inordinate delay.

5. Having considered the explanation rendered by the applicant, the Court finds that the applicant cannot be said to be at fault for not preferring this appeal on time because he was provided legal aid through the DLSA, Morigaon before the learned trial Court and that at the instance of the DLSA, Morigaon that the connected appeal has been filed by the applicant from jail.

6. It may be mentioned that the learned legal aid counsel has submitted that the applicant was convicted and sentenced on the basis of his plea of guilty before the learned Sessions Court and that there is no judgment by the learned Sessions Court in so far as the applicant is concerned after examination of evidence and accordingly, he has explained that the memo of appeal does not contain a judgment as judgment is not available.

7. Accordingly, notwithstanding that the delay occurred in filing of the appeal is inordinate, the explanation rendered is accepted to be good and sufficient cause which has prevented the applicant from filing the connected appeal on time. Accordingly, the delay of 1234 days beyond the period of limitation in filing the connected appeal is condoned.

8. The Registry shall register the connected appeal and list the same for admission hearing.

JUDGE

JUDGE

Comparing Assistant