

GAHC020007982022



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

Case No. : I.A.(Crl.)/22/2022

SHRI. KEDUKHOYI
S/O SHRI. DZUVEYI, PERMANENT R/O KOTISU VILLAGE,
PHEK - 797108, NAGALAND,
THROUGH - THE SUPERINTENDENT, DISTRICT JAIL,
PHEK - 797108, NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND, KOHIMA

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

Linked Case : CRL.A(J)/10/2022

SHRI. KEDUKHOYI
S/O SHRI. DZUVEYI
PERMANENT R/O KOTISU VILLAGE
PHEK - 797108
NAGALAND

THROUGH - THE SUPERINTENDENT
DISTRICT JAIL
PHEK - 797108
NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND
KOHIMA

Advocate for : SENTIYANGER
Advocate for : GOVT ADV NL appearing for
THE STATE OF NAGALAND

Linked Case : Bail Appln./11/2022

SHRI. KEDUKHOYI
S/O SHRI. DZUVEYI
PERMANENT R/O KOTISU VILLAGE
PHEK - 797108
NAGALAND
THROUGH - THE SUPERINTENDENT
DISTRICT JAIL
PHEK - 797108
NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND
KOHIMA

Advocate for : SENTIYANGER
Advocate for : GOVT ADV NL appearing for
THE STATE OF NAGALAND

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE KAKHETO SEMA

ORDER

Date : 22-03-2023
(N. Sailo, J)

Heard Mr. Sentianger, learned Legal Aid counsel for the

applicant and Mr. K. Angami, learned Public Prosecutor, Nagaland, for the State.

2. By filing this application, the applicant prays for condoning delay of 6063 (six thousand and sixty-three) days in filing the connected appeal preferred against the judgment and order dated 01.10.2004, passed by the Additional Deputy Commissioner (Judicial), Phek, Nagaland in GR No. 27/2003. Referring to the application, the learned counsel submits that the applicant was unaware about the fact that he can file an appeal before a High Court and since his arrest on 18.05.2003, he is in prison. It was only when some Paralegal Volunteers from the Nagaland State Legal Services Authority (NSLSA) visited the jail that he became aware that he can file an appeal before a High Court. The applicant initially approached this Court by filing WP(Crl.) No. 2(K)/2019, praying for premature release. The writ petition was disposed of vide order dated 04.07.2019 by directing the State respondents to consider the application filed by the applicant for premature release within a specified time-frame of five months. Although his application was initially not considered, but subsequently the same was rejected in view of the provisions contained in "Clause 4.1" of the Notification dated 16.05.2001, issued by the Home Department, Home Branch, Government of Nagaland. In other words, as per the special provision, persons who are convicted for offences such as rape, dacoity, terrorist crimes, etc. are not eligible for premature release from the prison. The applicant, thereafter filed the instant application by availing the services of the Legal Aid counsel

given by the Nagaland State Legal Services Authority. The learned counsel, therefore, submits that the delay in filing the connected appeal may be condoned so that the appeal of the applicant can be examined on merits.

3. Mr. K. Angami, learned Public Prosecutor, on the other hand submits that a bare perusal of the impugned judgment and order reveals that the applicant was convicted on his plea of guilt, and therefore, no purpose would be served if the delay is condoned. He also submits that the applicant was duly represented by a lawyer appointed by the Court and therefore, it is most unbelievable that he is ignorant about the provision for filing an appeal. Under the circumstance, he submits that the delay in filing the appeal may not be condoned.

4. We have heard the submissions made by the learned counsel for the rival parties and we have also perused the materials available on record. The applicant has taken the plea of ignorance about the provision for filing an appeal before the High Court. He has also stated that he has come to learn about the provision for filing appeal only after being visited by Paralegal Volunteers of the Nagaland State Legal Services Authority. We have no reason to disbelieve the contention of the applicant. In fact, the Apex Court, in the case of **Abdul Ghafoor & Another vs. State of Bihar**, reported in **(2011) 14 SCC 465**, which is relied upon by the learned counsel for the applicant at paragraph 3 of the judgment has observed and held as follows:-

"3. The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and

redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a reasonable time and not to let everyone live in a state of uncertainty. It does not permit anyone to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower court's orders or for redressal of grievances at one's own sweet will. The law of limitation indeed must get due respect and observance by all courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality."

4. Coming back to the present case, it may be seen that the applicant has been convicted for life and he has been in prison since 18.05.2003, i.e. the date of his arrest, and therefore, the appeal filed by him deserves to be examined on merits. We also notice that although the applicant had pleaded guilty but the learned Trial Court proceeded to examine the case of the prosecution before convicting the applicant.

5. In view of the above, we are of the considered view that the applicant has made out a case for condoning the delay. Accordingly, the delay of 6063 (six thousand and sixty-three) days in filing the connected appeal stands condoned.

I.A. is disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant