

GAHC010048932024



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

Case No. : I.A.(CrI.)/253/2024

JAGGANATH BARMAN
S/O LATE BRAJENDRA BARMAN,
R/O UTTAR KALABHANGA, P.S.- BARPETA ROAD, ASSAM- 781315.

VERSUS

THE STATE OF ASSAM AND ANR.
THROUGH THE PUBLIC PROSECUTOR.

2:NIKHIL BARMAN
S/O SRI SUNIL BARMAN
R/O UTTAR KALABHANGA
P.S.- BARPETA ROAD
ASSAM- 781315

Advocate for the Petitioner : MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 15.03.2024
[Manish Choudhury, J.]

Heard Mr. A. Gautam, learned counsel for the applicant and Ms. S.H. Bora, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. The instant interlocutory application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 21 days, which is stated to have occurred in preferring the connected appeal. The applicant as an appellant has preferred the connected appeal, which is yet to be numbered, under Section 374[2], Code of Criminal Procedure, 1973 against a Judgment and Order dated 29.11.2023 passed by the learned Additional Sessions Judge-cum-Special Court [POCSO], Barpeta in Special POCSO Case no. 95/2022. By the Judgment and Order dated 29.11.2023, the applicant-appellant has been convicted under Section 6 of the Prevention of Children from Sexual Offences [POCSO] Act, 2012 upon finding him guilty under Clause [m] of Section 5 of the POCSO Act and he has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 2 [two] years.

3. The applicant-appellant has stated that after pronouncement of the judgment, the copies of the depositions and other exhibited documents were applied for on 25.01.2024 but those were made ready for delivery only on 07.02.2024. It is averred that due to such delay in obtaining the certified copies of the necessary documents, a delay of 21 days in preferring the connected appeal beyond the statutory period of limitation, had occurred. It is submitted that the element of negligence is not attributable to the applicant-appellant.

4. Ms. Bora, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam has fairly submitted that since the applicant-appellant has been convicted for an offence under Section 6 of the POCSO Act and is undergoing sentence for a period of 20 years, the connected appeal is required to be heard on merit.

5. Having regard to the explanation provided for the period of delay, which is 21 days, and considering the submissions made by the learned counsel for the parties, this Court is of the considered view that the applicant-appellant has been able to provide explanation showing sufficient cause for condoning the delay of 21 days in preferring the connected appeal. Accordingly, the instant interlocutory is allowed condoning the delay of 21 days in preferring the connected appeal.

6. The Office to register the connected appeal and list thereafter, for examination.

JUDGE

JUDGE

Comparing Assistant