

GAHC010078132024



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

Case No. : I.A.(Crl.)/358/2024

MD. MOJIBUR ALI @ MOJIBUR RAHMAN @ JODU @ BUDU
S/O MD. ABDUL HAMID,
VILL.- NO. 2 KORIGAON, P.S.- SARUPATHAR, DIST.- GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE LEARNED P.P., ASSAM.

2:MAMTA BEGUM
W/O MUSLIM

VILL.- NO. 2 KORIGAON
P.S.- SARUPATHAR
P.O.- SARUPATHAR NAOJAN
DIST.- GOLAGHAT
ASSAM
PIN- 785601

Advocate for the Petitioner : MR. M A I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20.04.2024
(M. Choudhury,J)

Heard Mr. M.A.I. Hussain, learned counsel for the applicant-appellant and Ms. B. Bhuyan, learned Senior counsel and Additional Public Prosecutor assisted by Ms. B. Bora, learned counsel for the opposite party - respondent 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 1 [one] day, which is stated to have occurred in preferring the connected appeal under Section 374 [2] of the Code of Criminal Procedure, 1973 against a Judgment and Order dated 16.11.2022 and an Order of Sentence dated 17.11.2022 passed by the learned Special Judge, Golaghat [‘the trial court’, for short] in Special [POCSO] Case no. 33/2021. By the said Judgment and Order dated 16.11.2022 and Order of Sentence dated 17.11.2022, the applicant-appellant has been found guilty of the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and the applicant-appellant has been sentenced to undergo rigorous imprisonment for 20 [twenty] years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 3 [three] months.

3. Mr. Hussain, learned counsel for the applicant – appellant has submitted that the delay of 1 [one] day has occurred due to reasons explained in Paragraphs 4 – 6 of the instant interlocutory application. It is submitted that there was no deliberate negligence or laches on the part of the applicant – appellant.

4. Ms. Bhuyan, learned Senior counsel and Additional Public Prosecutor has submitted that since the period of delay is only 1 [one] day, the cause of substantial justice would be better subserved if the connected appeal is heard on merits.

5. We have gone through the statements and averments made in the instant interlocutory application more particularly, Paragraphs 4 – 6 thereof.

6. Having considered the fact that the period of delay is only 1 [one] day, as regards which the applicant - appellant has been able to explain showing sufficient cause, we are of the considered view that instead of issuance of notice to the respondent no. 2, who will have the participatory right to participate in the appellate proceedings, at this stage, the cause of substantial justice will be better served if the connected appeal is heard on merits, after condoning the delay of 1 [one] day in preferring the connected appeal.

7. Accordingly, the instant interlocutory application is allowed.

8. The Registry to register the connected appeal and thereafter, list the appeal for admission.

J U D G E

J U D G E

Comparing Assistant