

GAHC010085842024



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

Case No. : I.A.(Crl.)/436/2024

SUREN SAWTAL
S/O SRI LUDHURA SAWTAL,
R/O PAHUKATIA SONOWAL GAON, P.S.- BORHALLA, DIST.- JORHAT.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:MANTU SAWTAL
C/O SUREN SAWTAL
R/O SONOWAL GAON
P.S.- BORHOLLA
DIST.- JORHAT

Advocate for the Petitioner : MS B R A SULTANA (LEGAL AID COUNSEL),

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 28.08.2024
[Manish Choudhury, J.]

Heard Ms. B.R.A. Sultana, learned Legal Aid Counsel for the applicant-appellant and Ms. A. Begum, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

2. The instant interlocutory application is preferred by the applicant-appellant under

Section 5 of the Limitation Act, 1963 seeking condonation of the period of delay, which has occurred in filing the accompanying criminal appeal. The applicant as the appellant, has preferred the accompanying criminal appeal against a Judgment and Order dated 25.05.2016 passed by the Court of learned Sessions Judge, Jorhat in Sessions Case no. 169 [J-J] of 2014 [‘the trial court’, for short]. By the Judgment and Order dated 25.05.2016, the learned trial court has convicted the applicant-appellant for the offence of murder under Section 302, Indian Penal Code [IPC] and the applicant-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to rigorous imprisonment for another 6 [six] months. The applicant-appellant is presently in jail serving the afore-mentioned sentence.

3. Notice was issued to the opposite party, State on 15.05.2024.

4. Ms. Begum, learned Additional Public Prosecutor has fairly submitted that she has not received any instruction to oppose the instant application seeking condonation of delay. Ms. Begum has further submitted that the State will have no objection if the accompanying criminal appeal is heard on merits.

5. On perusal of the application, we find that the period of delay which has occurred for filing the accompanying criminal appeal is 2116 days beyond the statutory period of limitation. Though the application is found to have been cryptically drafted, it appears from the undertaking of the applicant-appellant, appended to this application as Annexure-C, that no person from his family or no friend of the applicant-appellant had contacted the applicant-appellant during the period of his incarceration and had not made any endeavour to prefer an appeal on his behalf before the appellate court against the Judgment and Order of conviction and sentence passed by the learned trial court. From the Certificate dated 07.03.2024, appended to this application as Annexure-D, it is noticed that the applicant-appellant was lodged in Central Jail, Jorhat from 22.09.2014 to 29.02.2024. Thereafter, on and from 01.03.2024, the applicant-appellant is undergoing his sentence at Mahendra Nagar Open-Air Jail, Jorhat. From the said facts, it appears that the applicant-appellant is incarceration for a period of about 10 years till date.

6. Section 5 of the Limitation Act, 1963 is engrafted in order to enable the court to do substantial justice to the parties by disposing of matters including the criminal appeals, on merit. The expression 'sufficient cause' is interpreted as an elastic concept to enable the court to apply the law in a meaningful manner with the ultimate objective to sub-serve the ends of justice. When the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. From the undertaking of the applicant-appellant, it cannot be presumed that the delay has been occasioned deliberately and it is also clear at a convict like the applicant-appellant, does not stand to gain any benefit by resorting to delay. If the refusal to condone the delay itself results in miscarriage of justice, it could also be a ground to condone the delay. In view of the above fact situation obtaining in the case, we find that the accompanying criminal appeal deserves consideration of merits to sub-serve the ends of justice. Accordingly, the instant application seeking condonation of delay of 2116 days in preferring the accompanying criminal appeal stands allowed.

7. The Office to register the accompanying criminal appeal and thereafter, list the same for admission.

JUDGE

JUDGE

Comparing Assistant