

GAHC010097962024



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

Case No. : I.A.(Crl.)/483/2024

SUREN KHODAL
S/O LATE BOGENDRA KHODAL,
R/O NIMONAGARH, P.S.- MATHURAPUR, P.O.- NIMANAGARH, DIST.-
CHARAIDEO, ASSAM, PIN- 785689.

VERSUS

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

2:BHADRAMONI TANTI
S/O LATE SHIVRAJ TANTI

R/O KUTHARKOTA 4 NO LINE
MOHKHUTI TEA ESTATE
P.S.- BOKOTA NEMUGURI
DIST.- SIVASAGAR
ASSAM
PIN- 785674

Advocate for the Petitioner : MR B SHARMA, MR S SHARMA,MR. M HASSAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 07.08.2024

[Manish Choudhury, JJ]

Heard Mr. B. Sarma, learned counsel for the applicant-appellant and Mr. K.K. Das, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. Mr. Das, learned Additional Public Prosecutor has submitted, on the basis of instructions received from the Officer In-Charge, Bokota Nemuguri Police Station, that notice upon the opposite party no. 2/informant has been duly served.

3. In view of above submission made by Mr. Das, learned Additional Public Prosecutor as regards service of notice upon the opposite party no. 2/informant, service of notice upon the opposite party no. 2/informant is treated to be complete. But none has appeared on behalf of opposite party no. 2/informant today on call, despite service of notice.

4. The instant application is preferred by the applicant seeking under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 339 days in filing the accompanying criminal appeal against a Judgment and Order dated 21.03.2023 passed by the Court of the learned Additional Sessions Judge-cum-Special Judge [POCSO], Sivsagar in Special [POSCO] Case no. 57/2022. By the Judgment and Order dated 21.03.2023, the learned Special Court has convicted the applicant-appellant has been sentenced under Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012, to undergo rigorous imprisonment for 20 [twenty] years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 6 [six] months. The applicant-appellant has also convicted under Section 10, POCSO Act, 2012, sentenced to undergo rigorous imprisonment for 5 [five] years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo further rigorous imprisonment for 3 [three] months.

5. We have gone through the statements and averments made in the application, more particularly,

paragraph 2 thereof, wherein the applicant has explained the reasons for not preferring the accompanying appeal within the statutory period of limitation.

6. Mr. Das, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam has submitted that he has not received any instruction to oppose the instant application seeking condonation of delay of 339 days.

7. Having gone through the statements and averments made by in this application, we are of the considered view that the applicant has explained the reasons showing sufficient cause for his inability to prefer the appeal within the statutory period of limitation and for filing the accompanying criminal appeal after 339 days beyond the period of limitation. Accordingly, the instant application seeking condonation of delay of 339 days beyond the period of limitation is allowed.

8. Though the opposite party no. 2 has not appeared despite service of notice, we observed that the opposite party no. 2 will have participatory right in the accompanying appeal.

9. The Registry to register the accompanying criminal appeal and to list the same thereafter for admission.

JUDGE

JUDGE

Comparing Assistant