

GAHC010144672024



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

Case No. : I.A.(CrI.)/680/2024

BIKUL BORO
S/O LATE GANESH BORO,
VILL.- AFUKHUNDA, P.S.- MORIGAON, DIST.- MORIGAON, ASSAM, PIN-

VERSUS

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

2: PURNIMA BORO
W/O BHASKAR BORO
VILL.- AFUKHUNDA
P.S.- MORIGAON
DIST.- MORIGAON
ASSAM
PIN

Advocate for the Petitioner : MR D K BHATTACHARYYA, MR A ATREYA

Advocate for the Respondent : PP, ASSAM,

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

ORDER

Date : 31.07.2024
[M. Choudhury, J]

Heard Mr. D.K. Bhattacharyya, 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. The instant application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 113 days which is stated to have occurred in preferring the accompanying criminal appeal under Section 415 [2] of the Bharatiya Nagarik Suraksha Sanhita, 2023 [corresponding to Section 374[2], Code of Criminal Procedure, 1973]. The accompanying criminal appeal is preferred to assail a Judgment and Order dated 22.01.2024 passed by the Court of learned Additional Sessions Judge-cum-Special Judge [POCSO], Morigaon [‘the Special Court’, for short] in POCSO Case no. 55/2020. By the Judgment and Order dated 22.01.2024, the applicant-appellant has been convicted under Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012 read with Section 342, Indian Penal Code. For the offence under Section 6, POCSO Act, the applicant-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, with default stipulation. For the offence under Section 342, IPC, the applicant-appellant has been sentenced to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for 15 days.

3. The applicant-appellant has explained in paragraph 7 [of the instant application] the reasons for the delay of 113 days.

4. Mr. Das, learned Additional Public Prosecutor appearing for the State has submitted that since the applicant-appellant has been convicted for serious offences and also inter-alia sentenced for life imprisonment, under Section 6, POCSO Act, interest of justice would be better sub-served if the accompanying appeal is heard on merit.

5. We have gone through the statements and averments made in the instant interlocutory application, more particularly, in paragraph 7, thereof.

6. Having gone through the same, we are of the view that the applicant-appellant has been able to explain the reason for delay with sufficient cause. Moreover, as the applicant-appellant because of his conviction under Section 6, POCSO Act has been sentenced to undergo life imprisonment. The cause of justice, in our considered view, would be better sub-served if the accompanying appeal is heard on merits.

7. Though a contention has been advanced on behalf of the learned Additional Public Prosecutor that issuance of notice to the opposite party no. 2 appears necessary, we are of the considered view that the opposite party no. 2 will have every participatory right in the course of the criminal appeal and we do not find it necessary, to issue notice to the opposite party no. 2 at this stage as the period of delay in preferring the appeal is only 113 days.

8. Accordingly, the instant interlocutory application seeking condonation of delay of 113 days stands allowed.

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

JUDGE

JUDGE

Comparing Assistant