

GAHC010168672024



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

Case No. : I.A.(Crl.)/846/2024

MD. SHAH ALAM
S/O. MD. HANIF ALI, R/O. NO.2 BONGALBORI, P.S. JAGIROAD, DIST.
MORIGAON, ASSAM.

VERSUS

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

2:ISMAIL ALI
S/O. LT. ALI HUSSAIN
R/O. VILL. KUIYADAL
P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PHN. 6001214554

Advocate for the Petitioner : MS B R A SULTANA,

Advocate for the Respondent : PP, ASSAM,

Linked Case :

SHAH ALAM

VERSUS

THE STATE OF ASSAM AND ANR G

Advocate for : MS B R A SULTANA
Advocate for : appearing for THE STATE OF ASSAM AND ANR G

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

ORDER

Date : 09-09-2024

[M. Choudhury, J]

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

2. The instant application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 8 days which is stated to have occurred in preferring the accompanying criminal appeal under Section 374, Code of Criminal Procedure, 1973. The accompanying criminal appeal is preferred to assail a Judgment and Order dated 07.06.2024 passed by the Court of learned Additional Sessions Judge-cum-Special Judge [POCSO], Morigaon [‘the Special Court’, for short] in POCSO Case no. 269 of 2023 which arose out of Jagiroad Police Station Case no. 220/2023. By the Judgment and Order dated 07.06.2024, the applicant-appellant has been convicted under Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012 and he has been sentenced to undergo rigorous imprisonment for a period of 20 [twenty] years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to

undergo rigorous imprisonment for another three months.

3. The applicant-appellant has explained in paragraph 5 and paragraph 6 [of the instant application] the reasons for the delay of 8 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 to undergo rigorous imprisonment for 20 [twenty] years under Section 6, POCSO Act, interest of justice would be better sub-served if the accompanying criminal appeal is heard on merit.

5. We have gone through the statements and averments made in the instant interlocutory application, more particularly, in paragraph 5 and paragraph 6, 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 rigorous imprisonment for 20 [twenty] years, 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 participatory right in the hearing 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 8 days.

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

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

JUDGE

JUDGE

Comparing Assistant