

GAHC010169112024



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

Case No. : I.A.(CrI.)/767/2024

UPEN GOGOI
S/O. LT. DURGESWAR GOGOI, R/O. NAWPARA GAON, P.S. DEMOW, DIST-
SIVASAGAR, ASSAM.

VERSUS

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

2:SRI. BIPUL GOGOI
S/O. SRI. SARBESWAR GOGOI
R/O. NAWPARA GSON
P/S. DEMOW
DIST. SIVASAGAR
ASSAM

Advocate for the Petitioner : MR J PAYENG, MS. SUSMITA DOLEY,MS A PAYENG

Advocate for the Respondent : PP, ASSAM,

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

ORDER

Date : 21.08.2024
[Manish Choudhury, JJ]

Heard Ms. A. Payeng, learned counsel for the applicant-appellant and Ms. S.H. Bora, learned

Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. This is an application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 64 days, which is stated to have occurred in preferring the accompanying criminal appeal against a Judgment and Order dated 22.02.2024 passed by the Court of learned Additional Sessions Judge-cum-Special Judge [POCSO], Sivasagar [‘the Special Court’, for short] in Special [POCSO] Case no. 36/2023. By the Judgment and Order dated 22.02.2024, the applicant-appellant has been convicted for the offence under Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012 and he has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 10,000/-, with default stipulation.

3. The applicant-appellant has explained the reasons for the delay of 64 days in paragraphs 3, 4 and 5 of the instant application.

4. Ms. Bora, 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 a period of 20 years, under Section 6, POCSO Act, interest of justice would be better sub-served if the accompanying appeal is heard on merits.

5. We have gone through the statements and averments made in the instant interlocutory application, more particularly, in paragraphs 3, 4 and 5, thereof.

6. Having gone through the same, we are of the view that the applicant-appellant has been able to explain the reasons for delay showing sufficient cause. Moreover, as the applicant-appellant because of his conviction under Section 6, POCSO Act has been sentenced to undergo imprisonment for 20 years term, the cause of justice, in our considered view, would be better subserved if the accompanying appeal is heard on merits.

7. Notice to the opposite party no. 2 has not been issued at this stage as the opposite party no. 2 will have participatory right to contest the accompanying criminal appeal and we are of the considered view that notice to the opposite party no. 2 can be dispensed with at this stage.

8. Accordingly, the instant interlocutory application seeking condonation of delay of 64 days stands allowed.

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

JUDGE

JUDGE

Comparing Assistant