

GAHC010200642023



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

Case No. : I.A.(CrI.)/936/2023

AJIT @ AJAY SARKAR
S/O LT RASH SARKAR,
R/O NO. 4 RAJGARH, P.S.- DIMAKUCHI, DIST.- UDALGURI, ASSAM.

VERSUS

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

2:LAXMI PRASAD BIMALI NATH
S/O LT KHAGRA PRASAD BIMALI

VILL.- NO. 2 SUKLAI NEHRU MEMORIAL HIGH SCHOOL
P.S.- DIMAKUCHI
DIST.- UDALGURI
ASSAM

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.02.2024

Heard Mr. A. Bhattacharjee, learned counsel for the applicant and also heard Mr. D.

Gogoi, learned amicus curiae appearing for the respondent No.2.

This application under Section 5 of the Limitation Act is preferred by by the applicant for condonation of delay of 11 days in filing the connected criminal appeal against the judgment and order dated 23.06.2023, passed in Special (POCSO) Case No.46/2021, by the learned Special Judge, Udalguri, whereby the learned Court below has convicted the applicant under Section 8 of the POCSO Act and sentenced him to suffer rigorous imprisonment for 4 years and also to pay a fine of ₹ 25,000/- with default stipulation.

It is to be noted here that notice was served upon respondent No.2, but, nobody entered appearance on behalf of the respondent No.2, for account which Mr. D. Gogoi, learned counsel was appointed as amicus curiae to represent the respondent No.2.

Mr. Bhattacharjee, learned counsel for the applicant submits that the judgment was pronounced by the learned Court below on 23.06.2023, and that there was no male family members in the family of the applicant and that the only brother of the applicant was working at Siliguri and while he was coming home back, he met with an accident on 24.06.2023, and he was undergoing treatment for the same and therefore, the appeal could not be filed within time and that the delay is not intentional rather it is circumstantial and therefore, it is contended to condone the same.

On the other hand, Mr. D. Gogoi, learned amicus curiae also submits that since delay is only for 11 days, the same may be condoned and the appeal may be heard on merit.

Having considered the submission of learned Advocates of both side and also considering the facts and circumstances on the record and having find the explanation, so forthcoming for the delay of 11 days plausible and sufficient, this Court is inclined to condone the same.

In terms of above, this I.A. stands disposed of.

Registry to register and number the connected appeal and list the same before this

Court on 07.03.2024.

Sd/- *Robin Phuikan*
JUDGE

Comparing Assistant