

GAHC010226622024



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

Case No. : I.A.(Crl.)/1114/2024

NABIN BARUAH
S/O LATE LETERA BARUAH,
RESIDENT OF VILLAGE AND PS NITAIPHUKHURI, SANTIPUR, DEMOW
DIST SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:SRI KANCHHA THAPA
S/O DEBABRATA HAZARIKA
RESIDENT OF VILLAGE AND PS NITAIPHUKHURI
SANTIPUR
DEMOW
DIST SIVASAGAR
ASSA

Advocate for the Petitioner : MS B R A SULTANA,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 28-11-2024

Heard learned Legal Aid Counsel Ms. B.R.A. Sultana for the applicant and learned Additional Public Prosecutor Mr. R.R. Kaushik for the respondent State.

2. Learned Legal Aid Counsel has prayed for condonation of delay of 786 (Seven Hundred and Eighty Six) days. It is submitted by the learned Legal Aid Counsel that :

“6. That, while filing this appeal there are 786 days delay on the part of the appellant/petitioner and the cause of delay are official process. The petition of appeal dated 05.12.2022 along with the judgment copy submitted by the appellant/petitioner was forwarded from Jail Supdt. District Jail Sibsagar to the Secretary, DLSA, Sibsagar dated 3.12.2022. Then on 19.08.2024, Secretary, DLSA, Sibsagar, sent the Jail appeal to the Secretary High Court Legal Service Authority explaining cause of delay occurred due to official shifting enclosing another 16 Nos. of Jail appeal those are left to be filed.”

3. It is further submitted that Division Bench of this Court in a similarly circumstanced case in connection with *Suntu @ Huntu Boraik vs. The State of Assam and Anr.* in Case No. I.A.(Crl.)/861/2024 has held that :

“6. Section 5 of the Limitation Act, 1963 is engrafted in order to enable the court to do substantial justice to the parties by disposing of matters including the criminal appeals, on merits. The expression ‘sufficient cause’ is interpreted as an elastic concept to enable the court to apply the law in a meaningful manner with the ultimate objective to sub-serve the ends of justice. When the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. As the applicant-appellant has been convicted and sentenced for a period of twenty years, it cannot be presumed that the delay has been occasioned deliberately by the applicant-appellant. It is also clear that a convict like the applicant-appellant, does not stand to gain any benefit by resorting to delay deliberately. If the refusal to condone the delay itself

results in miscarriage of justice, it could also be a ground to condone the delay.”

4. In the light of the decision of Division Bench of this Court, delay is condoned. It is apparent that there was no willful negligence on the part of the applicant/appellant and sufficient grounds have shown by the applicant/appellant for condonation of delay.

5. In terms of the above observation, this Interlocutory Application stands disposed of.

6. Registry to register the connected appeal.

JUDGE

Comparing Assistant