

GAHC010286452023



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

Case No. : I.A.(Crl.)/1263/2023

BOBY HATIMURIA AND 2 ORS.
W/O SHRI PUNESWAR HATIMURIA,
R/O GELAKHEY DA GAON, P.O. AND P.S.- GELAKHEY, DIST.- SAIVASAGAR,
ASSAM, PIN- 785696.

2: PUTUL HATIMURIA
S/O LATE JAGOT HATIMURIA

R/O GELAKHEY DA GAON
P.O. AND P.S.- GELAKHEY
DIST.- SAIVASAGAR
ASSAM
PIN- 785696.

3: DIPA HATIMURIA
W/O SHRI PUTUL HATIMURIA

R/O GELAKHEY DA GAON
P.O. AND P.S.- GELAKHEY
DIST.- SAIVASAGAR
ASSAM
PIN- 785696

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR.

2:SUMI BARUAH
D/O SHRI CHANDRA BARUAH

R/O BHUYAN GAON
P.S.- AMGURI
DIST.- SIVASAGAR

ASSAM
PIN- 785680

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 06-03-2024

Heard Mr. H.R.A. Rahman, learned counsel for the petitioner. Also heard Mr. D. Das, leaned Addl. P.P. for State respondent.

This is an application for condonation of delay of 111 days in filing the connected appeal against the judgment and order dated 31.03.2023 passed by the learned Additional Sessions Judge, Sivasagar in session Case No. 195(s-s)/2012.

The grounds for condoning the delay is stated in paragraph 4 of the condonation application. The same are reproduced herein for ready reference:

“4. That, the facts leading to the delay in filing the connected criminal appeal is as under

(a) That, after passing of the aforesaid impugned judgment and order dated 31/05/2023 by the Additional Sessions Judge, Sivasagar in Sessions Case No. 195(s- s)/2012 on 31/05/2023, inter alia, sentencing the applicants to undergo rigorous imprisonment for a period of 7 (seven) years and a fine of Rs. 3,000/- each, in default, rigorous imprisonment for another 2 months under Sections 366/34 of the Indian Penal Code, 1860, applicants were taken into custody and sent to the jail hajot on the same day.

(b) That, the appellants/applicants are poor but hardworking persons and somehow eke out a living to support their families. After passing of the aforesaid A judgment and order dated 31/05/2023 and there they do not have any immediate family member, who is conversant with procedure of the Court of law in preferring the appeal before this Hon'ble Court. As such,

the they could not contact with any counsel at Guwahati to for preferring an appeal assailing the said judgment and order dated 31/05/2023 in Sessions Case No. 195 (s-s)/ 2012, immediately within the period of limitation.

(c) That, on 01/07/2023 when a relative namely Smt. Purniama Gogoi had visited the applicants in Sivasagar Jail, they requested her to consult a counsel at Guwahati for preferring an appeal assailing the said judgment and order dated 31/05/2023.

(d) That, the said Smt. Purniama Gogoi due to her some personal difficulties and family constrains could not immediately visit any counsel at Guwahati. She had contacted and visited the present counsels for the applicants at Guwahati only on 04/07/2023. whereupon she was advised to obtain the certified copy of the judgment and order dated 31/05/2023 passed in Sessions Case No. 195 (s- s)/ 2012, Valatanama of the appellants / applicants duly attested by the Jailer of the Sivasagar Jail and other relevant documents of the said case, required for preferring the connected criminal appeal.

(e) That, the said Smt. Purniama Gogoi went back to Sivasagar and contacted a local counsel at Siavasgar and requested him to apply for the judgment and order dated DA 31/05/2023, depositions and other relevant documents of the said Sessions Case No. 195 (s-s)/ 2012. Accordingly, an application for certify copy of the said judgment and order dated 31/05/2023 and other documents was submitted in the office of the Sessions Judge, Sivasagar on 05/07/2027. Then the office of the Sessions Judge, Sivasagar notified for furnishing the stamp duty on 17/07/2023. Whereupon, stump duty was submitted on 21/07/2023 and thereafter, certified copy of the said judgment and order dated 31/05/2023, depositions other documents in Sessions Case No. 195 (s-s)/ 2012 was furnished on 28/07/2023.

(f) That, after obtaining the said certified copy of the judgment and order dated 31/05/2023 passed in Sessions Case No. 195 (s-s)/ 2012 on 28/07/2023, the said relative of the applicant Smt. Purniama Gogoi, due her financial issues and some other difficulties could not immediately come to Guwahati to hand over the same to the counsel for preparing the connected appeal. However, she visited the counsel at Guwahati on 25/11/2023 and furnished the said certified copy of the judgment and order dated 31/05/2023 and other relevant documents in connection with the said case.

(g) That, the counsel for the applicants have go through the records of Sessions Case No. 195 (s-s)/ 2012 and the took 5 days time in drafting the connected criminal appeal and requested the said Smt. Purniama Gogoi to again visit Guwahati for vatting the appeal and also to sign the affidavit DA of the instant interlocutory application.

(h) That, the said Smt. Purniama Gogoi come to Guwahati and vatted the connected criminal appeal and also signed the affidavit of the instant interlocutory application 01/12/2023.

(i) That, the connected criminal appeal was thereafter filed in the Registry of this Hon'ble Court on 01/12/2023 and as such, a delay of 111 days has been caused in preferring the connected criminal appeal".

It appears from the aforesaid averments made in the condonation application that the petitioner has shown sufficient cause for not filing the connected criminal appeal within the prescribed time.

In the interest of justice, the said delay of 111 days is condoned.

The Registry is directed to register the connected criminal appeal and place the same before this Court for admission.

I.A. stands disposed of.

JUDGE

Comparing Assistant