

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.2156 of 2018 (O&M)

Date of decision: 05.07.2018

Gurinder Kumar @ Sonu

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Challenge in this revision petition is to the order dated 05.05.2018 vide which, while deciding the appeal filed by the petitioner challenging the judgment of conviction and order of sentence dated 08.09.2016 passed by the trial Court convicting him under Section 21 of the Narcotic Drugs and Psychotropic Substances Act and imposing a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of 07 days, was dismissed without condoning the delay of 96 days in filing the appeal.

Notice of motion.

Mr. Sidakmeet Singh, AAG, Punjab who is present in the Court accepts notice on behalf of the respondent.

Counsel for the petitioner has submitted that against the impugned judgment passed by the trial Court, he has preferred an appeal before the Lower Appellate Court along with an application under Section 5 of the Limitation Act, which was duly supported by his affidavit Ex.AW1/A. It is further submitted that since the petitioner has filed the appeal challenging his conviction in a criminal case, there was no occasion for the petitioner not to file the appeal in time and delay in filing the appeal is duly explained in the application seeking condonation of delay, which was supported by his affidavit.

Counsel for the petitioner has further argued that since the judgment of conviction has put an embargo on the petitioner as he is

seeking compassionate appointment in place of his deceased father, the Lower Appellate Court has erred in not deciding the appeal on merits and dismissed the same only on the ground of limitation. It is further submitted that right to an appeal is a legal right provided to an accused person to prove his innocence before the Court of appeal and as such, the Lower Appellate Court erred in dismissing the application for seeking condonation of delay of 96 days in filing the appeal. It is further submitted that party should not be condemned on technical grounds and the appeal should be decided on merits.

Counsel for the State, on the other hand, has not raised any serious objection to the submissions made by counsel for the petitioner.

In view of the above and for the reasons stated in the criminal revision petition, I am of the opinion that the petitioner has given sufficient cause in his application supported by an affidavit Ex.AW1/A that on account of *bona fide* reasons, he could not file the appeal in time and, therefore, the Lower Appellate Court has erred in not condoning the delay of 96 days in filing the appeal.

Accordingly, the present revision petition is allowed, the impugned order dated 05.05.2018 passed by Lower Appellate Court is set-aside and the matter is remanded back to the Lower Appellate Court to decide the appeal on merits, in accordance with law.

Since, the petitioner has prayed that he has to seek appointment on compassionate ground, the Lower Appellate Court is directed to decide the appeal within a period of 02 months from the date of receipt of certified copy of this order.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

05.07.2018
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No