

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

296

CRR-2837-2019 (O&M)

DATE OF DECISION: 16.11.2019

MAKHAN SINGH

... Petitioner(s)

Versus

STATE OF PUNJAB

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Harvinder Singh Mann, Advocate for the petitioner(s).

Mr. N.K. Banka, DAG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the order dated 26.08.2019 whereby his application for condonation of delay in preferring the appeal has been dismissed.

Learned counsel for the petitioner contends that the petitioner had been convicted in another case and was in custody and, therefore, he could not file the appeal within the period of limitation. He also contends that the petitioner was under the impression that the sentence awarded by the trial Court in the instant case for a period of one year would run concurrently with the sentence in the other case. He further contends that the denial of hearing of the appeal on merits has resulted in the violation of his fundamental right under Article 21 of the Constitution of India. He has relied upon the judgments in the cases of Ashok v. State of Haryana, 2001 (1) R.C.R. (Criminal) 597 (P&H) and Bhup Singh v. Khushal Singh, 2010 (2) R.C.R. (Criminal) 778 (P&H).

He also contends that the petitioner has undergone sentence of over 7 months out of the total sentence of 1 year granted by the trial Court.

Custody certificate filed by the learned State counsel is taken on record which indicates that the petitioner has undergone sentence of 7 months and 24 days out of the total sentence of 1 year.

Heard.

The petitioner had been convicted by the trial Court on 02.03.2016. The allegations against the petitioner in the FIR are that he was found in possession of two live cartridges without any licence or permit. He was charge sheeted and at the conclusion of the trial convicted by the judgment dated 02.03.2016. It is not in dispute that on the date of conviction, the petitioner was in custody in another case under Section 302 IPC in FIR No.114 dated 27.08.2010. The petitioner could not file the appeal in time and had preferred an application for condonation of delay of 1133 days. He had not been informed by the Jail authorities of his statutory right to have preferred an appeal. It is also probable that he was under the impression that the sentence awarded in the instant case would run concurrently with the sentence which he was undergoing consequent to his previous conviction. Nevertheless, the application for condonation of delay ought to have been allowed by the appellate Court as denial of hearing on merits in an appeal preferred by the convict would be in violation of right to life and liberty guaranteed under Article 21 of the Constitution of India. The factum of the petitioner being in custody in another case which disabled him from filing an appeal in time

would constitute sufficient ground for condonation of delay in preferring the appeal within the period of limitation. It would, thus, be in the interest of justice, equity and fair play if the application of the petitioner for condonation of delay in preferring the appeal be allowed and his appeal be heard and decided on merits.

Consequently, the petition is allowed and the impugned order dated 26.08.2019, dismissing the application filed by the petitioner for condonation of delay in his appeal is set aside and the delay in preferring the appeal before the appellate Court is condoned. The appellate Court is directed to hear and decide the appeal of the petitioner on merits.

In the meantime, the sentence of the petitioner awarded by the trial Court shall remain suspended till the decision of the appeal. He shall be released on bail subject to his furnishing bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

(ANUPINDER SINGH GREWAL)
JUDGE

16.11.2019.

SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No