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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 10th July, 2023

+ CRL.L.P. 134/2023

STATE

..... Petitioner

Through: Mr. Tarang Srivastava, learned
APP for State along with Insp.
Manoj Dalal, P.S. Subhash
Place with SI Anoop Singh and
SI Kala Joshi Anti-Riot Cell.

versus

HARI LAL & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 6143/2023 (Condonation of Delay)

1. The petitioner has filed the present application under Section 5 of the Limitation Act, 1963, read with Section 482 Cr.P.C for Condonation of 27 years and 335 days delay in filing the present appeal with the following prayer :

“(a) Condone the delay of 27 years and 335 in filing of the present Appeal;

(b) Pass such other order/s as may be deemed fit and proper in the facts and circumstances of the case.”

2. FIR No.457/1991 was registered under Section 147/148/149/307/436/427 IPC at P.S. Saraswati Vihar (relating to the

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incidents of rioting, looting and killing of Sikhs throughout the State of NCT Delhi which took place between 31.10.1984 and 03.11.1984). The charges were framed and after the trial the accused were acquitted by the learned ASJ vide judgment dated 28.03.1995.

3. A Writ Petition Criminal bearing No.9/2016 with the case titled *S. Gurlad Singh Kahlon vs. Union of India & Ors.* was filed in which the Supreme Court vide Order dated 11.01.2018 directed the SIT to be constituted. Eventually vide Order dated 04.12.2018 of the Apex Court, SIT was directed to constitute of Justice S.N. Dhingra former Judge of Delhi High Court and Sh. Abhishek Dular, IPS.

4. The Two Member Commission submitted its Report dated 15.04.2019 in which a recommendation was made that the appeal may be filed against the Order of acquittal dated 28.03.1995 in FIR No.457/1991. Due to Covid-19 Pandemic the appeal could not be finalized as the file had to pass various channels, which resulted in further delay. Hence, the present Leave to Appeal has been filed along with the application for Condonation of Delay of 27 years and 335 days.

5. It is not in dispute that the accused were acquitted as the witnesses produced during the evidence by the prosecution were not found believable. If the prosecution or the complainant were aggrieved by the judgment of acquittal, there was nothing which prevented them from filing the appeal. The reason now been given for filing the appeal is the opinion given by SIT in its Report, that the Trial Court could not have taken a view of weakness of the case merely due to delay in recording of FIR or delay in recording the statements of the witnesses. The delay in recording of FIR was obvious as the State was not interested in recording the FIRs. During the riots more



than 3000 Sikhs were killed and only few cases were registered in respect of these gruesome murders, large scale burning and looting. The witnesses had deposed that their complaints were not being recorded by the police. Hence, an appeal may be preferred against acquittal in FIR No.457/1991.

6. It was not disputed on behalf of the State that no further investigations have been carried out by the Investigating Agencies and no fresh material in respect of the alleged offences has been placed on record. There is no explanation as to why the State or the complainant did not file the appeal on the grounds that were available even at the time of acquittal. The reason now been given is the findings by the SIT, but the SIT has also observed that the reason for disbelieving the witnesses on account of the delay of FIR was not correct. It is evident that the grounds of appeal which are now been agitated are purely on the merits of the case which existed even at the time of trial and consequent acquittal.

7. No reason whatsoever has been given for explaining the delay of about 28 years. Pertinently, the Report was given by SIT on 15.04.2019 but even thereafter there is a delay of about four years for which no cogent explanation has been given. This Court has recently dismissed three Criminal Leave Appeals bearing Nos. CrI.L.P.322/2023, CrI.L.P.323/2023 and CrI. L.P.325/2023, where the delay was less than 1000 days.

8. In the present case, the delay is 27 years and 335 days and there is no explanation for this inordinate delay. Moreover, the grounds taken by the State are not justifiable. Therefore, we find no merit in the present application, and the same is hereby dismissed.

**CRL.L.P. 134/2023 & CRL.M.A. 6175/2023**

8. In view of the order passed in CRL.M.A. 6143/2023, the present leave petition along with pending application is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 10, 2023
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