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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 09th August, 2023

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CRL.L.P. 137/2023

THE STATE

..... Petitioner

Through: Mr. Tarang Srivastava learned APP for
State.

versus

MAIKALE RAM & 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. 6197/2023 (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 274 days delay in filing the present appeal with the following prayer :

“(a) Condone the delay of 274 days 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.501/1992 was registered under Section 147/143/149/302/201/323 IPC at P.S. Nangloi (relating to the 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 29.04.1995.

3. A Writ Petition Criminal bearing No.9/2016 with the case title 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, under the Chairmanship of Justice S.N. Dhingra, former Judge of Delhi High Court.

4. The SIT submitted its Report in which a recommendation was made that the appeal may be filed against the Order of acquittal dated 29.04.1995 in FIR No.501/1992. Due to Covid-19 Pandemic the Appeal could not be finalized as the file had to pass through 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 274 days.

5. Indisputably the accused were acquitted as the witnesses produced during the evidence by the prosecution were not found believable vide judgment dated 29.04.1995. 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 prosecution 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.501/1992.

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 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. Though delay is claimed to be of about 274 days, but in fact the delay is of more than 27 years for which there is no explanation worth a say. Pertinently, the Report was given by SIT on 15.04.2019 but even thereafter it is claimed that there is a delay of about 274 days. The claim of delay of 274 days is also erroneous since the judgment of acquittal was penned in 1995 as already mentioned above. The delay of 274 days is alleged from the date of Report of SIT in 2019, but even thereafter the Leave Petition has been filed after almost four years. There is no explanation whatsoever to explain the delay after the Report of SIT, even if for the sake of argument it is accepted that new grounds for filing the Leave had emerged. The only explanation given for filing the present Leave in 2023 i.e. after four years that it took some time for the office to finalize the Leave which again reflects the non-seriousness and the reluctance of the prosecution to file the appeal. It has been erroneously claimed that the delay was of 274 days, when in fact the delay is of more than 27 years for which there is absolutely no explanation. This Court has recently dismissed three Criminal Leave



Appeals bearing Nos. Crl.L.P.322/2023, Crl.L.P.323/2023 and Crl.L.P.325/2023, where the delay was less than 1000 days.

8. In the present case, Rip Van Winklian Slumber has extended to more than 27 years and there is no explanation for this inordinate delay and the grounds taken by the State are not justifiable. Therefore, we find no merit in the present application, and the same is hereby dismissed.

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9. In view of the order passed in CRL.M.A. 6197/2023, the present leave petition along with pending application, if any, is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 09, 2023/va