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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 275/2024 & CRL.M.A. 16098/2024**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Luthra & Ms. Divya Yadav,
Advs.
Inspector Vineet Kumar, PS Seema
Puri.

versus

OM PRAKASH & ORS.

.....Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **21.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 378(3) of the CrPC has been filed by the State seeking leave to challenge the impugned judgment dated 26th April, 1995 passed by the ASJ, New Delhi, whereby the Respondent/accused were acquitted in Sessions case No. 46/34, arising out of FIR No. 511/1984, under Sections 147/148/302/436 read with Section 149 of the IPC, registered at PS Seema Puri which was lodged in respect of the 1984 riots. The names of the Respondent/accused persons in this case are as under:

Case No.	Accused
<i>CRL.L.P. 275/2024</i>	1. Om Parkash 2. Ms. Pushpa 3. Ms. Madhu 4. Mr. Nand Kishore@ Pappu

3. This case arises out of the 1984 riots. As per the prosecution State,



filing of this petition has been delayed primarily due to the Justice S.N. Dhingra's Committee which was constituted on 14th December, 2018 and submitted the report on 15th April, 2019. It is after the above stated report was submitted that the internal reviews were conducted and the matters were processed for filing of this leave petition. In effect, condonation of delay is sought for 10593 days.

4. Mr. Ritesh Kumar Bahri, Id. APP for the State submits that the delay in filing the present petition has occurred because only after this Committee, in its report, had recommended filing of this petition, the present petition was filed.

5. On merits, he further submits that the Trial Court has given the benefit of doubt to the accused primarily on the following grounds:

- (i) Delay in lodging of the FIR
- (ii) Identification of the accused
- (iii) That there were contradictions and improvements in the testimony of the witnesses
- (iv) No Test Identification Parade was conducted
- (v) No Public Witness
- (vi) No site plan was prepared in presence of the eye witnesses
- (vii) No recovery of any incriminating articles

6. This Court has perused the matter. It is noticed that similar leave petitions in relation to 1984 riots were filed by the State with substantial delay. The said petitions include ***CRL.L.P.322/2023***, ***CRL.L.P.323/2023***, ***CRL.L.P.325/2023***, ***CRL.L.P.137/2023*** as also ***CRL.L.P.134/2023***.

7. In ***CRL.L.P.134/2023*** titled ***State v. Hari Lal & Ors.***, on 10th July, 2023, a Coordinate Bench of this Court had observed as under:



“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. 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, 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.”*

8. Ld. APP-Mr. Bahri has handed over two orders in **SLP (Criminal) Diary No. 30396/2024, SLP (Criminal) No. 6549/2024** (previously SLP (Criminal) Diary No. 16368/2024) which were Special Leave Petitions (‘SLP’) challenging impugned judgement passed by the Coordinate Bench of this Court dismissing appeals of cases arising from 1984 riots for same reason of delay. The said SLPs have been dismissed. In the present case also the delay is 10165 days The said SLPs have been dismissed. In the present case also the delay is 10593 days

9. In the present case, the delay would be more than 29 years. While this Court is conscious of the large-scale loss of human lives and property during the 1984 riots, considering the long delay, the delay is not liable to be condoned and leave is not liable to be granted.



10. The present petition along with pending applications is, accordingly, dismissed.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 21, 2024

dj/Am