

GAHC010062952024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/297/2024

SIRAJ PAYENG @ CHIRAJ
S/O LATE SHYAMANTA PAYENG,
VILL.- RAMPUR MISSING GAON, P.S.- TEOK, DIST.- JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:KUHESWAR PAYENG
S/O LATE SHYAMANTA PAYENG
VILL.- RAMPUR BHOKATGAON
P.S.- TEOK
DIST.- JORHAT
ASSAM

Advocate for the Petitioner : MR. U CHOUDHURY (LEGAL AID COUNSEL),

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05.01.2026

Heard Mr. U. Choudhury, learned Legal Aid Counsel for the applicant-appellant and Mr. M.P. Goswami, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. Though steps were taken for service of notice upon the opposite party-respondent no. 2/informant, both Mr. Choudhury and Mr. Goswami have conjointly submitted since the conviction of the applicant is under Section 304, Part-II, IPC service of notice upon the informant is not mandatory and the service of notice upon such informant can be waived. This Court is in agreement with such submission of the learned counsel for the parties.
3. The instant application under Section 5 of the Limitation Act, 1963 is preferred by the applicant seeking condonation of delay 1810 days, which period of delay had occurred in filing of the accompanying criminal appeal under Section 374[2] of the Code of Criminal Procedure [CrPC], 1973, which is yet to be registered.
4. The accompanying criminal appeal is preferred against a Judgment dated 02.02.2019 and an Order on sentence dated 06.02.2019 passed by the Court of learned Additional Sessions Judge, FTC, Jorhat [‘the Trial Court’, for short] in Sessions Case no. 74/2018. In Sessions Case no. 74/2018, the applicant was arraigned as the sole accused to stand in the trial for a charge under Section 302, Indian Penal Code [IPC]. After conclusion of the trial, the Trial Court had convicted the applicant-accused, for the offence under Section 304, Part-II, IPC and the applicant has been sentenced to undergo rigorous imprisonment for 10 [ten] years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 5 [five] months.
5. The period of detention already undergone has been directed to be set off.
6. Mr. Choudhury, learned Legal Aid Counsel appearing for the applicant has submitted that since 04.02.2019, the applicant has been undergoing the sentence. Mr. Choudhury has further submitted that during the period of investigation also the petitioner was in custody. He has further pointed out that the petitioner has spent about 6 [six] years, out of his 10 [ten] years period sentence, in incarceration as on date.
7. I have gone through the statements and averments made in the instant interlocutory application, more particularly, Sections 4 & 5 thereof.

8. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374, CrPC. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. It has been observed in **Rajendra vs. State of Rajasthan, [1982] 3 SCC 382**, that where the appellant furnishes reasons for delay in filing an appeal, the court would not dismiss the appeal as time-barred without examining the reasons for the delay.

9. It is evident that the applicant has already spent about 6 [six] years in custody out of the sentence of 10 [ten] years imprisonment.

10. Section 5 of the Limitation Act, 1963 is engrafted in order to enable the court to do substantial justice to the parties by disposing of matters including the criminal appeals, on merit. The expression 'sufficient cause' is interpreted as an elastic concept to enable the court to apply the law in a meaningful manner with the ultimate objective to sub-serve the ends of justice. When the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

11. From the reasons assigned on behalf of the applicant about the period of delay, it cannot be presumed that the delay has been occasioned deliberately and it is also clear that a convict like the applicant, does not stand to gain any benefit by resorting to delay. If the refusal to condone the delay itself results in miscarriage of justice, it could also be a ground to condone the delay.

12. In view of the above fact situation obtaining in the case, this Court finds that the accompanying criminal appeal deserves consideration of merits to sub-serve the ends of justice. Accordingly, the instant application seeking condonation of delay of 1810 days in preferring the accompanying criminal appeal stands allowed.

13. The Office to register the accompanying criminal appeal and thereafter, list the same

for admission.

JUDGE

Comparing Assistant