

GAHC010080472024



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

Case No. : Crl.Pet./466/2024

TOSHESWAR KALITA
S/O LATE NAGEN KALITA
R/O VILL- MORONGIAL GAON
P.O. MORONGIAL, MOUZA- SINGIA
POTONI, P.S. NAGAON SADAR, NAGAON, DIST.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SHRI JITENDRA SAIKIA
S/O LATE BHOLARAM SAIKIA
R/O VILL- BHOTAO GAON
MOUZA- NIZ SAHAR

P.S. NAGAON SADAR

P.O. NAGAON
DIST. NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR S KHOUND, MR. J PAULO

Advocate for the Respondent : PP, ASSAM, MR. SURAJIT DAS, Amicus Curiae for R-2

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

ORDER

18.03.2026

Heard Mr. S. Khound, learned counsel for the petitioner. Also heard Mr. S. Das, learned Amicus Curiae for the respondent.

The grievance in this petition is that the learned Trial Court, while allowing the petitioner to withdraw his earlier complaint which was filed before time given for filing of such petition, there was no observation that the delay in filing a fresh petition would stand condoned.

The learned counsel for the petitioner has referred to the judgment of the Apex Court in ***Gajanand Burange vs Laxmi Chand Goyal***, reported in ***(2022) SCC OnLine SC 1711***. The Court had expressed that in such a situation, the delay in filing the fresh complaint requires to be condoned, subject to the conditions mentioned in the order itself.

The learned counsel for the respondent has submitted that the petitioner did not file any fresh complaint and therefore no occasion arose before the Trial Court to consider the condonation of delay in filing a fresh petition.

In view of the submissions made and the orders passed by the Apex Court, this Court is of the considered opinion that it is only when the petitioner would approach the learned Trial Court to file a fresh complaint that the Trial Court would have the occasion to consider the issue of condoning the delay, if any.

Accordingly, this petition is closed by allowing the petitioner the liberty to approach the Trial Court by filing a fresh complaint and in case there is any delay, the same shall be considered by the learned Trial Court on a prayer made by the complainant in accordance with the law laid down by the Apex Court in ***Gajanand Burange (supra)*** and also keeping in view the fact that the petitioner had approached this Court by filing this criminal petition.

With the aforesaid observations, this criminal petition is closed.

JUDGE

Comparing Assistant