

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

207

**CRA-S-1767-2023 (O&M)
Decided on : October 06, 2023**

SUNIL

..... Appellant

Versus

STATE OF HARYANA

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Shivansh Malik, Advocate
for the Appellant.

Mr. Rajbir Singh, DAG, Haryana.

NAMIT KUMAR, J. (Oral)

CRM-26768-2023

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 75 days in filing the present appeal.

Notice in the application was issued on 25.08.2023 but the State has chosen to not file any reply thereto. For the reasons recorded in the application, the same is allowed and delay of 75 days in filing the present appeal is condoned.

Disposed of.

Main case

1. By way of filing the present appeal, the appellant has made a challenge to the order dated 06.12.2022 passed by learned Addl. Sessions Judge, Rohtak, vide which application filed by the appellant seeking regular bail in case bearing FIR No.382 dated 10.09.2022, registered at Police Station IMT, Rohtak, under Sections 304, 284, 506 and 34 IPC, Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Sections 7 and

9 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 has been dismissed.

2. Learned counsel for the appellant contends that the appellant was a Site Incharge of some other site, though present at the time of incident. He further submits that he had no role to play in the present occurrence; that as per the prosecution version, Devender (son of the complainant) and Rupak, who were working as gardener and helper, respectively, in the Water Treatment Plant, IMT, Rohtak, were forced to get down in the septic tank/well having poisonous gas, without any safety measures, resulting into their death. It is further submitted that Sanjay Jain, one of the Directors of Enviro Infra Engineers Pvt. Ltd., against whom also the FIR was registered, has been found innocent during investigation for the reasons best known to the investigating agency. It is further submitted that the co-accused namely Himanshu Sharma has already been granted regular bail by a Co-ordinate Bench of this court vide order dated 07.08.2023 passed in CRA-S-520-2023 and the appellant has been in custody since 28.09.2022; that *challan* stands presented and that out of 38 prosecution witnesses, none has been examined so far.

3. On the other hand, learned State counsel while opposing the grant of bail to the appellant has filed reply by way of affidavit dated 04.10.2023 of Mr. Virender Singh, HPS, Deputy Superintendent of Police, C.A.W., Rohtak and submits that the appellant and co-accused forced Devender and Rupak to get down in the well without any appropriate safety measures, but they lost the grip on the rope and fell down in the well and ultimately had passed away due to inhaling poisonous gas. It is further submitted that the appellant and the co-accused are responsible for the aforesaid heinous crime and that material prosecution witnesses are yet to be examined.

4. I have heard learned counsel for the parties and perused the record.
5. The appellant was working as Site Incharge and was present there only at the time of incident. The co-accused namely Himanshu Sharma has already been granted regular bail by a Co-ordinate Bench of this court vide order dated 07.08.2023 passed in CRA-S-520-2023; the appellant has been in custody since 28.09.2022; Sanjay Jain, one of the Directors of the Company, against whom also the FIR was registered, has been found innocent during investigation; Challan has been presented; none of the prosecution witnesses has been examined so far; trial is unlikely to conclude any time soon; therefore, no useful purpose would be served by keeping the appellant behind the bars.
6. In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the present appeal is allowed; the impugned order dated 06.12.2022 is set aside and the appellant is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.
7. The appeal stands disposed off accordingly.

October 06, 2023

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*