

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-35306-2023 in/and
CRA-S-2308-2023 (O&M)
Date of Decision:-03.11.2023

Mohd. Asif Alam

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Abhimanyu Singh, Advocate, for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana.

GURVINDER SINGH GILL, J.(Oral)

CRM-35306-2023

The instant application has been filed seeking condonation of delay of 427 days in filing the accompanying appeal.

Having regard to the reasons mentioned in the application and the fact that the matter pertains to detention of the applicant/appellant for a long time and that witnesses are stated to have resiled, the application is allowed and the delay of 427 days in filing the appeal is hereby condoned.

CRA-S-2308-2023

1. The present appeal is filed on behalf of the appellant challenging order dated 22.03.2022 passed by the learned Additional Sessions Judge, Gurugram, whereby application filed by the appellant under Section 439 Cr.P.C. seeking grant of regular bail in case FIR No.746 dated 26.11.2021 registered at Police

Station Sector-10, Gurugram, under Sections 342, 302, 201, 34 IPC and Section 3(2)(v) of the SC & ST Act has been dismissed.

2. The FIR in question was lodged at the instance of Nand Kishore, wherein he stated that on 26.11.2021, he was informed by one Kailash Singh of his village that complainant's elder brother was lying in an injured condition in parking area known as Sonu Parking. Upon receiving said information, the complainant alongwith Bholu Kumar reached at Sonu Parking where they found the dead body of complainant's brother having multiple injuries. Upon making enquiries, the complainant came to know that Krishna Sharma, Manager of the Parking alongwith 2 truck drivers had killed his brother.
3. Learned counsel for the appellant submits that it is a case where the complainant had never witnessed the occurrence and his version was mainly based on that what had been told to him by one Kailash Singh. It has further been submitted that during the proceedings of trial, complainant - Nand Kishore as well as said Kailash Singh have been examined, who both have turned hostile and did not support the case of the prosecution at all. It is further submitted that name of the appellant has been nominated on the basis of disclosure statement made by co-accused Krishna Sharma who has already been granted the concession of bail by this Court vide order dated 11.8.2023.
4. Opposing the bail, the learned State counsel has submitted that since the appellant is specifically named in the FIR and that there is evidence in the shape of CCTV footage as well which the prosecution shall be placing on record shortly before the trial Court, the complicity of the appellant is clearly evident. Learned State counsel has, however, informed that the appellant as on date has been behind bars since the last about 1 year & 11 months and that he is not involved in any other case.

5. This Court has considered rival submissions.
6. It is not in dispute that neither the complainant nor Kailash Singh have seen the occurrence. In any case, both of them have already resiled and have not supported the case of the prosecution. The appellant has been behind bars for a substantial period of 1 year & 11 month and otherwise enjoys a clean record. Co-accused Krishan Sharma has already been granted bail by this Court. In these circumstances, further detention of the appellant will not serve any useful purpose as the conclusion of trial will take some time. The appeal, as such, is accepted and the appellant is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

03.11.2023
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No