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2024:PHHC:034517

**CRM-9048-2024 and
CRM-9020-2024 in/and
CRA-S-795-2024
Date of decision : 11.03.2024**

....Applicant/appellant

....Respondents

Mr. R.K. Ambavta, AAG, Haryana with ASI Satish.

CRM-9020-2024

Consequently, the present application is allowed. The delay of 18 days in filing the instant appeal is hereby condoned.

CRM-9048-2024

Allowed as prayed for.

CRA-S-795-2024

Challenge is to the order dated 7th of November, 2023 passed by the ASJ, Sonapat whereby the application filed by the appellant seeking regular bail in case FIR No.40, dated 22.01.2023 registered for the offences punishable under Sections 302, 506, 452, 324 and 34 of IPC (Section 452 IPC deleted later on) and Section 25 of Arms Act and Section 3(2)(v) of SC/ST Act (added later on) at Police Station City Gohana, District Sonipat, stands dismissed.

2. FIR was registered on the statement of one Raj Kumar son of Ram Niwas alleging as under:

“xxx it is requested that I Raj Kumar son of Ram Niwas resident of ward no 10 Arya Nagar Gohana stay along with my Father Ram Niwas and Virender son of Gaj Singh stay together at Araya Nagar. Today at about 1:30 AM some unknown boys got into our house and told that get out of the house, we are going to set your house on fire, being scared I made noises hearing which my family members came and they attacked by father with knives and also Virender who is the son of my Tayaji. Virender died during treatment because of the injuries suffered during the fight. I have suspicion on Ashok son of Partap, Sonu son of Pratap, Rohtash son of Kartar, Mukesh son of Diwan, Krishan son of Ram Mehar all residents of Arya Nagar and Ramesh @ Rama and his son Ronaq residents of Sorkhi. Legal proceedings be initiated against them.
S/d Rajkumar.

3. As per the prosecution, Ram Niwas during the course of investigation suffered a statement on 22nd of January, 2023 wherein he

named Rohit as one of the culprits. The said Rohit further suffered disclosure wherein he named the present appellant along with other co-accused on 24th of January, 2023. Counsel for the appellant has referred to the statement made by Ram Niwas the injured who appeared as PW1 before the Trial Court and his testimony has been placed on record as Annexure A-4. Counsel submits that Ram Niwas an injured witness has not supported the case of the prosecution and was declared hostile witness. Likewise, complainant Raj Kumar appeared as PW2 and his testimony has been placed on record as Annexure A-5. Referring thereto, counsel for the appellant submits that from bare perusal thereof, it is evident that Raj Kumar admitted that he is not an eye-witness to the occurrence and that he never moved any complaint apart from Ex.P2 against Ashok, Sonu, Mukesh and Krishan. Counsel further submits that even if the statement suffered by Ram Niwas during the course of investigation is taken on its face value, the same does not implicate the present appellant but implicates Rohit only.

4. On being asked specifically w.r.t. the incriminating evidence against the appellant, State Counsel has very fairly admitted that apart from disclosures made by co-accused that too while in police custody, there is nothing incriminating against the appellant and further submits that no recovery has been made from the appellant apart from a Polo car which was used for transportation.

5. Faced with the situation counsel for the appellant submits that there is no such allegation in the FIR.

6. Appellant is behind bars for more than 1 year, 1 month and 15 days. Not only the challan stands presented but material witnesses also stand examined. They have not supported the case of the prosecution.
7. In view of the above, without commenting on the merits of the case, keeping in view the incarceration suffered by the appellant and the nature of allegation against him, the present appeal is allowed. The appellant is ordered to be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 11, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No