

02.08.2019

Present: Sh. P.K. Samadhiya, APP for the State.

Accused no.1, 2 and 3 produced from JC.

Accused no.3 on bail, is present.

Sh. Rajesh Juneja, counsel for the accused no.1,3 and 4.

Sh. Gajraj Singh, counsel for the accused no.2.

Counsel for the accused Mithun submits that according to the charge sheet, the only incriminating evidence against the said accused is that he had been using the mobile phone no.9667905090 on the date of incident and its location at the relevant time was near the scene of crime. It is not the case of the prosecution that there had been any conversation of the accused Mithun from the said mobile phone with other accused. Hence, he pleaded that even if it is taken as a truth, even then, the prosecution has only raised the suspicion against the said accused which is not the grave suspicion, hence, the said accused may be discharged. To substantiate his arguments he relied upon the judgment titled passed by Hon'ble Delhi High Court in "**SALONI ARORA VS. STATE**" *Criminal Revision Petition no.497/08*.

On the contrary, APP for the State submits that sufficient material is available on record to proceed against the accused Mithun.

In response to a query, APP for the State, on instruction of IO, submits that there is no incriminating evidence against the accused Mithun except his mobile phone location which was near the scene of crime at the relevant time. Further, there was no communication between the said accused and other co-accused through the said mobile phone number.

In view of the foregoing discussions and the judgment relied upon by the counsel for the accused Mithun, it can be held that only incriminating evidence against the accused Mithun is that he had been using the mobile

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phone no.9667905090 on the date of incident whose location at the relevant time was near the scene of crime. It is not the case of the prosecution that there had been any conversation of the accused Mithun from the said mobile phone with other accused. Hence, I am of the opinion that there is no sufficient material available on record to proceed against the accused Mithun. Accordingly, the accused Mithun is discharged.

Counsel for the accused no.1,3 and 4 submits that the accused has been falsely implicated in the present case and there is no sufficient material on record to charge the accused for the alleged offence. Hence, the accused no.1,3 and 4 may be discharged.

Addl. PP submits that there are sufficient material available on record to frame the charge against the accused no.1,3 and 4.

On perusal of the record including the documents and the statements of witnesses, a prima facie charge **u/s 392/34 IPC, 302/34 IPC** is settled against the accused Sonu and Sagar @ Rahul, a prima facie charge **u/s 397 IPC** is settled against the accused Sonu and a prima facie charge **u/s 212 IPC** is settled against the accused Uma to which the accused plead not guilty and claim trial.

Since the accused Mithun is discharged, hence, the bail application moved by the accused Mithun is dismissed as become infructuous.

Accordingly, the accused Mithun be released immediately from Jail, if not required in any other case.

Put up for PE on **09.10.2019**. LW's no.2,6,7,9,10,13,15,18,19,20 and 21 be summoned for next date of hearing. IO is directed to file the affidavit of evidence of LW no. 2,10,15, and 21 and supply the advance copy of the same to the counsels for the accused 3 days prior to the next date of hearing.

(Pankaj Gupta)
ASJ(FTC): N-W: Rohini:
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