

State Vs. Saad Mirza & Anr.

CNR No.: DLCT01-013471-2023

SC No.: 525/2023

FIR No.: 579/2023

P.S.: Kotwali

17.11.2023

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Rashid Hashmi, Ld. Counsel for both the
accused persons.
Both the accused persons, namely, Saad Mirza @
Fardin and Wahaj Mirza @ Fari are produced from
judicial custody.
IO SI Satish Kumar in person.

ORDER ON CHARGE

1. By means of the present order, this Court would decide whether the accused persons, namely, Saad Mirza @ Fardin and Wahaj Mirza @ Fari (hereinafter referred to as the '*accused persons*') are to be charged for the offence(s) alleged against them in the charge sheet or for any other offence or the accused persons are to be discharged.

2. Succinctly, the case of the prosecution is that on 17.07.2023 at around 04:45 p.m., the complainant, namely, Varun Walia had gone to Abdul Hannan Tools Store at Meena Bazar to receive the payment from the said shop's owner, Abdul Rehan for his employer at Vaibhav Overseas Company. At around 05:15 p.m., when the complainant reached at Esplanade Road, Chandni Chowk, Delhi, with a blue color bag containing the payment/sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only), received from Abdul Rehan, the complainant was waylaid by the accused persons, namely, Saad Mirza @ Fardin, Wahaj Mirza @ Fari and CCL 'K', who, while acting in concert and common intention with each other, snatched the said blue color bag containing a

payment/sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) from the complainant. Pertinently, as per the complainant, the accused Saad Mirza @ Fardin is stated to have used a deadly weapon, i.e., pistol at the time of commission of the said incident. Notably, on the basis of the complaint of the complainant and the ensuing investigation, the present proceedings were initiated. Further, during the course of investigation a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) was recovered from Saad Mirza @ Fardin; Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) from accused, namely, Wahaj Mirza @ Fari; and Rs. 2,00,000/- (Rupees Two Lakhs only) from accused, CCL 'K'.

3. Ld. Addl. PP for the State submitted that the facts and circumstances specified under the charge sheet, including the documents placed on record, are sufficient to demonstrate a *prima facie* case against the accused persons. At the same time, it was submitted by the Ld. Addl. PP for the State that reasonable grounds exist to proceed with the framing of charge(s) against the accused persons, as specified under the chargesheet.

4. *Per contra*, Ld. Counsel for the accused persons submitted that no case/charge against the accused persons is even *prima facie* established in the absence of recovery of weapon allegedly used in the incident or in the absence of any injury on the body of the accused. Ld. Counsel further submitted that there are material improvements in the initial complainant and the subsequent statement(s) made by the complainant, belying the case of the prosecution. At the same time, it was submitted by the Ld. Counsel that there is material infirmity in the investigation.

5. The arguments of learned counsel for the accused persons and that of learned Addl. PP for the State, heard as well as record(s), been thoroughly perused.

6. Before proceeding further, this Court deems it appropriate to iterate the settled principles of law¹; at the stage of framing charges neither the truth, veracity or the effect of the evidence which the prosecution seeks to adduce can be meticulously judged, nor can any weight be attached to the probable defence of the accused². On the contrary, at the stage of framing of charges, only the sufficiency of ground for proceeding against the accused, on a general consideration of materials placed before the Court by the investigating police officer is relevant³. Further, though, sifting of evidence is permissible⁴ at such a stage for limited purpose to find out a *prima facie* case, however, scanning of evidence in detail is not permissible. Clearly⁵, at the time of framing of charge the court is not required to make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial. Concomitantly, it is trite law⁶ that the inconsistency in the material produced by the prosecution cannot be looked into for discharge of an accused, in the absence of full-fledged trial. Needless to further emphasize⁷ that at the stage of charge-framing, court is not even required to record detailed reasons as to why charge is framed, rather⁸, a very

1 *State of Bihar v. Ramesh Singh*, AIR 1977 SC 2018 and *Manjit Singh Viridi v. Hussain Mohammed Shattaf*, (2023) 7 SCC 633

2 *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 SCC OnLine SC 1294

3 *State Anti-Corruption Bureau, Hyderabad & Anr. v. P. Suryaprakasam*, (1999) SCC (Crl.) 373 and *State of Orissa v. Debendra Nath Padhi*, 2005 (1) SCC 568

4 *State of Maharashtra v. Priya Sharan Maharaj & Ors.*, (1997) 4 SCC 393

5 *Mohsin Khan v. State (NCT of Delhi)*, 2017 SCC OnLine Del 9315

6 *Sheoraj Singh Ahlawat v. State of U.P.*, (2013) 11 SCC 476

7 *Bhawna Bai v. Dhanshyam & Ors.*, (2020) 2 SCC 217

8 *Supdt. and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja*, AIR 1980 SC 52 and *Sajjan Kumar v. CBI*, (2010) 9 SCC 368

strong suspicion founded upon materials placed before the Court, which leads the Court to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged, may justify the framing of charges.

7. Therefore, wary of the aforesaid principles, in light of the arguments addressed by the Ld. Counsel for accused persons as well as that by Ld. Addl. PP for the State, this Court, outrightly observes that from the facts and circumstances of the case, material/documents placed on record, including the statements of witnesses, seizure/recovery memo(s) and TIP record(s), *prima facie* case under Sections 392/34 IPC, 397 IPC and 411 IPC stands established against the accused person, namely, Saad Mirza @ Fardin and *prima facie* case under Sections 392/34 IPC and 411 IPC stands established against accused, namely, Wajah Mirza @ Fari. Further, from the perusal of case record, it is revealed that there is strong suspicion and sufficient material/ground(s) to proceed against the said accused persons, besides there are witness(es) who can depose against them. In so far, as the contentions of the Ld. Counsel for the accused persons regarding the absence of any injury on the body of the victim, or that pertaining to non-recovery of the weapons allegedly used in offence to repel the charges under Section 397 IPC are concerned, the same do not find favour with this court in view of the settled judicial precedents⁹. Simultaneously, regarding the averment of the Ld. Counsel for the accused persons pertaining to the alleged infirmity in investigation, this

⁹ *State v. Hassan Ahmed*, Crl. Rev. Pet. No. 108/2021, dated 08.11.2021 (Hon'ble High Court of Delhi); *Murlidhar v. State*, 2018 SCC Online Del. 9401; and *Dilawar Singh v. State of Delhi*, (2007) 12 SCC 641

Court unambiguously observes that it is a settled law¹⁰ that mere defect in investigation cannot be a ground for discharge.

8. Accordingly, in view of the foregoing, charge(s) under **Sections 392/34 IPC, 397 IPC and 411 IPC** are framed against accused person, namely, Saad Mirza @ Fardin, to which he has pleaded not guilty and claimed trial. Further, charge(s) under **Sections 392/34 IPC and 411 IPC** are framed against accused person, namely, Wajah Mirza @ Fari, to which he has pleaded not guilty and claimed trial.

9. List for P.E. along with arguments on pending bail application of the applicant/accused, namely, Wahaj Mirza @ Fari on **18.12.2023**.

10. **Issue summons against PW Sh. Varun Walia along with the concerned IO** for the next date of hearing.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
17.11.2023

¹⁰ *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors.*, (2014) 11 SCC 709