

State Vs. Raj Kumar @ Bhola & Ors.

CNR No.: DLCT01-013816-2022

SC No.: 644/2022

FIR No.: 208/2022

Under Sections: 174A/302/307/120B/34 IPC & 25/27 Arms Act

PS.: I.P. Estate

04.04.2024

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Ms. Khushboo, Ld. Proxy counsel for Mr. Abhinav Sharma, Ld. Counsel for the accused namely, Sabir. (*through video conferencing*).
Mr. Manish Kumar, Ld. Proxy counsel for accused Sabir.
Mr. Shyam Babu and Mr. Antesh Kumar Mishra, Ld. Counsel for the accused, namely, Samreen.
Mr. Raj, Ld. Proxy counsel for Mr. Ayub Ahmed Qureshi, Ld. Counsel for the accused, namely, Salman.
Sh. Praveen Dabas, Ld. Proxy counsel for Mr. Jwala Singh, Ld. Counsel for the accused, namely, Mustkeen.
All the accused persons have been produced from judicial custody.

ORDER ON CHARGE

1. By means of the present order, this Court would decide whether the accused persons, namely, Salman and Sabir (hereinafter referred to as the '*accused persons*') are to be charged for the offence(s) alleged against them in the chargesheet or for any other offence or the accused persons are to be discharged. Pertinent to note at the outset that charges against co-accused persons namely, Raj Kumar @ Bhola, Samreen and Mustkeen have already been framed pursuant to the order dated 27.04.2023, passed by the Ld. Predecessor Judge.

2. Succinctly, the case of the prosecution is that on 12.06.2022, the accused persons, namely, Raj Kumar @ Bhola, Mustkeen, Sabir, Salman along with two other unidentified co-

accused persons reached near the house of the complainant, Mohd. Idreesh. At around 10:15 p.m., on the said night, accused Raj Kumar @ Bhola called out to the complainant's son, Farman/the deceased to come out of the house and as soon as Farman came out of the house, accused, Raj Kumar @ Bhola pulled him out in the *gali* by pulling the deceased's hair. Thereafter, accused, Raj Kumar @ Bhola started beating the deceased as well as inflicted several stab wounds on Farman, using a knife. When the complainant tried to intervene, as per the complainant, the accused, Raj Kumar @ Bhola exhorted at co-accused Mustkeen @ Mota by uttering, "*jaldi aaja Farman v iska baap bachne nahi chaiye.*" Thereupon, Mustkeen responded to accused, Raj Kumar @ Bhola, "*tu Idreesh ka bhi kaam tamam kar de, tab tak main zakhmi Farman ko nibta deta hun.*" Further, as per the complainant, Farman fell down consequent to his injuries, however, Mustkeen continued beat the deceased. Concomitantly, accused, Raj Kumar @ Bhola attempted to kill the complainant by declaring, "*Farman ka toh gala kaat diya, ab tera bhi kaat deta hun.*" Pertinently, in the said process, the complainant sustained a cut injury on the left side of his face. The complainant closed the door of his house in an attempt to save himself and subsequently, when he came out of his house, he saw that Farman was lying there, covered/drenched in blood. Thereupon, the complainant and deceased being rushed to LNJP Hospital, Farman was declared brought dead and the complainant was noted to sustain injury on the left side of his face. Pertinently, upon the complainant's complaint, present FIR was registered, and investigation ensued. Consequently thereto, the cause of deceased's death was determined to be hemorrhagic

shock consequent upon multiple stab injuries involving the neck, chest and left forearm, opined to be sufficient to cause death in the ordinary course of nature. Further, it was revealed from the statements of the other eyewitnesses, i.e., Sonu, Reshma and Ms. Shama that at the time of the aforesaid incident, 3-4 associates of accused, Raj Kumar @ Bhola and Mustkeen had blocked the road as well as assisted/aided the said accused in the commission of the offence. Further, co-accused, Samreen was determined to have aided and abetted the commission of the aforesaid incident/offence. Further, as per the prosecution, all the accused, namely, Raj Kumar @ Bhola, Mustkeen, Salman, Sabir and two other unidentified persons were seen in the relevant CCTV footages to have reached to spot of incident and subsequently having fled from there, post occurrence. It is also *inter alia* noted under the main chargesheet as well as documents annexed therewith, total 4 calls were made between the accused, Sabir and Raj Kumar @ Bhola, with the last call at around 09:43 p.m. as well as total 2 calls were found between accused Salman and Raj Kumar @ Bhola, with the last call at around 09:38 p.m., on the date of incident. Further, 7 calls were recorded between the accused Sabir and Salman on the day of commission of crime, last call being at around 09:51 p.m. Notably, both, the accused persons, Salman and Sabir were found avoiding their apprehension/absconding and were declared as proclaimed offenders *vide* order dated 14.12.2022, passed by Ld. MM-03 (Central), Tis Hazari Court. However, upon their subsequent apprehension, supplementary chargesheet was filed against the said accused. Relevant to note that as per the said supplementary chargesheet, the accused, Salman and Sabir, both denied/refused

to undergo TIP proceedings before the Ld. MM, Central, Tis Hazari Court, on 10.03.2023.

3. Ld. Addl. PP for the State submitted that the facts and circumstances specified under the charge sheet, including the documents/material placed on record, are sufficient to demonstrate a *prima facie* case against the accused persons and to proceed with the framing of charge(s) against the accused persons. Further, during the course of proceedings, Ld. Addl. PP for the State, while referring to the decision in ***State of NCT of Delhi v. Ravi Kant Sharma, AIR 2007 SC 1135***, contended that the relevant extract of the daily diary can be considered for supplementing the identities of accused, Sabir and Salman.

4. *Per contra*, Ld. Counsel for the accused persons submitted that no case/charge against the accused persons is even *prima facie* established and that the accused persons have been falsely implicated in the present case, based on a biased, unfair and impartial investigation. In this regard, Ld. Counsel further submitted that there is no material on record to establish collusion and/or conspiracy between the accused persons as well as the other co-accused, besides from CCTV footage it can be clearly seen that the allegation of the accused, Salman and Sabir blocking the road are not sustainable. Even otherwise, as per the Ld. Counsel there are material improvement in the testimony of the witnesses in question. Ld. Counsel further vehemently contended that the names of the complainant are nowhere mentioned in the statements of any of the witnesses and the evidence against them is solely, the disclosure statements of co-accused persons, besides none of the 'so called' eyewitnesses have identified the accused persons, as the associates of co-

accused Raj Kumar @ Bhola and Mustkeen. Further, Ld. Counsel for the accused, while referring to the decision of the decisions in *Mariam Fasihuddin and Ors. v. State and Ors., Criminal Appeal No. 335/2024, dated 22.01.2024 (SC)* and *Surender v. State (NCT of Delhi), 2022 SCC OnLine Del 1783*, submitted that the certified copy of CDR of Salman's phone cannot be considered by this Court as the same was only file during the course of arguments on charge, besides the same does not pertain to any fresh evidence/material brought forth on subsequent or fresh investigation.

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

6. At the outset, this Court deems it pertinent to observe the settled law¹ that at the stage of framing of charges, neither can the truth, veracity and effect of the prosecution case be meticulously² judged, nor can any weight to be attached to the probable defence of the accused. On the contrary, at such a stage, 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 relevant. In fact, the probative value³ of the material on record cannot be gone into, and the material placed on record by the prosecution has to be accepted as true at that stage. Needless to mention that the superior courts⁴ have persistently deprecated the practice of holding a mini trial at the time of framing of charge. Relevant to

¹ *State of Bihar v. Ramesh Singh, AIR 1977 SC 2018*

² *Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460*

³ *Soma Chakravarty v. State, (2007) 5 SCC 403*

⁴ *Indu Jain v. State of M.P., (2008) 15 SCC 341*

further note that it is trite law⁵, at the stage of framing of charge, only the police report is required to be considered and the defence of the accused⁶ cannot be looked into. Further, though, sifting of evidence is permissible⁷, however, scanning of evidence in detail is not, at the stage of framing of charge. Concomitantly, it is trite law⁸ that the inconsistency in the material produced by the prosecution⁹ or defect in investigation¹⁰, cannot be looked into for discharge of an accused, in the absence of full-fledged trial. Needless to further emphasize¹¹ at the stage of charge, court is not even required to record detailed reasons as to why charge is framed, rather¹², a very strong suspicion founded upon materials placed before the Court, which leads it to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged, may justify the framing of charges. In fact¹³, it is only when no case is made out even after presuming entire prosecution evidence, only then can an accused be discharged. Needless to accentuate that it is a settled law¹⁴, *“at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial.”*

5 *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

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

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

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

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

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

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

12 *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

13 *Manjit Singh Viridi v. Hussain Mohammed Shattaf*, (2023) 7 SCC 633

14 *Sonu Gupta Vs. Deepak Gupta & Ors.*, (2015) 3 SCC 424

7. Therefore, wary of the aforesaid principles, in light of the arguments addressed by the Ld. Counsel for accused persons as well as the arguments addressed by Ld. Addl. PP for the State, this Court, outrightly observes that the from the facts and circumstances of the case, material and the documents and material placed on record, including the statements of witnesses as well as the MLC and post mortem report of the deceased, Farman as well as the medical documents of the complainant, *prima facie* case under Sections 120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC and 174A IPC stands established against accused persons, namely, Salman and Sabir (as aforementioned, co-accused have already been charged *vide* order dated 27.04.2023). Further, from the perusal of case record, it is revealed that there is strong suspicion and sufficient evidence/ material/ ground(s) to proceed against the said accused persons. At the same time, there are witness(es) who can depose against them. In so far, as the contention of the Ld. Counsel of accused persons pertaining to the alleged falsity in the prosecution's case, embellishment in the statement(s) of the complainant as well as eyewitnesses is concerned, the same does not find favour with this Court at this stage, in view of the repeated avowals of the various courts, hereinunder noted. Additionally, with respect to the averment of the Ld. Counsel for the accused persons pertaining to the alleged infirmity in the investigation in the instant case, this Court unambiguously observes that it is a settled law¹⁵ that mere defect in investigation cannot, in itself, be a ground for discharge. Needless to mention, the arguments raised by Ld. Counsel for the accused persons are more in a nature of

¹⁵ *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors.*, (2014) 11 SCC 709

accused persons' defence as well as subject matter of trial, which cannot be considered by this Court at the present stage. Further, even otherwise, the contention of the Ld. Counsel for the accused persons regarding the inadmissibility/irrelevance of the certified CDRs of accused Salaman's mobile phone is concerned, same too would not come to the rescue of the accused persons for the reason, firstly, the material sought to be placed is only a certified extract of the said CDRs, besides, as aforementioned, the factum of accused Salman and Sabir being in regular touch with each other as well as with co accused Raj Kumar @ Bhola stands fortified from the documents/CDRs of Sabir as well as Raj Kumar @ Bhola, placed on record with the main chargesheet (in particular from a perusal of pages 717 and 853 of the main chargesheet), even not considering the certified copy of CDR filed by the IO for accused Salman, subsequent. Lastly, even otherwise, disregarding the extract of case diary placed by IO on record, there is material/evidence on record at this stage to proceed with the framing of charges against the accused persons. Needless to reiterate, at the stage of framing of charge, determining factor is not the sufficiency of evidence for the purpose(s) of conviction, rather, sufficient grounds to proceed against accused. Concomitantly, it does not lie in the mouth of the accused to say at this stage that their identities as perpetrators of offence does not stand established, when, as aforementioned, accused Salman and Sabir voluntarily opted out of TIP proceedings. Apposite to lastly observe that though, this Court though holds highest regard for the judgments cited by the Ld. Counsel for the accused persons, however, the same would not come to the aid and/or rescue of the

accused persons, as the facts and circumstances as well as the stage of the present proceedings are clearly distinguishable.

8. Accordingly, in view of the foregoing, charge(s) under **Sections 120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC** and **174A IPC** are framed against accused persons, namely, **Salman** and **Sabir**. The said charges are read out to the accused persons in vernacular language and upon the said accused comprehending the same, both, the accused Salman and Sabir have pleaded not guilty and claimed trial.

9. List for P.E. on **30.05.2024** and for arguments on pending bail application of applicant/accused, namely, Samreen on **06.04.2024**.

10. **Issue summons against PW Mohd. Idreesh, PW Sonu Mogli and PW Ms. Reshma along with the concerned IO** for the next date of hearing.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
04.04.2024