

19.07.2024

Present : Dr. Raj Rani, Ld. Addl. PP (substitute) for the State.

Accused Deepak Kumar @ Dharmender in JC with
Ld. Counsel Sh. Vikram Singh Nayal.

Accused Raja in JC with Ld. Counsel Sh. Yogesh
Pandey.

IO/ASI Manna Lal is also present.

Bail application u/Sec 439 Cr.PC, moved on behalf of
applicant/accused Raja is listed for hearing today.

However, Ld. Counsel for applicant/accused Raja has
stated that he does not wish to pursue the instant application, at this
stage and has prayed for withdrawal of the same.

The statement of Sh. Yogesh Pandey, Counsel for the
accused Raja, has been recorded separately, to this effect.

In view of the statement of the Counsel for the
applicant/accused Raja, the bail application of accused Raja is
dismissed as withdrawn.

Arguments on the point of charge, have been heard
and file perused.

It is a settled proposition of law that at the time of
framing of charge, the Court is not required to marshal any
evidence and only grave suspicion is to be seen and when grave

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suspicion arises, charge can be framed against the accused.

Reliance can be placed upon *Alpana Dass v. CBI 2006 (90) DRJ 441*.

In the case of *Union of India v. Prafulla Kumar Samal* 1979 SSC (3) 609, their lordship laid down the parameters that must weigh in the mind of the Court while considering the issue on charge. It was observed as under:

(i) That the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(iv) That in exercising his jurisdiction u/s.227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Guided by the above Judgments, it can safely be observed that at the time of Charge, the court does not have to

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weigh the evidence collected by the prosecution on the scale, which would be applicable after the prosecution has led its evidence.

The scrutiny of the complaint made by the complainant and the other prosecution evidence makes it clear that the accused persons, duly armed with a deadly weapon i.e. a pistol, in furtherance of their common intention, made an attempt to commit robbery on the person of complainant Faiyaz, and thereafter they also caused simple hurt to the complainant.

As per the complainant, both the accused persons were armed with a deadly weapon. Both the accused persons have been duly identified by the complainant in the TIP proceedings conducted in Jail by the Ld. MM. The pistol has been recovered from the possession of accused Deepak Kumar @ Dharmender.

Accordingly, at this prima facie stage, I am of the view that, a prima facie case u/s 393/394/34 IPC and u/s 398 IPC, is made out against both the accused persons and further a prima facie case u/s 25/27 Arms Act is made out against accused Deepak Kumar @ Dharmender.

Formal Charges for offences punishable u/s 393/34 IPC, 394/34 IPC, 398 IPC and 25/27 Arms Act, are, accordingly, framed against the accused Deepak Kumar @ Dharmender and Charges u/s 393/34 IPC, 394/34 IPC and u/s 398 IPC, are framed against the accused Raja. Both the accused persons have pleaded

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not guilty and claimed trial.

Matter be listed for PE on 09.08.2024. PW mentioned at serial no. 1/complainant in the list of witnesses be summoned for the next date of hearing. Summons be also issued to IO and MHC(M).

(Seema Maini)
Principal District & Sessions Judge (North)
Rohini Courts, Delhi/19.07.2024