

**IN THE COURT OF SH. PAWAN KUMAR MATTO, SPECIAL JUDGE
(NDPS), ADDL. SESSIONS JUDGE, NORTH-WEST DISCTRICK, ROHINI
COURTS, DELHI**

SC No. 641/17
FIR No. 820/17
P.S. Mangolpuri
U/s 302/34/120-B IPC & 27/54/59 of Arms Act
State Vs. Mohd. Faishal

16.02.2018

ORDER ON CHARGE

1. Brief facts of the present case are that the chargesheet against this accused has been filed under section 302/34/120-B IPC and Section 27 / 54 of Arms Act.
2. Matter was fixed for consideration on charge.
3. I have heard the Ld. Counsels for the parties.
4. Ld. Counsel for accused has submitted that since the prosecution has failed to bring on record any cogent evidence to show that there was any agreement between this accused and the other accused who are alleged to have committed murder of the deceased. So, in the absence of any agreement, no charge can be framed against this accused on the basis of CDR brought on record by the investigating officer, as from the CDR, it cannot be inferred that the accused had made talk to commit the murder of the deceased and prayed for discharge of the accused Faishal.
5. On the other hand, Ld. APP for State has submitted that on 10.06.2017, the statement of Sh. Virpal who is the maternal uncle of deceased was recorded vide which it is clear that he had intimated to the deceased that this accused was following the deceased on his scooty and this accused had intimated someone about the time of departure of the deceased from Opposite Gali no. 4 and submitted that

in the said statement, the said witness has not named this, accused but, supplementary statement of the said witness Sh. Virpal was recorded by the IO on 16.06.2017 wherein he had mentioned the name of this accused, name of father of this accused, address and profession of this accused and submitted that the testimony of Sh. Virpal and CDR filed by the IO clearly manifest that there was talk between this accused and accused Vikas and since this accused had informed to the other accused regarding the departure of the deceased from Opposite Gali no. 4 and since, soon after, such information given by this accused to the other accused, the murder of the deceased was committed. So, at this stage, this court cannot ignore the CDR, statements of Sh. Virpal recorded on 10.06.2017 and also supplementary statement of Sh Virpal recorded under section 161 Cr PC on dated 16.06.2017 and submitted that the statements of Sh. Virpal with CDR are sufficient to hold that prima facie case under section 109 r/w section 302 of IPC is made out against this accused as this accused is alleged to have facilitated other accused by way of giving information regarding the location of the deceased and on the next spur of time, the deceased was killed by the other accused, so charge under section 109 r/w section 302 IPC is liable to be framed against this accused.

6. I have given thoughtful consideration to the submissions made by the parties and perused the record.

7. The perusal of the record shows that the charge-sheet against this accused has been filed under section 302/34/120-B IPC and Section 27 / 54 of Arms Act. At the time of hearing arguments on the charge, the Ld. Counsel for the accused has submitted that no offence is made out against the accused and he is liable to be discharged. Ld. APP for State has not pressed for framing the charges against this accused under all the sections, wherein the charge-sheet has been filed against this accused. He has pressed for framing charge under section 109 r/w section 302 of IPC.

8. Perusal of the record shows that during the investigation, the statement of Sh. Virpal, who is the maternal uncle of the deceased Deepak was recorded on dated 10.06.2017, which reveals that Sh. Virpal has stated therein that this accused had telephonically informed to some person about the departure of the deceased from there and Sh. Virpal had telephonically informed to the deceased that the boy who resides in his street was following the deceased and alerted to the deceased and soon thereafter, the deceased was shot and supplementary statement of this witness Virpal was also recorded on dated 16.06.2017, wherein this witness has disclosed the name of this accused, name of father of this accused, address and profession of this accused and during the investigation, call detail record was also taken by the IO, which reveals that this accused had telephonically talked with the accused Vikas, who is alleged to have caused bullet injuries to the deceased from which the death of the deceased had taken place. No doubt, from the CDR collected by the IO during the investigation, it cannot be inferred that this accused had asked to the main accused to commit murder. But from the statement of Sh. Virpal recorded on dated 10.06.2017, it is prima facie clear that this accused had intimated to the other accused regarding the departure of the deceased from a categorical place and told about the location of the deceased to the other accused, who are alleged to have killed to the deceased. Thus, from the statements of Sh. Virpal recorded, during the investigation, by the IO and from the CDRs, it is clear that this accused is alleged to have facilitated to the other accused for committing the murder of the deceased. Therefore, I am inclined to hold that since this accused is alleged to have facilitated / abetted to the other accused for committing the murder of the deceased, so prima facie case under section 109 r/w section 302 of IPC is made out and charge thereunder is liable to be framed against this accused.

(Pawan Kumar Matto)
Special Judge (NDPS)/
Additional Sessions Judge (N-W)
Rohini Courts,

Delhi.16.02.2018