

**IN THE COURT OF SHRI VIPIN KHARB
ADDITIONAL SESSIONS JUDGE-07 : SOUTH-EAST DISTRICT
SAKET COURTS : NEW DELHI**

SC 11580/2023
STATE Vs. KABIR
FIR No. 222/2023
PS: Hazrat Nizamuddin

ORDER ON CHARGE

13.02.2026

Brief Facts of the Case

1. As per the complainant Tanveer on 26.07.2023, he was walking down with Kamaal at Alvi chowk gol chakkar near Sufi Inayat Dargah, Hazrat Nizamuddin, where one person who was walking behind them and was wearing black clothes fired at Kamaal 3 – 4 times and ran away towards ‘Phool Wali Gali’. Due to the firing, one more person, who was a passerby, also received gunshot injury on his leg. Due to all this commotion the public gathered and someone stated that ‘Kabir’ had fired the shots. The injured persons were taken to hospital by complainant Tanveer in Auto and on the statement of Tanveer Alvi, present FIR was registered. Injured Kamal was admitted in AIIMS hospital, whereas other injured Raju got himself treated in Safdarjung hospital but he left hospital after receiving treatment and could not be traced during the investigation.

2. During investigation, CCTV footage was checked and in it accused Kabir can be seen in black clothes running from the spot. The incident was also seen by the eyewitness Mehmood Khan, who is brother of injured Kamal

and was only 50 feet behind them at the time of the incident and he stated that he saw accused Kabir firing upon Kamal and three bullets hit Kamal and one bullet hit on the foot of a beggar. The statement of injured Kamal was recorded after one month of the incident i.e. on 25.08.2023 wherein he stated that before firing, Kabir shouted that “tu Faisal and Asim se panga le raha hai” and he also stated that his family is having property dispute with the family of Asim and Faisal and on 22.07.2022 Faisal threatened him and on 25.07.2023 at 12:41 a.m. Faisal again called him and threatened him.

3. During investigation, accused Kabir was arrested with pistol and he disclosed that he was friend with Rashid who made him meet co-accused Asim and Faisal and they told him that they are having property dispute with family of Kamal and they will give him good money if he kill Kamal and Rashid gave him pistol for the purpose. Accused Rashid disclosed that Asim and Faisal are his friends and Faisal gave him pistol which he gave to Kabir. During investigation, pistol recovered from possession of accused Kabir was sent to the FSL and FSL result was filed through supplementary charge-sheet. As per FSL result the recovered pistol could not be connected with the fired bullets recovered from the body of injured Kamal.

Arguments on charge on behalf of accused Asim and Faisal

4. Ld counsel for the Asim and Faisal pressed for the discharge of the accused persons on the ground that there is property dispute between the family of accused persons and family of Kamal regarding a adjacent plot which is subject matter of civil litigation. The complainant's family is in habit of filing false complaints against the family of accused persons. The injured has alleged in his statement u/s. 161 Cr.PC that accused Shah Faisal have

threatened him on 22.07.2022. The present incident had occurred on 25.07.2023 i.e. after more than one year of alleged threat and the time gap shows that for one whole year there was no complaint against the accused persons and no illegal / unlawful act was alleged against them. Even if, for the arguments sake any threat was given on 22.07.2022 then same has lost any influence and becomes irrelevant and has no connection with the present incident.

5. Ld counsel for both the accused persons further argued that complainant Tanveer was walking besides injured Kamal and his statement was recorded on the same day of incident i.e. 26.07.2023 but as per his statement he did not hear any shout or exhortion from accused Kabir that injured has taken panga with accused Faisal and Asim. As per prosecution case, witness Mohd. Khan, who was brother of injured Kamal, was walking behind them at a distance of 50 feet and his statement was also recorded on the same day i.e. 26.07.2023 and he also did not state about any shout or exhortion from accused Kabir. After much delay i.e. after a month of the incident on 25.08.2023, statement of injured was recorded in which he stated that accused Kabir shouted on him and took name of both the accused persons. For the first time the name of both the accused persons Asim and Faisal came in the prosecution story after one month of the incident. This shows that embellishments and improvements have been made by injured Kamal just to falsely implicate accused Shah Faisal and Asim in the present case.

6. It is prayed by Ld counsel for the accused persons that the only material against the accused persons is the statement given by the injured Kamal that accused Kabir took name of both accused Asim and Faisal and it is a very weak piece of evidence which is not supported by any other material and it

will be travesty of justice if only on this weak piece of evidence accused persons have to go through the rigour of trial and accused persons should be discharged from the case.

7. Case file perused.

8. The incident occurred on 26.07.2023 and on the same day statement of Tanveer Alvi (who is friend of injured and was with injured at the time incident took place), Sujan Ali (nephew of injured) and Mehmood Khan (brother of the injured) were recorded and all of them were present in the vicinity of the spot but none of them had named the accused Asim and Faisal and did not say that Kabir made any statement / shouting before firing on Kamal. From the day of incident i.e. 26.07.2023 till 25.08.2023 there was no allegation against the accused persons and for the first time on 25.08.2023 i.e. after one month of the incident, any allegations against them was made and their names was dragged in the case.

9. As per the site plan, position of both Tanveer and Mehmood was such that in case injured Kamal have heard the shout then they must have also heard the shout. Further, statement of Tanveer and Mehmood Khan was recorded without any delay and on the same day; recording of statement at the earliest opportunity ensures that they are accurate, reliable and untempered. Witness doesn't have time to cook-up story or make embellishment or improvements to falsely implicate anyone. Whereas, statement of injured Kamal was recorded after the much delay of 31 days and he got sufficient time to improvise and make improvement in narration.

10. Both Tanveer and Mehmood Khan corroborates each other whereas Kamal's statement lacks corroboration from other material collected during the investigation. There is no evidence to the effect that both accused Asim and Faisal were in touch with the other accused persons namely Kabir or Rashid. There is no material to suggest that both accused were in any manner contacted Kabir or Rashid with a view to conspire for the commission of the alleged offence. There is no call record to connect both accused persons with the accused Kabir. There is no scientific / technical evidence like CDR, CCTV or any eyewitness which can connect Shah Faisal and Asim with co-accused Kabir. On the other hand, there is motive with injured Kamal to falsely implicate both accused Asim and Faisal as his family is having long pending property dispute with family of accused persons.

11. Injured Kamal has stated about threats given by Faisal on 22.07.2022; regarding this Court agrees with the submission made by Ld counsel for the accused persons that same has lost influence and becomes irrelevant and has no connection with the present incident. Regarding the call made from the mobile number of accused Faisal on the mobile number of injured at 00:41 a.m in the night before the incident, the CDR shows that call was of only 47 seconds and except this call there is no other call between them. The duration of the call suggests that number could have been dialed inadvertently. Even if, this call was made deliberately by accused Faisal same is a very weak piece of evidence to connect accused Faisal with the accused Kabir and with the incident. Except the statement of the injured, there is no other incriminating evidence against the applicant / accused on the record.

12. Hon'ble High Court of Delhi in the judgment "**Sunil Bansal Vs State of Delhi**", 2007 (2) JCC 1415 held that while undertaking the permissible and

necessary exercise of sifting of the materials and particularly keeping in mind the existence of two contradictory statements, charge cannot be framed based thereon. The court observed that the subsequent statements were not only contradictory but unsafe as well and that the court cannot be expected to accept one version over another. It was held that the court would be justified in concluding that the version supporting the discharge of the petitioner is to be preferred. In **2002(1) JCC 127, Bhagwanti Devi vs. State** it was also held by Hon'ble High Court of Delhi that subsequent statement may give rise to suspicion but not to grave suspicion and consequentially, no charge should be framed against the petitioner based on these statements.

13. In **96 (2002) DLT 566 Majhar @ Papoo & Anr. Vs State**, Hon'ble High Court of Delhi has held that the complainant has made allegations in the supplementary statement recorded by the police. The statement could be considered when some allegations were made in the original complaint against the petitioners and not otherwise. In **2002 SCC CrI. 310, Dilwar Balu Khurana vs. State of Maharashtra**, Hon'ble Supreme Court had clearly enunciated the principle that if two versions or two inferences can be reasonably drawn, the version favourable to the accused has to be accepted by the court so long as it is a reasonable one.

14. In the present case the court is faced with contradictory statements. The first set of statements which were recorded immediately after the occurrence does not even remotely mention about the shout made by accused Kabir whereas the statement of injured recorded after one month talks about shout made by accused Kabir in which he took name of accused Asim and Faisal. If accused Kabir had shouted then Tanveer and Mehmood Khan must have heard the shout as they were positioned close to accused Kabir. Injured is having

dispute with family of accused Faisal and Asim because of which their false implication by injured cannot be ruled out.

15. The law on point as to when an accused can be discharged or can be charged in situation where contradictory evidence is on record has been best laid down in case titled as **“Union of India Vs. Prafulla Kumar Samal and Anr”**. After examining all pros and cons following guidelines have been laid down in para no. 10 of the aforesaid judgment:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

i) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift 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 under Section 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.”

16. Hon'ble Supreme Court of India in case titled as **“Satish Mehra Vs. Delhi Administration and Ors 1996 J. C. C 507”** has expressed similar view that when judge is fairly certain that there is no prospect of case

ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on future date.

17. Following the principles laid down in **Dilawar Babu Khurana vs. State of Maharashtra** (supra), the first version of the prosecution has to be accepted. Injured Kamal has suspicion that firing was done at the instance of Asim and Faisal. Suspicion, how strong may be but can never be a piece of evidence. All these pieces of material, collected against both accused Asim and Faisal, even if considered together even then they failed to raise any suspicion regarding involvement of accused in the firing, leave aside grave suspicion. It, therefore, has to be held that the prosecution has failed to make out a case raising strong suspicion of the involvement of the accused Faisal and Asim in the commission of offence. Therefore, **both accused Faisal and Asim are entitled to be discharged from the present case.**

Arguments on behalf of Rashid

18. Ld counsel for the accused Rashid submits that only on the basis of disclosure statement of the co-accused persons, he has been arrested in the present case and as per disclosure statement of accused Kabir, he provided the weapon of offence i.e. pistol to the accused Kabir and there are no other allegations against him. The weapon of offence was recovered from the possession of the accused Kabir and not from the possession of accused Rashid. Except the statement of the accused Kabir, there is no other incriminating evidence against him.

19. In the present case, the material collected against the accused Rashid during investigation is that accused Kabir disclosed that accused Rashid gave pistol to him; it is disclosure statement of co-accused and same cannot be relied upon. Therefore, **the accused Rashid is entitled to be discharged from the present case.**

Arguments on behalf of accused Kabir

20. It is argued on behalf of accused Kabir that he is falsely implicated in the present case and he cannot be recognized by CCTV footage as the person seen in the CCTV footage was wearing white mask on his face. Further, the alleged pistol recovered from accused Kabir during investigation did not match with the used bullets recovered from the body of the injured, which shows that pistol has been planted upon the accused Kabir which proves that he is falsely implicated to work out the case.

21. On the other hand, Ld. Addl. PP for the State submits that eye-witnesses have taken name of accused Kabir which is sufficient at this stage to frame charges against him.

22. As per the FSL result, the used bullets recovered during investigation were not fired from the pistol which was recovered from accused Kabir, therefore, recovered pistol is not connected with the present case, therefore, no charge for the offence u/s. 25/54/59 Arms Act can be framed. But it is prima facie shown that bullets i.e. ammunition were fired by the accused Kabir, therefore, he is liable to be charged for the offence u/s. 27/54/59 Arms Act. There is eye-witness account as per which, accused fired 3 bullets on Kamal and two bullets hit Kamal and one hit Raju (who could

not be traced during the investigation). Therefore, prima facie offence u/s. 307 IPC is made out.

23. Accordingly, **accused Asim, Faisal and Rashid are discharged from the present case and accused Kabir is liable to be charged for the offence u/s. 307 IPC read with 27/54/59 Arms Act.**

24. As pistol without license has been recovered from the accused Kabir (which is not connected to this case) which in itself is a separate offence u/s. 25/54/59 Arms Act, therefore, concerned SHO is directed to register separate FIR against accused Kabir for possession of pistol without license.

Copy of order be sent to concerned SHO.

(Vipin Kharb)
ASJ-07, South-East
Saket Courts, New Delhi
13.02.2026