

IN THE COURT OF MS. MADHU JAIN
PRINCIPAL DISTRICT & SESSIONS JUDGE
SOUTH : SAKET COURTS, NEW DELHI.

SC No. 107/2024
FIR No. 120/2023
PS Neb Sarai
State vs. Pawan & Anr.

20.02.2024

ORDER ON CHARGE

1. Vide this order, I shall decide framing of charge against accused persons, who have been charge sheeted for commission of offences U/S 308/323/341/506/34 IPC.
2. Ld. Chief Public Prosecutor for the State has argued that the allegations against the accused persons not general but specific in nature. It is further argued that the medical evidence duly supports the allegations. It is argued that prima-facie the allegations attract the relevant sections mentioned in the charge sheet.
3. On the other hand, Ld. counsel for the accused persons argued that a graver section U/S 308 IPC has been invoked instead of Section 324 IPC. It is further argued that the malafide intention of the accused persons to cause death cannot be presumed as they are unknown to the complainants and they did not have any motive. The nature

of injuries as per MLC are not of such magnitude to attract sections proposed in the charge sheet. It is further argued that accused persons are boys of young age and they have been falsely implicated in the present case, which could hamper their future.

4. I have heard Ld. Chief Public Prosecutor for the State and Sh. Yogesh Dahiya, Ld. counsel for the accused persons and have carefully perused the record.
5. 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 suspicion arises, charge can be framed against the accused. Reliance can be placed upon *Alpana Dass v. CBI, 132 (2006) DLT 85*.
6. In the case of *Union of India Vs. 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.

7. It is clear that at the stage of consideration of framing of charge, the court is not required to meticulously judge the truth, veracity and effect of evidence which the prosecution proposes to adduce nor weight is attached to the probable defence of the accused. The court is not required to assess if there is sufficient ground for conviction or whether the trial is definitely going to end in the conviction of the accused. It is only to be considered if there is a strong suspicion which leads the Court to think that there are grounds for presumption that the accused had

committed an offence. The contentions raised by the counsel for the accused persons are a question of facts and not only of law which can not be decided without there being evidence led by both the parties. **Accordingly, charge U/S 308/323/506/34 IPC is made out against the accused persons.**

8. Nothing expressed herein shall tantamount to any expression on the merits of the case.

***Announced in the open Court
Today on 20th February 2024***

(MADHU JAIN)
Principal District & Sessions Judge (South)
Saket Courts, New Delhi : 20.02.2024