

IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH DISTRICT,
SAKET COURTS, NEW DELHI

CNR NO. DLST01-001499-2019

SC NO. 141/2019
FIR NO. 220/2010
PS Neb Sarai

IN THE MATTER OF

State

Versus

- 1. Chaitanya Bhardwaj**
S/o Late Sh. K. S. Bhardwaj
R/o H. No. E-75, Carriappa Marg,
Sainik Farm, New Delhi
- 2. Mohd. Salim**
S/o Mohd. Kamil
R/o H. No. 128, Gaffar Manjil,
Gali no. 10, Jamia Nagar,
Okhla, New Delhi
- 3. Mohd. Arif @ Bilau**
S/o Mohd. Yusuf
R/o H. No. C-32, Bank Wali Gali,
New Seelampur, Delhi
- 4. Mohd. Hayat @ Chandan**
S/o Lt. Raish Khna
R/o H. No. D-50, Gali No.9,
Mohanpuri, Mauzpur, Delhi-53

5. **Sushil @ Goldy**
S/o Sh. Labbu Ram
R/o H.No. 216/224, Double Storey,
New Seelampur, Delhi. **Accused**

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.
2. I have heard detailed arguments and have carefully perused the record.
3. The contention of Ld. Counsel for the accused Chaitanya Bhardwaj is that he was the partner of the complainant. It is submitted that as per the Agreement to Sell dated 23.08.2010, the sale consideration amount of plot no. 43D was Rs. 10 lakh, therefore, an amount of Rs. 40 lakh could not have been paid to the complainant. Regarding the amount recovered from accused Chaitanya Bhardwaj, it is submitted that it was the hard earned money of this accused and in his Income Tax Returns, he had shown cash in hand as Rs. 35 lakh. It is further submitted that Mohd. Salim is a friend of accused Chaitanya Bhardwaj and therefore it is natural that they would make calls to each other as reflected in CDRs. It is also submitted that since the house of the accused Chaitanya Bhardwaj is near the spot of incident, therefore, CDRs have

reflected his location near the spot of incident. It is further submitted that there are various lacunas in the case of prosecution. It is submitted that he has been falsely implicated in the present case and there is no evidence against him.

4. Ld. Counsel for accused Mohd. Hayat @ Chandan has argued that he was arrested only on the disclosure statement of accused Mohd. Salim. His name is not mentioned in FIR and no recovery has been effected from him. He had refused TIP as he had shown to the complainant party by the police. It is further submitted that it was a case of property dispute between the complainant and accused Chaitanya Bhardwaj and, therefore, false implication of the accused persons cannot be ruled out.

5. Ld. Counsel for accused Arif and Sushil has argued that they were arrested on the basis of disclosure statement and there is no evidence against them.

6. I have considered the rival contentions.

7. The case of the prosecution is that the complainant Sh. Vikram Sibbal was involved in the work of property dealing in partnership with accused Chaitanya Bhardwaj. A property deal was effected with one Sunny Seth by which property no. 43D, Ashoka Avenue, Sainik Farm was sold by the complainant and Chaitanya Bhardwaj. Ld. Addl. PP for State has pointed out that the

complainant had sold his half portion in the property no. 43D to Sunny Seth. On 28.08.2010, payment was received from Sunny Seth towards this sale. The supplementary statement u/s 161 Cr.P.C. of complainant Vikram Sibbal dated 12.11.2010 shows that he had sold his portion measuring 300 sq. yards in property no. 43D to Sunny Seth for a consideration amount of Rs. 50 lakh out of which Rs. 10 lakh was paid to him by pay order and Rs. 40 lakh was paid to him in cash at his office on the day of incident. The chargesheet discloses that accused Chaitanya Bhardwaj was aware of this money transaction.

8. After receiving the sale amount, complainant was alone at his office on 23.08.2006 at around 6:15 PM when three boys forcibly entered his office and loudly demanded to hand over the bag of the amount received that day. Out of fear, complainant told them that the said bag was kept in the dickey of his car. One of those boys snatched the mobile phone of the complainant as well as his Chinese watch which had recording facility and car keys. Two of those boys took out red coloured bag containing Rupees 40 lakh only in the denomination of Rs. 500/- and Rs. 1000/- from the dickey of his car bearing registration no. DL 3C AA 2871. While fleeing from the spot with the money, those boys locked the main gate from out side. The complainant shouted *chor-chor*. After some time, an employee of the complainant, namely, Prem, reached there and opened the door. The complainant also called the police.

9. The investigation discloses that the conspiracy to rob the complainant was hatched by his partner accused Chaitanya Bhardwaj along with accused Mohd. Salim. They involved the nephew of Mohd. Salim, namely, Mohd. Hayat @ Chandan and his two accomplices accused Mohd. Arif @ Bilau and accused Sushil @ Goldy.

10. An amount of Rs. 15 lakh out of the robbed amount and complainant's watch were recovered at the instance of Mohd. Salim from his house. An amount of Rs. 20 lakh out of the robbed amount was recovered at the instance of accused Chaitanya Bhardwaj from his house. The car keys of the complainant were recovered at the instance of accused Sushil @ Goldy. Accused Mohd. Hayat @ Chandan, Mohd. Arif and Sushil @ Goldy refused TIP.

11. At the time of their arrest, a loaded pistol with two live cartridges were recovered from accused Mohd. Hayat @ Chandan and a knife was recovered from accused Mohd. Arif @ Bilau.

12. Analysis of the CDRs of the mobile phone numbers of the accused persons discloses numerous calls exchanged between them from 22.08.2010 to 23.08.2010. The investigation also discloses that at the time of the incident in question, accused Chaitanya Bhardwaj and accused Mohd. Salim were near the spot of incident. The CDRs on record confirm the same. The investigation further discloses that on the date of incident, accused Chaitanya

Bhardwaj gave a signal to accused Mohd. Salim who further signaled the three accused persons, namely, Mohd. Arif, Mohd. Hayat @ Chandan and Sushil @ Goldy to barge into the office of the complainant and commit robbery. Accused Mohd. Salim waited for accused Mohd. Arif, Mohd. Hayat @ Chandan and Sushil @ Goldy in his Santro car bearing registration no. DL 3CV 0577 and aided them in fleeing from the spot along with the robbed amount.

13. So far as the contentions of Ld. Counsels for the accused persons including averments related to false implication and there being inconsistencies in the case of the prosecution are concerned, they are a matter of trial. At this stage, only a *prima facie* case giving rise to grave suspicion is to be seen.

14. In **Sajjan Kumar Vs. CBI (2010) 9 SCC 368**, Hon'ble Supreme Court of India has held as follows:

"17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The

test to determine prima facie case would depend upon the facts of each case.

(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 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

15. In view of the above discussion, *prima facie* there is sufficient material of record to frame charge against the accused persons as follows:

- (i) All accused persons: Offence punishable u/s 120B IPC; section 395 IPC r/w section 120B IPC; section 342 IPC r/w section 120B IPC; section 451 IPC r/w section 120B IPC;**
- (ii) Accused Mohd. Hayat @ Chandan: Offence punishable u/s 25 Arms Act;**

- (iii) Accused Mohd. Arif @ Bilau: Offence punishable u/s 25 Arms Act;**
- (iv) Accused Mohd. Salim: Offence punishable u/s 411 IPC;**
- (v) Accused Chaitanya Bhardwaj: Offence punishable u/s 411 IPC;**
- (vi) Accused Sushil @ Goldy: Offence punishable u/s 411 IPC.**

**PRONOUNCED IN OPEN COURT ON THIS 16th DAY OF
FEBRUARY 2023**

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**