

IA No. 5-24
SC No. 439/23
STATE Vs. Sahil Gahlot and Ors.
FIR No. 76/23
PS : BHD Nagar
U/S : 302/201/120B/34 IPC

15.10.2024

Present: Shri Dushyant Siwatch, Ld. Addl. Public Prosecutor for the State.
Sh. Ankit Mutreja (through VC) and Ms. Shipali Garg (in person), Ld. counsel for Applicant/Accused Naveen.

Vide this order, I shall dispose off the Application filed on behalf of Applicant/Accused Naveen Kumar for directing the Investigation Officer (IO) to procure the call detail records and call locations of persons namely Manjeet @ Kali (Mobile No. 9810858677), Neeraj (mobile no. 9643524135), Pankaj (mobile no. 9213710589) and Deepanshu (mobile no. 9210046854) who attend the pre-wedding function of co-accused Sahil Gahlot under Section 193(9) of BNSS and for directing the IO to specifically inform the role of present accused and on which basis the accused Naveen has been implicated in present FIR.

It has been submitted on behalf of counsel for Accused Naveen that IO has not specifically mentioned the role of Accused Naveen and the IO be directed to specifically inform his role in the present FIR. It is also submitted that the prosecution is relying on only one call of accused Naveen with co-accused Sahil Gahlot on 09.02.2023 to allege conspiracy. It is further submitted that accused Naveen has been falsely implicated and the prosecution has relied upon the location chart

of the Accused Naveen to show that Accused Naveen was near to the place of residence of deceased Nikki on the alleged date of incident i.e. 10.02.2023. It is further submitted that the IO has not chargesheeted other persons who attended the pre-wedding functions of co-accused Sahil Gahlot and also went in search of him. It is further submitted that there were other persons who had tried to contact and search for accused Sahil Gahlot namely Manjeet @ Kali, Neeraj, Pankaj and Deepanshu but the IO has not implicated these persons in the present chargesheet. It is prayed that IO be also directed to procure the call locations and CDRs of these persons.

Reply filed by IO.

The present application has been vehemently opposed by Ld. Addl. PP for the State on the ground that the role of accused Naveen has been provided in the chargesheet. It is further submitted that the name of accused Naveen was disclosed by co-accused Sahil Gahlot during investigation and there was sufficient prima facie evidence on record to file chargesheet qua the accused Naveen Kumar along with other co-accused persons in the present case. It is prayed that the present application be dismissed.

Arguments heard at length. Record perused. Considered.

Careful and meaningful reading of chargesheet and the documents annexed thereto reflects that chargesheet in the present case was filed on 12.05.2023 against all the accused persons including Accused Naveen Kumar, who has filed the present application. Vide order dated 03.04.2024, charges were directed to be framed against all the accused persons including

Accused Naveen Kumar for the offence punishable under Section 302/201/202/120 B IPC after hearing at length arguments on behalf of all the accused persons. In the said order, the details of the prima facie incriminating evidence against all the accused persons including accused Naveen as per the chargesheet and documents filed along with has been dealt with. The matter is present at the stage of prosecution evidence. Therefore, the plea of the Accused Naveen Kumar in the present application that directions be given to IO to provide his specific role qua the present chargesheet is in the considered opinion not tenable at this stage.

The next prayer urged by the Accused Naveen by way of the present application is that the call details record and location charts of four persons namely Manjeet @ Kaali, Neeraj, Pankaj and Deepanshu be called as they attended the pre-wedding function of co-accused Sahil Gahlot.

Careful and meaningful reading of the present application reflects that the Accused Naveen Kumar seeks to call these records on the ground that these other persons were also present in the pre-wedding function and had also gone to search co-accused Sahil Gahlot and had called him but only the present applicant/accused Naveen has been falsely implicated by the IO.

The counsel for Accused Naveen Kumar has during the course of the arguments with regards the present application argued that since the present application has been filed after the enactment of BNSS, the IO be directed to collect the Call Details Report and locations chart of the aforesaid named four persons under Section 193 (9) Provisio of BNSS.

In this context, it is seen that chargesheet in the

present case was filed on 12.05.2023 on completion of investigation against all the accused persons including the accused Naveen. Charge thereof has been framed against all the accused persons including accused Naveen vide order dated 03.04.2024, on the basis of the material available on record for the offences punishable 302/201/202/120 B IPC. The matter is at the stage of prosecution evidence. Thus, in the considered opinion of this court, as per Section 531 of BNSS, the present case shall be governed by the provisions of Cr.P.C. Also, it is pertinent to mention that the present application moved on behalf of Applicant/Accused Naveen is silent as to which provision of law, the same has been filed and there is no averment to this effect in the said application.

The counsel for Accused Naveen Kumar has during arguments contended that further investigation can be directed under the proviso of Section 193(9) of BNSS. In the present case, it is seen that the charge-sheet in the present case was filed in 2023. As already reiterated above, the matter is presently at the stage of prosecution evidence. Section 531(1) of BNSS provides that if immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending shall be disposed of, continued, held or made, as the case may be in accordance with the provisions of Cr.P.C., 1973 as in force immediately before such commencement, as if this Sanhita had not come into force. The trial in the present case thus would be continued under the provisions of Cr.P.C. In the considered opinion of this Court, this miscellaneous application moved by accused Naveen would thus be governed by the provisions of Cr.P.C. Even, if for the sake of

arguments, it is presumed that the provisions of BNSS will apply to the present application, the proviso of Section 193(9) Cr.P.C provides for investigation if the court considered necessary.

Further, it is the power of police to continue an investigation after a final report has been submitted. Further investigation is a contamination of earlier investigation and not second investigation. The present application has been moved by the Accused Naveen Kumar on the ground that role of other persons be also investigated. It is seen and noted that no protest petition was filed by the said accused during investigation of the present case or even after filing of chargesheet in this regard till the filing of the present application.

Arguments were heard at length at the time of consideration on charge on behalf of all the parties including Applicant/Accused. In the considered opinion of this Court, this application has been moved belatedly on 27.07.2024 and appears to be an afterthought to derail the trial. Furthermore, the IO has filed his reply to the present application wherein he has stated that the co-accused Sahil Gahlot had also disclosed during investigation about accused Naveen Kumar. It is also seen that it is not the case of Accused Naveen Kumar qua the present application that he requires the same details for his defence or for the purpose of trial. This court is unable to cull out any reasonable ground qua this application specially when the matter is at the stage of prosecution evidence. Therefore, in the considered opinion of this court, in view of the facts and circumstances discussed above, the prayer of the Applicant/Accused Naveen vide this application is also not tenable.

Accordingly, in the facts and circumstances adumbrated above, the present application is dismissed as being not maintainable.

(Gurmohina Kaur)
ASJ-05/South-West District,
Dwarka Courts/New Delhi
15.10.2024