

**IN THE COURT OF SH. DEVENDER KUMAR JANGALA,
ASJ-05, NEW DELHI DISTRICT, PHC, NEW DELHI.**

**SC no. 21/22: FIR No. 159/21
State Vs Robin Balyan & Ors.**

**PS Special Cell
Under Section 186/353/307/34 IPC and 25/27 Arms Act**

17.10.2023

Present : Sh. Mukul Kumar, Ld. Additional PP for the state.
Accused Robin Balyan produced form JC.
Other accused persons Vinay @ Nitin @ Rahul @ Balli
@ Vinay Jat @ Vinay Baba, Dipanshu Dagar @ Deepu
and Sumit Puniya are present on bail.
Sh. Lalit Rana, Ld.counsel for the accused Vinay @
Nitin through video conferencing.
Ms. Pallavi Pawaskar, Ld.counsel for the accused
Deepanshu Dagar.
Ms. Preetpal Kaur and Sh. Rajat Mangla, Ld.counsel for
the accused Robin Balyan.

Arguments on point of charge heard. Record perused.

Brief facts: On 21.06.2021 a secret information was received that the accomplices of infamous Nandu and Jyoti Baba Gang would be coming to Delhi to murder a property dealer of Delhi. Accordingly A team was constituted and trap was laid. At about 4.30 AM, the secret informer pointed towards two motorcycles with pillion riders on it. The motorcyclists were directed to surrender by the police party, but instead of surrendering they fired upon the police party. Police party also fired in their self defence. The bullets fired by the police hit on the legs of three accused persons and they were overpowered. The names of the arrested persons were revealed as Vinay, Robin Baliyan, Sumit Punia and Deepu Dagar. Two country made pistols, two country made kattas with 10 live cartridges were recovered from the possession of accused persons. Accordingly case was registered and investigation was carried out. The police after completion of investigation has filed the charge sheet for commission of offence u/s 186/307/353/34 IPC & 25/27 Arms Act.

It is submitted by Ld. Additional PP for the State that there is sufficient material on record to charge the accused persons for commission of offence u/s 186/307/353/34 IPC & 25/27 Arms Act.

On the other hand, it is submitted by Ld. Counsel for the accused persons that the accused persons have been falsely implicated in the present case and recovery has been planted. It is argued that the accused persons had neither evaded their arrest nor fired upon the police party and there is no public witness to support the story of prosecution. It is prayed that the accused persons may kindly be discharged in the present case.

I have heard the Ld. Additional PP for the State and Ld. Respective counsel for the accused persons and have gone through the record.

On the point of consideration on charge, I have placed reliance upon one judgment of Hon'ble Supreme Court of India titled as ***"Sheoraj Singh Ahlawat Vs State of U. P. reported in (2013) 11 SCC 476"***. The Hon'ble Supreme Court has reiterated that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. It was further held that if on the basis of material on record, a court could come to the conclusion that commission

of the offence is probable consequence, a case for framing of charge exists. If the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. At the stage of framing of a charge, probative value of the material on record cannot be gone into, the material brought on record by the prosecution have to be accepted as true at that stage. It was reiterated that at the stage of framing charge, the court has to prime facie consider whether there is sufficient ground for proceedings against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused and that roving and fishing inquiry is impermissible. A mini-trial at the stage of framing of charge would defeat the object of the Code. It was reiterated that at the stage of framing of charge the defence of the accused cannot be put forth.

The prosecution in support of its case has cited 15 witnesses. The statement of witnesses recorded u/s 161 Cr.PC is also placed on record which supports the story of prosecution. All the prosecution witnesses have specifically alleged that the accused persons had not surrendered despite warning and disclosing identity of the police officials and fired upon the police party. The story of prosecution is also corroborated with the recovery memo. The fired and live cartridges and fire Arms have been examined by FSL, Rohini, Delhi which reported that recovered 'fire Arm' was in working condition & ammunition recovered in the present case are "Ammunition" as per the definition of Arms Act, 1959. The necessary sanction u/s 39 Arms Act have already been accorded by Sh.Sanjeev Kumar Yadav, DCP, Special Cell, New Delhi. The same is placed on record. The FSL result and complaint u/s 195 Cr.PC signed by Sh.Sanjay Dutt, ACP, Special Cell, New Delhi is also on record.

In view of the above material placed on record by prosecution, the submissions made by Ld. Counsel for accused persons

regarding false implication of the accused persons does not appears to be true prima facie. The non-examination of public witness is also not fatal to the case of prosecution at this stage because the prosecution may prove its case even in the absence of deposition of public witness. The contention with regard to the false implication of the accused would be determined at appropriate stage during trial, if proved by the accused persons.

In view of the above, I am of the considered opinion that there is sufficient material on record to frame charge under Section **186/353/307/34 IPC & 25/27 Arms Act** against all the four accused persons. Therefore the charge for the offences punishable under Section **186/353/307/34 IPC & 25/27 Arms Act is framed against the accused persons Robin Balyan, Vinay @ Nitin @ Rahul @ Balli @ Vinay Jat @ Vinay Baba, Dipanshu Dagar @ Deepu and Sumit Puniya**. All the accused persons pleaded not guilty and claimed trial.

Put up for PE on **10.01.2024. Material Witnesses be summoned for next date.**

(Devender Kumar Jangala)
ASJ-05, NDD/PHC/New Delhi
17.10.2023