

**HIGH COURT OF DELHI AT NEW DELHI**  
**Bench: HON'BLE MR. JUSTICE VIKAS MAHAJAN**  
**Date of Decision: October 21, 2023**

CRL.REV.P. 1139/2023

**STATE (NCT OF DELHI)**

**..... Petitioner**

**Versus**

**HARPREET SINGH KHALSA AND ORS.**

**..... Respondents**

**Sections, Acts, Rules, and Article:**

Section 302, 120B, 201, 34, 174A of the Indian Penal Code (IPC)

Sections 25, 27 of the Arms Act,

Section 390 of the CrPC (Code of Criminal Procedure)

**Subject:** Criminal Revision Petition challenging the order of discharge in a case involving serious offences, including murder, and alleging a mini-trial conducted at the stage of framing charges. The judgment focuses on the need for a prima facie case and the inadmissibility of conducting a detailed trial during this stage.

**Headnotes:**

Criminal Revision Petition – Challenge to the order of discharge – Accused discharged of various offences including murder – Mini trial conducted at the stage of framing charges – Alleged overlooking of crucial evidence – Prima facie case made out for further consideration – Operation of the impugned order stayed. [Para 3-18]

Framing of Charges – Judicial discretion in framing charges – Court's duty to determine whether a prima facie case exists – Mini trial not permissible at this stage – Evidence including CCTV footage and CDRs allegedly overlooked – Prima facie case requires further examination. [Para 12-15]

Suspension of Discharge Order – Court's authority to suspend a judgment and order of discharge – Reliance on precedent for suspension of the order – Operation of the impugned order suspended till the next hearing. [Para 17-18]

**Referred Cases :**

- State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 11 SCC 191
- State (NCT of Delhi) vs. Shiv Charan Bansal and Others, (2020) 2 SCC 290
- State of Maharashtra vs. Mahesh Kariman Tirki and Others, (2022) 10 SCC 207
- State of U.P. v. Poosu, (1976) 3 SCC 1

**Representing Advocates**

Advocates: Mr. Sanjay Jain, Sr. Adv., Mr. Laksh Khanna, APP

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**ORDER**

**21.10.2023**

**CRL.M.A. 29230/2023 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**CRL.REV.P. 1139/2023 & CRL.M.A. 29229/2023 (stay)**

3. The present petition impugns the order dated 20.10.2023 whereby the learned ASJ-08, West District, Tis Hazari Courts, Delhi has discharged the respondent nos. 2 to 4 of all the offences, whereas the respondent no.1 was discharged from an offence under Section 302 read with Section 120B IPC, in CNR No.DLWT01-003393-2022, SC No. 216/2022, titled as “**State vs Harmeet Singh & Ors**”, arising out of FIR No. 557/2021 under Sections 302/201/34/120B/174A IPC read with Sections 25/27 of Arms Act, registered at Police Station Moti Nagar.
4. The brief facts of the case are that on a receipt of information about the foul smell emanating from a flat situated at 2<sup>nd</sup> floor in a building bearing no.WZ-523/24, Basai Darapur, local police of PS Moti Nagar reached there. The said flat was under the tenancy of accused-Harpreet Sing Khalsa (in short ‘Khalsa’) and is owned by Sh. Kulbhushan, who opened the flat with his own keys. A blood stained mattress was found lying in one of the rooms and in one of the bathrooms, a dead body with its face covered with a black polythene and cloth was discovered. In the meanwhile, the complainant / Bhupender Singh reached there and identified the deceased as his brother Trilochan.
5. The statement of complainant/Bhupender Singh was recorded wherein he stated that his brother Trilochan was a resident of Jammu and a wellknown person and that his family was residing in Canada. Accused Harmeet and Khalsa used to visit his brother.

- 5.1 His deceased brother was scheduled to leave for Canada on 02.09.2021 and he accordingly reached at the flat of Khalsa. He had spoken to the wife of deceased on 03.09.2021, who informed him that Trilochan did not board the flight on 02.09.2021 and his flight had been re-scheduled for 03.09.2021.
- 5.2 He also spoke to his nephew Karan, who informed him that he had already talked with Khalsa, who informed him that he left Trilochan inside IGI Airport, but forgot his phone, which remained with Khalsa. When he again inquired with Karan, he informed him that Khalsa told him that Trilochan had been quarantined in Frankfurt, Germany. However, the complainant made his own inquiries and found that Trilochan did not even reach at the immigration at IGI Airport.
- 5.3 He further stated that on 08.09.2021, he was present along with Ranjot Singh Nalwa, a friend of Trilochan. Mr. Nalwa telephoned Khalsa and inquired from him about Trilochan and Khalsa informed him that he along with Harmeet had killed Trilochan.
- 5.4 He alleged that his brother Trilochan had been killed by Khalsa and Harmeet. He also alleged that Sudarshan and one Surender Singh Kala had previous enmity with deceased who also previously extended threats to kill Trilochan and they are behind the killing of Trilochan.
6. On the statement made by the complainant/Bhupender Singh, the aforesaid FIR came to be registered.
7. Mr. Sanjay Jain, the learned Senior Counsel for the petitioner submits that while discharging the respondents/accused persons, the learned Trial Court *vide* its impugned order has conducted a mini trial which is not permissible at the stage of framing of charge / discharge.
8. He invites the attention of the Court to para 88 of the impugned order to contend that the learned Trial Court has made an observation as regard the credibility of the incriminating material. He submits that learned Trial Court could not have looked into the probative or evidentiary value of the evidence and the same could have been seen by the learned Trial Court at the stage of trial.
9. He submits that there are CDRs on record which show that all accused persons were in regular touch with each other but the learned Trial Court has negated the said CDRs observing that the same cannot be looked into without transcript of CDRs having been filed on record.
10. He further submits that the learned trial court in para 53 of the impugned order has noted that the CCTV footage shows that all the accused and the

deceased were seen together but the said evidence, which by itself was sufficient to frame the charge, has been brushed aside. Para 53 of the impugned order reads as under:

*“53. What emerges from the facts of the prosecution case is that apart from the deceased, prima facie, except accused Sudershan, all the remaining four accused persons were in the flat. Although there is no eye witness to the incident and apart from the extra judicial confession of accused Harmeet, there was no evidence that it was actually accused Harmeet, who killed deceased. Nobody knows as to what actually transpired in the flat or who was actually present in the flat as there was no CCTV footage of inside the flat. The CCTV footage photographs filed by the prosecution shows only leaving of the accused persons and deceased at some point of time or exit of the accused persons at some point of time.”...*

11. In support of his contention, the learned Senior Counsel has placed reliance on the decision of the Supreme Court in ***State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 11 SCC 191***, to contend that at the stage of framing of charge, the court is only required to consider whether the *prima facie* case has been made out or not and at that stage, the mini trial is not permissible.
12. He also refers to the decision of the Supreme Court in ***State (NCT of Delhi) vs. Shiv Charan Bansal and Others”, (2020) 2 SCC 290***, to contend that while considering the question of framing of charges, the power to sift and weigh the evidence is for the limited purpose of finding out whether or not a *prima facie* case has been made out against the accused.
13. Placing reliance on the decision of the Supreme Court in ***State of Maharashtra vs. Mahesh Kariman Tirki and Others, (2022) 10 SCC 207***, Mr. Jain submits that this Court can suspend the judgment and order whereby the accused has been discharged. The relevant part of the said decision on which the reliance was placed reads as under:-

*“11. It cannot be disputed and it is not in dispute that even considering Section 390CrPC and the decision of this Court in State of U.P. v. Poosu [State of U.P. v. Poosu, (1976) 3 SCC 1 : 1976 SCC (Cri) 368], the appellate court in an appeal against acquittal may/can even suspend the order of acquittal/discharge passed by the appellate court. Therefore, it is not disputed that this Court can suspend the judgment and order passed by the High Court acquitting/discharging the accused.*

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*17. In view of the above, we are of the firm opinion that the impugned judgment and order passed by the High Court is required to be suspended.”...*

14. At the stage of framing of charge / discharge, the learned Trial Court was only expected to find from the material on record whether or not there is a sufficient ground for proceeding against the accused and not to consider whether there

is sufficient ground for conviction of the accused, or whether the trial is sure to end in conviction.

15. It *prima facie* appears that the learned Trial Court has overlooked evidence in the form of CCTV footage and CDRs and has undertaken the exercise of finding out probative and evidentiary value of the evidence on record, which is not permissible.
16. The offence for which the respondents/accused were charge sheeted is serious and the matter requires consideration.
17. Issue notice to the respondents by all permissible modes, returnable on 13.12.2023.
18. In view of the above and having regard to the submissions made by the learned senior counsel, which *prima facie* appear to have substance, the operation of the impugned order is stayed, till the next date of hearing.
19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
20. Order *dasti* under the signatures of Court Master.
21. Order be uploaded on the website of this Court.

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