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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th January, 2025

\+ CRL.REV.P. 15/2025 & CRL.M.A. 731/2025, CRL.M.A. 732/2025

AAYUB .....Petitioner

Through: Mr. Sulaiman Mohd. Khan, Ms. Taiba Khan, Mr. Bhanu Malhotra, Mr. Usman Ghani Khan, Mr. Gopeshwar Singh Chandel and Mr. Abdul Bari Khan, Advocates.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Raghuinder Verma, APP for the State with SI Satender Kr. Arya, P.S. Geeta Colony.

CORAM:
JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J. (ORAL)

1. The present petition under Section 438 read with Section 442 of the Bharatiya Nagarika Suraksha Sanhita, 2023 has been filed seeking the following prayers: -

> "a) Call for the records of the present case from the Ld. Trial Court.
> b) Allow the revision of the revisionist and set aside impugned Order on Charge and Framing of Charge Dated 08.11.2024 passed by the passed by the Court of Ms. Shail Jain, Ld. Principal Distt. & Session Judge (East), KKD Courts, Delhi under section 307/34 IPC & 27 Arms Act in SC No. 396/22 thereby discharged the revisionist;
> b) Pass such other and/or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances mentioned above, in the interest of justice."

2. Briefly stating facts of the present case are that, on 10.06.2015 at around 02:10 AM, *vide* a DD No. 4A of the even date, an information was received at PS Geeta Colony from LNJP Hospital whereby it was informed that one person named Shahzad s/o Shakir, aged 23 years, had been admitted in the hospital as he had arrived there from his home in an injured condition and that an Investigation Officer is required in the hospital. In pursuance of this information, SI Vinit along with Ct. Shish Pal went to LNJP Hospital and collected a MLC No. ECF-006966 dated 10.06.2015, whereby the aforenamed Shahzad was reported to have sustained injuries by firearm near his home. Subsequently, the injured/complainant was declared fit to make statement, however, he refused to make any statement to the SI present in the hospital. Then, SI Vinit went to the alleged crime spot, i.e., the home of the injured and inquired regarding the happening of the alleged incident of firing of gunshots. Thereafter, FIR No. 340/2015, under Sections 307/34 of the IPC and Sections 27/54/59 of the Arms Act, 1959, was registered at PS Geeta Colony.

3. Then, on 11.06.2015, SI Vinit again went to the crime spot and inquired from the neighbors regarding the alleged incident, however, all the efforts were in vain. SI Vinit, again on the same day, went to LNJP Hospital and recorded the statement of the injured, Shahzad, wherein, the latter give a detailed statement narrating the entire incident and stated that on 09.06.2015, during night at around 11:30 PM, when he was surfing on internet in mobile phone while sitting on slab outside the gate of his house, the present petitioner along with 2-3 boys came there and fired a gunshots at him by taking out a country made pistol (*katta*). Investigation was conducted in the aforesaid FIR

and chargesheet was filed on 15.01.2021 arraying the present petitioner as accused in the present case.

4. Learned Principal District and Sessions Judge *vide* order dated 19.04.2022, framed charges against the petitioner, however, the same was challenged before this Court by way of CRL.REV.P. 726/2022 on the ground that the learned Presiding Judge did not record the arguments advanced on behalf of the petitioner. The said revision petition was disposed of *vide* order dated 19.04.2022 of this Court with the directions that all the possible contentions raised on behalf of the present petitioner before the learned Trial Court shall be dealt with.

5. In pursuance of the directions passed by this Court, a detailed order on framing of charge, after hearing the submissions of behalf of the petitioner, has been passed by the learned Trial Court on 08.11.2024, whereby the charges for the offence punishable under Sections 307/34 of the IPC and Section 27 of the Arms Act have been framed against the petitioner. Hence, the present petition has been filed assailing the said order.

6. Learned counsel for the petitioner submits that the latter has falsely been implicated in the present case as he had not caused the alleged gunshots injuries to the injured, Shahzad. He has further submitted that the injured, Shahzad was taken to the hospital at 01:42 AM, i.e., after a delay of 2 hours, whereas the incident in the present case, as per the case of prosecution, had occurred at around 11:30 PM, which itself casts doubt over the case of the prosecution.

7. It is further pointed out that the injured, Shahzad, on being declared fit to make statement after the incident, had initially refused

to give statement to the police and had given statement on the next day after the registration of the FIR. It is also pointed out that no bullet shells or blood was found at the spot where the alleged incident in the present case is stated to have been reported and no voice of a shots being fired has been heard by any person or neighbours.

8. It is the case of the petitioner that the CCTV footage of the vicinity of the house of the petitioner shows that he was lastly seen going towards his house at the relevant point in time when the incident in the present case had happened. It has also been contended that the house of the petitioner is situated 7 to 9 Kms away from the house of the injured, Shahzad, where the alleged incident in the present case had occurred and it was not possible for the petitioner to be present at the alleged crime spot in such a short time frame. It was further submitted that the learned Trial Court has failed to take into account the CDR of the petitioner which clearly reflects that at the time of the alleged incident he was not present at the spot. It is also argued that the learned Trial Court has not taken into account the aforesaid CCTV (Annexure A-7) footage, while passing the impugned order, which clearly shows that the petitioner was near his house at the time of the alleged incident. It was also argued that the IO has not examined any public person even though the incident in the present case took place in a populated area.

9. It is further submitted that the weapon used in the alleged incident has not been recovered yet. Further, the report of the Head of Department, Forensic Science, LNJP Hospital, Delhi (Annexure A-8) stated that possibility of injuries being self-inflicted cannot be ruled out and the possible directions of the bullet in the body is downward,

slightly backward and slightly outward. The relevant portion of the aforesaid report is reproduced hereinunder: -

> "(a) All the five injuries are consistent to be carried by a project of firearm as all the firearm injures are irrigated by imaginally straight line ending at the location of bullet is the body: the direction of bullet in the body: the direction of bullet in the body is downward rightly backwise & rightly outward.
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> b) Injuries are also consistent with being caused by two different projectiles. Injury no. 1 & 2 caused by projectile of firearm with the direction of bullet going backward, slightly downward and slightly inward and injury no. 3 , 4 and 5 caused by other projectile of fire arm with the direction of bullet going downward, slightly backward and slightly outward and possibility of injuries being self - inflicted cannot be rule out."

10. Learned counsel for the petitioner has further submitted that from the statement of the injured recorded under Section 161 of the CrPC, it can be clearly inferred that the present FIR was filed as a counterblast to FIR No.109/09, under Section 326 of the IPC, registered at PS Chandni Mahal against the uncles of the injured by the petitioner. Also, the injured stated that he was hit by a bullet coming from the front, however, the said statement is contradictory in view of the aforesaid expert opinion.

11. Learned counsel for the petitioner submitted that the learned Trial Court has not relied upon the statement of witness Anish recorded under Section 161 of the CrPC wherein he stated that he had checked the footage of his house and saved that footage and the said footage was seized by the IO.

12. It was further argued that in the supplementary chargesheet, it is alleged that the petitioner came on a pulsar motorcycle to the house of the injured, however, the said detail was not mentioned in the main

chargesheet as well as the first supplementary chargesheet and the same has been introduced to counter the CCTV footage showing the presence of the petitioner around his residence.

13. Heard the learned counsel for the petitioner and perused the record.

14. Learned Trial Court while passing the impugned order on charge has observed thus: -

> "The prosecution case is that on 10.06.2015, Duty Ct. Mukesh gave information to PS Geeta Colony regarding admission of Shahjad in LNJP hospital with gun shot injuries and on the basis of said information, DD no. 4A was recorded at PS Geeta Colony and was assigned to SI Vineet Kumar, who went to hospital and found injured Shahzad admitted there with injuries on his palm, right hand and abdomen regions. Injured was found 'fit for statement', but he refused to give statement stating that he was not in a position to make statement. IO made endorsement on DD no. 4A and got the present FIR registered under Section 307 IPC and 27 Arms Act. Later on, injured Shahzad gave statement to the police stating therein that on 08.06.2015, he had parked his Mahindra Champion in the parking near Turkman Gate. After 2-3 hours, at about 8.30 p.m., when he came back to the parking, he could not find his vehicle there and came to know that accused Aayub, who used to be working there in the parking, had pushed his vehicle to other side of the parking. When the injured Shahzad asked accused as to why he had shifted his vehicle, he started abusing Shahzad and threatened that he would come to his house and see him. On 09.06.2015, at about 11.30 p.m., while Shahzad was sitting on the slab outside his house, accused Aayub came there alongwith two-three other boys. Accused Aayub took out a country-made pistol and opened fired at him. **Shahzad placed his hand on the country-made pistol in order to save him and the bullet hit palm of his right hand and it was injured.** Thereafter, accused fled away from there, extending threat to Shahzad. Injured was removed to hospital by his mother. As per MLC of injured Shahzad, he had suffered as many as five injuries, which are as under :
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> 1. CLW over right hand palm,
> 2. CLW over medial aspect of right hand,

3. CLW over abdomen right Hypochanduium with Satellite wound,

4. CLW over abdomen right illiac region and

5. CLW over abdomen on Illiac region with swelling surrounding the region.

The nature of injury has been opined to be 'dangerous'.

Supplementary chargesheet was filed wherein it is mentioned that accused Aayub and his associates fled away from the spot on a black colour pulsar motorcycle. It is also mentioned that distance between place of incident and Turkman Gate is about 7 k.m., which can be covered within 20 minutes by following all traffic norms and without following traffic norms, the distance can be covered within 15 minutes.

It is well settled law that at the time of framing of charge, the Court 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 accused is made out, but there cannot be a roving inquiry into the pros and cons of the matter and weigh the evidence as if he or she is conducting a trial. In **Union of India v. Prafulla Kumar Samal (supra)**, the Supreme Court laid down the following principles while passing order on charge:

> "10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> 1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.
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> 2) 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.
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> 3) 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.
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> 4) That in exercising his jurisdiction under Section 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."

In **Bhawna Bai vs. Ghanshyam (2020) 2 SCC 217**, it has been held by Hon'ble Supeme Court as under :

> "12. ….... At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen."

Considering the abovesaid settled proposition of law and the fact that injured has specifically stated that it was accused who had fired at him and caused as many as five injuries on his person, which have been opined to be dangerous. No person of common prudence would endanger his life by causing life threatening injuries on his or her person. As regards, the defence that accused was present outside his house at about 11.05 p.m., on 09.06.2015 and thus he could not have covered the distance of 7-9 k.m. within 20-25 minutes, I am of the opinion that this argument can not be accepted at this stage. As per allegation mentioned in the chargesheet/supplementary chargesheet, the same distance can be covered by motorcycle by following all traffic norms within 20 minutes and within 15 minutes, without following traffic norms. So, there is no merit in this contention. Even otherwise, other defences, as argued on behalf of the accused, can be proved by defence during trial and same cannot be

> appreciated at this stage, as prima facie there is sufficient material on record to frame charge against the accused.
> As regards the argument of Ld. Counsel for accused that no shell / blood was found at the spot, it is clearly admitted by Ld. Defence Counsel & also mentioned in supplementary chargesheet that shell of bullet & blood was found inside the room & on mattress. Once, it is found that injury was caused to injured in a serious manner by inflicting bullet injuries, which is prima facie corroborated by the statement of injured that "he put his hand in front of country-made pistol, due to which he suffered gunshot injury on his hand. This clearly shows that the injury was caused with a close distance otherwise, injured could not have put hand in front of country-made pistol.
> Further, as regards argument of Ld. Defence Counsel that allegedly injury was caused at 11.30 p.m., but he reached hospital at 1.42 a.m., I am of the opinion that, 1.42 a.m. is the time, when injured was examined by the doctor or when MLC was prepared. Again this fact can be explained & it would be duty of prosecution to prove these facts beyond reasonable doubt, but at this stage of 'charge', Court only has to consider, whether there is sufficient evidence which creates grave suspicion against accused for the incident or not ?
> Keeping in view the facts and circumstances of the case, statements of the witnesses coupled with medical evidence, prima facie case for framing of charge for commission of offence punishable u/s 307/34 IPC & 27 Arms Act against accused Aayub, is made out.
> Accordingly, charge for offence punishable under Section u/s 307/34 IPC & 27 Arms Act is framed against accused Aayub to which he pleaded not guilty and claimed trial."

15. Perusal of the impugned order shows that arguments advanced on behalf of the petitioner before this Court were similar to what were agitated before the learned Trial Court. Perusal of impugned order further shows that the same has been passed after considering all the arguments advanced on behalf of the petitioner.

16. As per the case of the prosecution, the injured has in his statement stated that it was the petitioner, who alongwith two or three others, had fired the alleged gunshots on him whereby the

injuries reflected in the MLC were sustained by him. It has been contended on behalf of the petitioner that, given the distance between his house and the spot where the alleged incident had occurred, it was not possible for him to be present there. To support this contention, reliance has also been placed on the CCTV footage collected from the vicinity of the house of the petitioner. It is matter of record that the said CCTV footage is not of the exact time when the incident in the present is alleged to have occurred.

17. Insofar as the contention of the petitioner that the injuries sustained by the injured, Shahzad, are self-inflicted is concerned, it sufficient to note that the same cannot be ascertained, at this stage, as the prosecution on the basis of the material adduced in the chargesheet has been able to make out a case a *prima facie* case against the petitioner. The said contention can be properly adjudicated during the course of the trial on the basis of the prosecution evidence and defence taken by the petitioner.

18. The Hon'ble Supreme Court in **Ghulam Hassan Beigh v. Mohammad Maqbool Magrey and Others, (2022) 12 SCC 657**, has observed and held as under: -

> "**25.** In *Asim Shariff* v. *NIA* [*Asim Shariff* v. *NIA*, (2019) 7 SCC 148 : (2019) 3 SCC (Cri) 40] , this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under : (SCC p. 155, para 18)
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> > "*18.* Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227CrPC in sessions cases (which is akin to Section 239CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, *State* v. *Selvi* [*State* v. *S. Selvi*, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710] , *Vikram Johar* v. *State of U.P.* [*Vikram Johar* v. *State of U.P.*, (2019) 14 SCC 207 : (2019) 4 SCC (Cri) 795] the trial Judge will be justified in discharging him. *It is thus clear that while examining the discharge application filed under Section 227CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record*."

(emphasis supplied)

26. In *State of Karnataka* v. *M.R. Hiremath* [*State of Karnataka* v. *M.R. Hiremath*, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , this Court held as under : (SCC p. 526, para 25)

"*25*. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N.* v. *N. Suresh Rajan* [*State of T.N.* v. *N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

'*29*. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep

into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.' "

27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. **However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution.** [See : *Bhawna Bai* v. *Ghanshyam* [*Bhawna Bai* v. *Ghanshyam*, (2020) 2 SCC 217 : (2020) 1 SCC (Cri) 581]].

28. In *Amit Kapoor* v. *Ramesh Chander* [*Amit Kapoor* v. *Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , this Court observed in para 30 that the Legislature in its wisdom has used the expression "*there is ground for presuming that the accused has committed an offence*". There is an inbuilt element of presumption. It referred to its judgment rendered in *State of Maharashtra* v. *Som Nath Thapa*[*State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820] ,

> and to the meaning of the word "*presume*", placing reliance upon *Black's Law Dictionary*, where it was defined to mean : (*Amit Kapoor case* [*Amit Kapoor* v. *Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , SCC p. 485, para 30)
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> > "*30. … 'to believe or accept upon probable evidence'; 'to take as true until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgment*."
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> > (emphasis supplied)"
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> > (Underline supplied)

Thereafter, appreciation of expert opinion at the stage of charge was also discussed and it was observed and held as under: -

> **"29.** What did the trial court do in the case on hand? We have no doubt in our mind that the trial court could be said to have conducted a mini trial while marshalling the evidence on record. The trial court thought it fit to discharge the accused persons from the offence of murder and proceeded to frame charge for the offence of culpable homicide under Section 304IPC by only taking into consideration the medical evidence on record. The trial court as well as the High Court got persuaded by the fact that the cause of death of the deceased as assigned in the post-mortem report being the "cardio respiratory failure", the same cannot be said to be having any nexus with the alleged assault that was laid on the deceased. Such approach of the trial court is not correct and cannot be countenanced in law.
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> **30. The post-mortem report, by itself, does not constitute substantive evidence. Whether the "cardio respiratory failure" had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one of its witnesses.**
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> **31.** To put it in other words, whether the cause of death has any

nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record. **The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.**

32. The prosecution should have been given opportunity to prove all the relevant facts including the post-mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no serious injuries were noted in the post-mortem report, the death of the deceased on account of "cardio respiratory failure" cannot be said to be having any nexus with the incident in question."

(emphasis supplied)

19. In view of the above discussion, this Court is of the considered opinion that the grounds taken by the present petitioner with respect to his claim of not being present at the alleged crime spot alongwith all the other defences raised, as pointed out hereinabove, are matter of trial. Learned Trial Court has correctly recorded that the same cannot be considered at this stage as the same would constitute a mini trial.

20. In view of the facts and circumstances of the present case, this Court is of the considered opinion that the impugned order of framing of charge against the present petitioner suffers from no illegality or

perversity and thus, finds no reason to interfere with the same.

21. The present petition is dismissed and disposed of accordingly.

22. Pending applications, if any, also stand disposed of accordingly.

23. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or pending trial and any observations made herein are only for the purpose of the present petition.

24. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

25. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JANUARY 14, 2025