IN THE COURT OF SH. M. K. NAGPAL
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE
(PC ACT), CBI 09 (MPs/MLAs CASES), ROUSE AVENUE
DISTRICT COURT, NEW DELHI

SC No. 4/2022
Filing No. 565/2022
CNR No. DLCT11-000578-2022
FIR No. 227/92, PS Janakpuri
and FIR No. 264/92, PS Vikas Puri
U/S 147/148/149/153A/295/302/307/395/436/120-B IPC

State

Versus

Sajjan Kumar (Ex. M.P.)
S/o Ch. Raghunath Singh,
R/o H.No. B-3/1, Mianwali Nagar,
Paschim Vihar, New Delhi.

ORDER ON CHARGE

23.08.2023

1. The accused has been sent to face trial before this court on allegations of commission of offences punishable U/Ss 147/148/149/153A/295/302/307/395/436/120B IPC by Special Investigation Team (SIT) constituted by the Ministry of Home Affairs (MHA), Govt. of India (GoI) in relation to investigation/re-investigation of cases registered in respect to riots that took place in Delhi, aftermath the assassination of Late Smt. Indira Gandhi, the then Prime Minister of this country, on 31.10.1984. This investigation by the SIT has been conducted

with regard to incidents of arson, rioting, loot and murder etc. that took place on 01.11.1984 and 02.11.1984 in the areas of Gulab Bagh, Nawada & Uttam Nagar, Delhi and in respect to which two separate FIRs vide Nos. 227/92, U/Ss 147/148/149/295/302/307/395/436 IPC & 264/92, U/Ss 147/148/149/302/304 IPC were registered at Police Stations Janakpuri and Vikas Puri respectively, which were earlier investigated by the Riots Cell of Delhi Police.

2. The factual background leading to registration of above two cases/FIRs and filing of this consolidated chargesheet with regard to the above two FIRs is that in the year 1985, the GoI had constituted the Hon'ble Mr. Justice Ranganath Mishra Commission of Inquiry for conduction of an inquiry into allegations relating to the incidents of organized violence that took place in Delhi, following assassination of the then Prime Minister of this country, and also to recommend measures which could be adopted for prevention of recurrence of such incidents. An affidavit dated 08.09.1985 in Gurumukhi language (on pages 47-52 of the file and English translated version thereof is on pages 53-55) of the complainant Sh. Harvinder Singh was filed before the said Commission narrating the incidents that took place on 01.11.1984 and 02.11.1984 in the above areas and resulting into injuries on the person of complainant, some other members of his family and the family of their one neighbour named Sh. Nath Singh and also the deaths of his father Sh. Sohan

Singh & brother-in-law (jija) Sh. Avtar Singh. The said affidavit further contained some depositions about looting of articles/property of a local Gurudwara and damage/destruction of property.

3. The contents of above affidavit of the complainant Sh. Harvinder Singh are being reproduced herein below:-

> "I, Harvinder Singh, state on oath as under:-
> Too much smoke was seen from the neighboring colony at about 11.00 morning of 1.11.84. That smoke started coming nearer slowly. Meanwhile, a crowd consisting of 200/250 person at once reached in front of the Gurdwara of our colony and set the Gurdwara on fire and started looting the thing kept in the Gurdwara. The people of the mob came by a D.T.C. bus and boarded on the same bus after looting and burning. One white car and the other red driven by some leader-brand people were leading the mob. The residents of the colony came out when the mob had gone ahead and started extinguish the fire of the Gurdwara. The mob again came back when they were still standing and thinking what to do next. They attacked the Sikhs with bricks, stones and rods as a result of which we sustained injuries. Then they burnt out house.
>
> On reaching home, I found my father who sustained a deep rod injury. He was laying unconscious. Whole of his body was blood stained. A mob of about 200/250 culprits attacked in the houses of Sardar Nath Singh, the President of our colony in the street of our back side, when I was still helping my father. They started beating the members of his family and set the truck on fire, parked outside. I and the members of my family were witnessing all the incident peeping through the holes of the rear door of our house. They threw 15/16 years old son of Sh. Nath

Singh, alive, into the burning truck but the residents of the colony saved him later on. We were so scared that we ran away leaving the doors of the house open. My Jeeja Ji (husband of my sister) and my father went to the house of one old hindu lady who locked the house from the outside. There, I came to know that some hindu brother had got my injured mother admitted into the Rana Nursing Home, Rajouri Garden. The noises of burning were heard by us while sitting inside the closed room. The condition of the father was going to be much more poor. All the three of us were hungry and helpless in the closed room. We passed the night there. The old mother opened the door at 5.00 morning of the 2nd date and borrowed two cycles from somewhere. I started on one cycle with my father and the other was driven by my brother-in-law and a Hindu boy. We reached Uttam Nagar when it struck 7.00 O'clock. A crowd of about 200/250 persons surrounded us there in front of the office of the Cong. (I) Party and started beating us with rods. We fell down with the injuries. They gave rod blows at my head, legs and hands. The blood was coming from my head. Meanwhile noise of shouting came, they should be burnt alive with kerosene oil. I started running on hearing it. They were going to give me rod blows at the back side. I reached near the Police Post, Uttam Nagar running fast. I requested the police with folded hands to save my brother-in-law and my father who were being beaten by the mob in the opening on the road. But they started abusing me and did not listen to me, on the other hand, they said "you Sikhs deserve such behavior". The S.P. said what can we do? The dead bodies of the hindus, filled in the trains are too coming from Punjab." Blood was coming from my head, hands were not in working order. I begged the police for water, but they refused to help me. I prayed to allow me to phone. I phoned the owner of my factory. They were also sardars. I remained lying till 3.00 O'Clock at noon. The police refused to me to

provide medical aid in spite of my repeated requests. They said “it will make no difference if you die when thousands of Sikhs are being dieing. The S.P. U.K. Katna came to the Police Post at about 3.15 noon. I requested him to send me to the hospital. That S.P. brought some injured mothers and children to the Police Post from the Nazafgarh side. About 40/50 sardars had reached their till 5.00 in the evening. He sent me and two or three more injured to Din Dayal Hospital, Hari Nagar. My head was stitched and I was again sent to the Police Post, Uttam Nagar, after a short while. My masters came to bring me at 8.00 at night. They left me and some other Sikhs to the Gurudwara of Hari Nagar. Charanjit Singh, a friend mine, took me to his house at Hari Nagar where I was got treated medically from a private doctor.

I saw two or three constables who came to the Police Post with the goods looted from the neighboring shops when I was praying for water in the injured condition, in the Police Post, Uttam Nagar. They had soap cakes, tooth paste and honey bottles in their hands. The Policemen were enjoying and watching sitting the carefree when the shops of the Sikhs were being looted opposite to them. “My brother-in-law and my father lost their lives during this incident. My sister who had only twenty seven days old son at that time, become widow. I have been disabled due to the injuries at the hands. We have been paid Rs.10,000/- each for the loss of lives and Rs.2,000/- each for injured. Sd/-Deponent.”

4. In the year 1990, a Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal was also constituted by the Delhi Administration and this Committee came to consider the above affidavit of complainant and recommended the registration of two fresh cases on the basis of allegations contained therein as, after going through the contents

of above affidavit and scrutiny report of the police records, the members of Committee were of view that incidents reported by the deponent/complainant had neither been investigated in nor linked to any of the cases registered at PS Najafgarh vide FIR Nos. 256/84, 257/84 and 285/84 in relation to the October-November, 1984 riots. It is then on the basis of recommendations of this Committee that the above said two FIRs under the above mentioned Sections came to be registered on directions of the Hon'ble Lt. Governor, as he accepted the recommendations of said Committee. As already discussed, the above two FIRs were investigated by the Riots Cell of Delhi Police and both the cases are stated to have been sent as untraced on 05.01.1994 and 29.12.1992 respectively.

5. In December, 2014, the MHA, GoI had constituted another Committee comprising of Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice Sh. J.P. Agrawal and terms of reference of this Committee included examination of the need for constitution of a SIT for investigation of cases pertaining to 1984 riots, to look into the grievances related to said riots, to oversee implementation of payment of additional/enhanced compensation and the requirement of any other assistance in relation to the said riots. It is then vide order dated 12.02.2015 of this Committee, that a SIT came to be constituted with the following terms of reference:-

> "To re-investigate the appropriately serious criminal cases which were filed in the National Capital Territory

of Delhi in connection with the 1984 Riots and have since been closed. For this purpose, the SIT shall examine the records afresh from the Police Stations concerned and also the files of Justice J. D. Jain and Sh. D. K. Agrawal Committee and take all such measures under law for a thorough investigation of the criminal cases:

To file charge sheet against the accused in the proper court where after investigation sufficient evidence is found available."

6. The office of SIT was notified as a separate PS having jurisdiction over whole of the National Capital Territory (NCT) of Delhi by the Hon'ble Lt. Governor of Delhi vide GNCT Delhi Notification No. 6/13/2015/2124 to 2131 dated 09.07.2015.

7. After constitution of SIT, a public notice is stated to have been issued in some leading newspapers of Delhi and Punjab requesting all the individuals, groups or associations etc., who were acquainted with facts of these cases pertaining to riots, to give evidence or depose about the same before the SIT to facilitate further investigation and details of all these cases, including the above two FIRs, were also uploaded on website of the MHA to give it wide publicity. After due scrutiny of records of these cases/FIRs, the SIT decided to conduct further investigation into these cases and intimations in this respect are also stated to have been given to the concerned court of Ld. Metropolitan Magistrate (Ld. MM), Dwarka Court Complex, Delhi on 11.08.2016 and 22.11.2016 respectively.

8. It is claimed that during the course of further investigation of these cases, as undertaken by the SIT, efforts were made to trace out the complainant, but he was found not available at his given address of Gulab Bagh, Nawada, Delhi. However, it was revealed that his one sister had been alloted a flat in Tilak Nagar and on contacting her, the Investigating Officer (IO) came to know that the complainant was residing at Dera Bassi, District Mohali, Punjab. IO had then approached the complainant and recorded his statement U/S 161 Cr.P.C. on 05.09.2016, in which he more or less stated on the lines of his depositions as contained in the previous affidavit dated 08.09.1985. It is stated that the name of his deceased brother-in-law as Sh. Avtar Singh has been revealed by the complainant in this statement only and even the accused Sajjan Kumar was named by him for the first time in this statement. He further stated therein that he could only recognize the accused from the above mob as the accused had earlier visited their street and house many times because his father was a Congress party worker. Again, it also came in this statement that the mob initially consisted of 100-125 persons and then some other persons came in two DTC buses and joined them.

9. IO had then requested the complainant to come to Delhi for getting recorded his statement U/S 164 Cr.P.C., but the complainant refused for the same. The statement U/S 164 Cr.P.C. dated 22.09.2016 of complainant in Gurumukhi language (carbon

copy on pages 217-226 and Hindi version thereof is on pages 229-231 of file) was then got recorded by the IO before the court of Ld. Sub-Divisional Judicial Magistrate (SDJM), Dera Bassi, District Mohali, Punjab and it is alleged that in this statement, the complainant had corroborated the allegations made earlier by him in his statement recorded U/S 161 Cr.P.C. by the SIT. His supplementary statements U/S 161 Cr.P.C. are also claimed to have been recorded on different dates explaining, inter-alia, the reasons for not naming the accused Sajjan Kumar during the course of earlier investigation conducted by the Riots Cell of Delhi Police. Statements of two sisters of the complainant namely Smt. Kawaljeet Kaur & Smt. Harjeet Kaur, i.e. widow of the deceased Sh. Avatar Singh and his mother Smt. Jaspal Kaur, were also recorded U/S 161 Cr.P.C. by the IO of SIT.

10. Besides the above statements of family members of the complainant, the IO is also claimed to have recorded statements of two sons of above Sh. Nath Singh namely Sh. Manjeet Singh & Sh. Tejender Singh and it is alleged that even they both in their above said statements had named and identified the accused Sajjan Kumar from amongst the persons constituting the mob. The name of their brother, who was thrown in a burning truck by the mob and was saved by the neighbours later on, is stated to have been disclosed in these statements as Sh. Gurcharan Singh and he is being claimed to have subsequently expired on 17.02.2009 due to injuries suffered in the above incident. It was

also claimed in the statements of these two witnesses that even the witness Sh. Tejender Singh had received severe injuries in above incident and he got paralyzed and remained bed ridden because of the same and he was unable to move from bed without help. Some photographs produced by the witness Sh. Manjeet Singh regarding the scene of crime and some treatment papers of the members of above two families, as well as the death certificates of Sh. Sohan Singh, Sh. Nath Singh and Sh. Gurcharan Singh, are also stated to have been seized by the IO during the course of this further investigation conducted by the SIT.

11. It is, thus, the case of prosecution in the present chargesheet that the evidence collected by SIT during the course of this further investigation U/S 173(8) Cr.P.C. had revealed that in the aftermath of assassination of Late Smt. Indira Gandhi, the accused, who was then the Member of Parliament (MP) from Outer Delhi constituency, having been elected on ticket of the Indian National Congress (INC) Party, had hatched a criminal conspiracy with others and objective of this conspiracy was to commit, amongst other offences, the offence of spreading disharmony between different religions and disturbing peace and tranquility. It is also alleged that in pursuance of said conspiracy, the accused along with 100-125 other unknown persons had formed an unlawful assembly and the common of that unlawful assembly was to commit criminal acts including rioting, arson,

murder and destruction of properties belonging to a particular community i.e. Sikhs, besides setting the Gurudwaras on fire. The accused is, thus, alleged to have committed the offences punishable U/Ss 147/ 148/149/153A/295/302/307/395/436/120B IPC. It is further found stated in chargesheet that the requisite sanction U/S 196 Cr.P.C. to prosecute him for commission of the offence punishable U/S 153A IPC has already been obtained from the competent authority.

12. It is necessary to mention here that the accused was granted anticipatory bail in this case by the court of Ld. Additional Sessions Judge (Ld. ASJ) vide order dated 21.12.2016 and since he was confined in jail in case FIR No. 416/84 of PS Delhi Cantt., which was re-registered by the CBI as case No. RC-24(S)/2005-SCU.I/SCR.I, he was formally arrested in this case and has been sent to face trial on the above allegations and for the above said offences.

13. Further, it has also been submitted in the present chargesheet that the above two cases have been clubbed together as the above incident dated 02.11.1984 had occurred in continuation of the incident which took place on 01.11.1984 and both these incidents were committed as a part of the same transaction perpetrated by the same people, who acted in pursuance of the above criminal conspiracy hatched by the accused and others and also that these cases emanate from the

same affidavit of complainant, though the incidents took place within the jurisdiction of two different police stations.

14. Arguments on charge, as advanced by Sh. Manish Rawat & Sh. Gaurav Singh, Ld. Addl. PPs representing the prosecution and Sh. Anil Kumar Sharma & Sh. S. A Hashmi, Ld. Counsels for the accused, assisted by Sh. C.M. Sangwan, Sh. Apoorv Sharma and Sh. Anuj Sharma Advocates, have been heard and considered in light of record of the case. Brief written notes/submissions filed from both sides have also been gone through.

15. The first contention of Ld. Defense Counsels is that once the final untrace reports in above two FIRs were presented before the court of Ld. MM(s) concerned and the same were also accepted by the courts, the very constitution of SIT in terms of recommendations given by the Committee comprising of Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice Sh. J.P. Agrawal by the MHA in year 2014 was illegal. Further, it is also their contention that as is clear from terms of reference of the order dated 12.02.2015 of MHA, GoI constituting the SIT, it was formed with a direction to re-investigate cases registered in respect to the above riots of 1984, but it was not legally permissible for SIT to conduct such re-investigation or even further investigation of any criminal case as once the above final or untrace reports in both these cases were submitted by the Riots

Cell of Delhi Police and the same were even accepted by the court(s), the GoI had no authority to direct such re-investigation or further investigation as the same could have been directed only by the Constitutional Courts and even the court of Ld. MM concerned had no jurisdiction or powers to direct such reinvestigation. It is also their contention that under the garb of further investigation, the IO of SIT had only done re-investigation of the two cases and the same was not legally permissible. Judgments in the cases of **Hoor Begum Vs. Govt. of NCT of Delhi, 2011 (3) JCC 2131; Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors., 2013 (5) SCC 762; Dharampal Vs. State of Haryana & Ors., 2016 (4) SCC 160; Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Anr., 2019 AIR (SC) 5233; Ram Udagar Mahto Vs. State, 2022 Cr. LJ 1127 and Luckose Zachariah @ Zak Nedumchira Luke & Ors. Vs. Joseph Joseph & Ors., 2022 (1) TLR (SC) 181** have also been referred to by Ld. Defence Counsels in support of their above submissions.

16. However, though the propositions of law as laid down in the above cases being referred to by Ld. Defence Counsels cannot be doubted or disputed, but this court is of *prima facie* view that the same cannot be applied to the given facts and circumstance of present case and hence, the same are of no help to the accused. It is so because though the above order dated 12.02.2015 of the MHA, GoI constituting SIT, inter-alia, speaks

about powers of SIT to re-investigate appropriately serious criminal cases filed in connection with above riots, which have since been closed, but the said order further states that the SIT was also empowered to examine afresh the records of all police stations and to take all such measures under the law for a thorough investigation of the criminal cases and to file charge sheet against the accused in the proper court, where after investigation sufficient evidence has been found therefor. Hence, simply because the word 're-investigate' has been used in the said order, it does not mean that formation of SIT was only with an intent and purpose of re-investigation of above cases and not with proper or further investigation.

17. Moreover, even if the above submission of Ld. Defence Counsels is taken as true for a moment, then the appropriate course of action which would have been available to the accused was to challenge the above order of MHA, GoI or formation of SIT before the Constitutional Courts and once he had chosen not to do so at the relevant time of constitution of SIT and even thereafter, he cannot now be heard of saying that formation of SIT was illegal or it was not in consonance with law.

18. Even otherwise, it has also been observed by this court on perusal of record that the investigation conducted by SIT in these cases does not actually amount to re-investigation of the cases and rather, it is further investigation into the allegations made

therein as it has been conducted in continuity of earlier investigations done by the Riots Cell of Delhi Police and in background of allegations that the earlier investigations were not conducted properly for one or the other reason. Further, even the motive behind formation of SIT was the same.

19. Again, apart from revisiting the complainant and some of the other witnesses examined earlier during the course of investigation conducted by the Riots Cell of Delhi Police, the IO of SIT is also found to have examined various fresh witnesses and collected some further documentary evidence during the course of his investigation and hence, even for this reason, the investigation conducted by SIT has to be taken as further investigation and not as re-investigation of these two cases. Moreover, the observations made in para no. 15 of the case of **Vinay Tyagi (Supra)** being relied upon by Ld. Defence Counsels themselves supports this view and these propositions are also being reproduced herein below:-

> "15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as

> ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a ‘reinvestigation’, ‘fresh’ or ‘de novo’ investigation.”

20. The next challenge put by Ld. Defence Counsels to prosecution of the accused in this consolidated chargesheet is that the prosecution should not have filed a consolidated chargesheet for the above said two cases registered vide two separate FIRs No. 227/92 of PS Janakpuri and 264/92 of PS Vikas Puri as these cases pertain to two separate incidents that took place within jurisdiction of two different police stations and on two separate dates and timings. It is also the contention of Ld. Defence Counsels that prosecution of accused at one place for his alleged acts constituting the offences committed at two different times and places is an illegality and this alone should be a ground for discharge of the accused and this court should not perpetuate the above wrong or illegality of the prosecution.

21. It is also the contention of Ld. Defence Counsels that had the above two incidents taken place in continuity or perpetuity of

the same transaction or in same chain of events, then there was no need for registration of two separate FIRs at different police stations and once these were registered and even separate investigations were conducted by the Riots Cell of Delhi Police leading to filing of two separate untrace/final reports, then this filing of a consolidated chargesheet for both these cases by the SIT cannot be justified and has to be held as an illegality.

22. The grounds on which this consolidated chargesheet for the above said two cases has been filed by SIT are that though these incidents took place on two different dates and at two different places, but the same were committed in continuity and were part of the same transaction perpetrated by the same people acting in pursuance of the criminal conspiracy hatched between accused Sajjan Kumar and other persons. It has also been submitted on this aspect that it was done as both these cases emanated from the same affidavit filed by complainant before Hon'ble Mr. Justice Ranganath Mishra Commission and even some of the witnesses deposing about these incidents are common. It has further been submitted by Ld. Public Prosecutors, in addition to the above submissions, that even Section 219 Cr.P.C. permits framing of joint charge against or trial at one place of an accused in three cases for offences of the same kind committed within a span of 12 months.

23. However, it is observed that even though Section 219

Cr.P.C. provides for a joint trial of three offences of the same kind committed by an accused within a space of 12 months from first to the last of such offences, but this Section or any other Section nowhere provides for filing of a consolidated chargesheet for such three offences. It clearly emerges out from discussion under the preceding heads that two separate FIRs at two different police stations were earlier registered regarding the above incidents dated 01.11.1984 and 02.11.1984 and the same were registered only because these incidents were treated or taken as separate incidents as these took place at two different places. Even the statements of victims and other witnesses of these two incidents are found to have been recorded separately not only by the Riots Cell of Delhi Police, but also by SIT which was entrusted with the task of re-investigation or further investigation of these cases in terms of the above order dated 12.02.2015 issued by the MHA, GoI. Hence, when two separate final or untrace reports were already submitted and even accepted by the courts of Ld. MMs concerned in these two cases, on the basis of investigations done by the Riots Cell of Delhi Police, and even IO(s) of SIT had investigated these cases separately and had recorded separate statements of witnesses in two cases/FIRs, the subsequent filing of a consolidated chargesheet in respect to these two cases can never be justified and in considered view of this court, the IO of SIT should have filed two separate chargesheets in respect to these two cases.

24. But since it has not been done and the IO has already filed a consolidated chargesheet in respect to these two cases and the same even stands committed to this court after cognizance, the court has now to see if the same can be termed or considered as an illegality or if the same has caused any prejudice to the accused or not. When the matter is considered in this perspective, this court is of considered opinion that no prejudice at all has been caused to the accused merely by clubbing of these two cases and filing of a consolidated chargesheet in respect to both of them by the IO of SIT and hence, it cannot be termed as an illegality and has to be considered as an irregularity only, which does not go to root of the case.

25. However, another separate issue which is now to be considered by this court is as to whether or not both the above incidents actually took place in continuity or the same can be considered to have taken place as a part of the same transaction and perpetrated by the same people who acted in furtherance of the alleged criminal conspiracy between the accused and other persons. As stated above, the incident dated 01.11.1984 took place in the area of Gulab Bagh, Nawada, Delhi, which fell within the territorial jurisdiction of PS Janakpuri, and it took place at around 11 am, when a mob is stated to have arrived or gathered there and had put the Gurudwara as well as houses of Sikh community situated in the said locality on fire and damaged, destroyed or looted the articles kept in Gurudwara and houses of

the Sikhs in locality and gave beatings to the residents thereof resulting into injuries on their persons. But the other incident is claimed to have taken place at around 7 am on the next day i.e. 02.11.1984 at a different place i.e. near the Congress party office in Uttam Nagar and within the jurisdiction of a different police station i.e. Vikas Puri. It has been vehemently argued by Ld. Public Prosecutors that as per allegations contained in the chargesheet, the complainant, his father and brother-in-law were injured in the first incident of date 01.11.1984 and due to the fear of mob, they took shelter in the house of some Hindu lady on said date and they remained locked in the said house during the intervening night of 01-02.11.1984. It is also their submission that when these persons were going towards Janakpuri on the next morning, in connection with treatment of father of the complainant who was severely injured in the said incident, on two bicycles borrowed by them and they had reached near the Congress party office in Uttam Nagar, they were again attacked by a mob and this attack on them was by the same mob. Hence, it is the submission of Ld. Prosecutors that these incidents took place in continuity and have to be considered as a part of the same transaction and perpetrated by the same offenders and in pursuance of the above larger conspiracy between the accused and others to kill Sikhs and to destroy and damage their property, to avenge the killing of the then Prime Minister. In support of this submission, they have also drawn attention of this court towards some statements made by the complainant U/S 161

Cr.P.C. before the IO of SIT, wherein the complainant is found to have specifically claimed that some of the persons constituting the mob which attacked them near the Congress party office in Uttam Nagar on 02.11.1984 were the same, which were part of the earlier mob and were seen by him, along with the accused Sajjan Kumar, on 01.11.1984.

26. However, when the above submission of Ld. Public Prosecutors is considered and appreciated by this court in light of allegations made in the chargesheet and the statements of complainant being pointed out by them, this court is of *prima facie* view that the above submission of Ld. Public Prosecutors cannot be accepted and both the above incidents cannot be taken to have happened in continuity or in the same course of transaction and rather, the same were two separate incidents. This court is also of the *prima facie* view that even the persons who constituted the mob on these two dates were not the same and were different.

27. It has been observed on perusal of record that the first statement of complainant on this aspect being pointed out by Ld. Public Prosecutors is of date 09.11.2016 (on pages 348-350) and the same is found to have been recorded in case FIR No. 264/92, PS Vikas Puri. Further, one more statement of complainant to the same effect is also there in the above said case and it is of date 23.12.2016 (on pages 354-355). Similarly, one statement of

complainant to this effect is also found to have been recorded on same date 23.12.2016 in the other case FIR No. 227/92 of PS Janakpuri (on pages 179-180). Though, it is found recorded in all these statements that some of the persons in mob which attacked upon the complainant and others near the Congress party office on 02.11.1984 were same and they were also there, along with the accused Sajjan Kumar, in the mob which attacked the Gurudwara and their houses on 01.11.1984, but it is further found stated by the complainant in these statements recorded by the IO of SIT that he could not identify any such person participating in these mobs and he had identified only the accused Sajjan Kumar as a participant of the mob dated 01.11.1984. Again, the complainant even does not claim in any of these statements that the accused Sajjan Kumar was present or seen by him amongst the persons which constituted the mob and attacked him and his other relatives near the Congress party office on 02.11.1984. Hence, simply because he claims vaguely in these statements that some of the persons constituting these two mobs on two different dates were the same, it cannot term these two separate incidents to be a part of the same transaction or chain of same events or to have taken place in continuity or perpetrated by the same people, as has been alleged by and submitted on behalf of the prosecution.

28. Further, even the submission of Ld. Public Prosecutors regarding existence of any such criminal conspiracy between the

accused and other persons for killing of Sikhs and destroying or damaging their property, which has been made in support of their plea for treating these incidents in continuity, cannot be accepted as had any such criminal conspiracy existed, then there was no need for registration of any separate cases against the accused and others for the above two incidents and a single FIR for these incidents could have been registered at any of the above police stations. The submission of Ld. Prosecutors for existence of even any larger conspiracy between the accused and others for killing of Sikhs etc., to avenge the murder of the then Prime Minister, is also not acceptable as then only a single FIR for the incidents of all police stations falling within the parliamentary constituency of accused, if not the entire State of Delhi, could have been registered by the police.

29. Again, one other statement dated 02.03.2017 (on pages 181-182) of sister of the complainant, namely Smt. Kawaljeet Kaur, in case FIR No. 227/92 of PS Janakpuri is also found to have been recorded by police in FIR of PS Janakpuri and it was recorded by the IO of SIT in respect to both these incidents. It is observed that though she had not named the accused Sajjan Kumar as a participant of any of the above two mobs of these two incidents, but she had identified and told the names of two other persons as Sh. Rajeev Bhatia and Sh. Balraj Tyagi, who according to her were present at the time of above incident dated 02.11.1984, which took place near the Congress party office.

However, she also told IO in the said statement that these two persons were not participants of the mob or crowd which attacked her brother, father and brother-in-law and they were merely standing behind in the crowd. It further came on record in her above statement that as per her information, Sh. Rajeev Bhatia, who was stated to be the Principal of Geeta Public School where she was working as a teacher, had already expired. The other witness Sh. Balraj Tyagi is, however, found to have been examined U/S 161 Cr.P.C. during investigation conducted by the SIT on 20.03.2017 (on page 183) and he is found to have stated to IO that during the 1984 riots, and especially on 02.11.1984, he did not even go outside and remained in his house the entire day and hence, he was not aware about the said incident nor he could identify any of the offenders. Thus, the witnesses Smt. Kawaljeet Kaur and Sh. Balraj Tyagi do not name or identify the accused Sajjan Kumar as a participant of the above mobs and they even do not name or identify any other person as an offender.

30. It is also the contention of Ld. Public Prosecutors that the evidence and material on record is at least sufficient to show *prima facie* that the accused Sajjan Kumar in criminal conspiracy with other persons was responsible for both these incidents, if not the incidents of entire West Delhi or area in his constituency or the entire State, and once *prima facie* evidence to show existence of this conspiracy is there, these two incidents of two different

dates are to be taken to have happened in continuity and as a part of the same transaction. In this regard, they have also drawn the attention of this court towards allegations contained in para no. 19 of the chargesheet and as per allegations contained in this paragraph, the evidence collected by SIT during further investigation conducted U/S 173(8) Cr.P.C. in the case had established that in the aftermath of assassination of Late Smt. Indira Gandhi, the accused Sajjan Kumar, who is the then MP from Outer Delhi constituency, had hatched in a conspiracy, the object of which was to commit amongst other offences, the offence of spreading disharmony between different religions and disturbing peace and tranquility. It is also found stated in the said para that it was in pursuance of the said conspiracy only that the above accused along with others (100-125 unknown persons) had formed an unlawful assembly, the common object of which was to commit criminal acts, including rioting, arson, murder and destruction of property belonging to a particular community i.e. Sikhs, besides setting the Gurudwara on fire. It is further the contention of Ld. Public Prosecutors that since the criminal conspiracy between the accused and other offenders is *prima facie* there as per allegations contained in the chargesheet, the offences of above two incidents have to be taken in continuity as the offence of criminal conspiracy punishable U/S 120B IPC is a continuing offence.

31. However, in considered opinion of this court, the facts and

circumstances of these FIRs and allegations contained in this consolidated chargesheet, as already discussed, do not make out a *prima facie* case for commission of the offence of criminal conspiracy, which has been defined by Section 120A and made punishable by Section 120B IPC. As per provisions contained U/S 120A IPC, a criminal conspiracy is when two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means. Hence, in terms of these provisions, an agreement between two or more persons to commit an offence or an illegal act or some legal act by illegal means is required to be there before these persons can be said to have committed the offence of criminal conspiracy. Further, as per proviso to the said Section, an agreement to commit an offence or an illegal act shall itself amount to a criminal conspiracy and it is not at all required or necessary that any overt act should also be done by parties in pursuance to the said agreement. The gist of the offence of criminal conspiracy, thus, lies in meeting of minds of two or more persons for doing of some offence or illegal act or an act which is though not illegal by doing it with illegal means.

32. Coming to the facts of present case, it has already been discussed that except the accused Sajjan Kumar, no other participant of the above two mobs has been named or identified by the complainant or any of the other victims or witnesses of these two cases and that is the reason why only the accused

Sajjan Kumar has been chargesheeted and sent to face trial for the offences of these two incidents. The evidence on record does not show as to with whom the above criminal conspiracy was entered into by the accused Sajjan Kumar and even from the above allegations contained in para no. 19 of this consolidated chargesheet, it is not clear as to who were the other conspirators. Even the place and manner where the alleged criminal conspiracy was hatched are not *prima facie* clear from contents of the chargesheet and other material filed in support thereof. Hence, simply by vaguely stating and alleging in chargesheet that the above unlawful assemblies were formed or had gathered in pursuance of some criminal conspiracy, the prosecution cannot be said to have been able to make out a *prima facie* case to show the existence of such a criminal conspiracy between the accused and other unknown offenders or participants of the said mob.

33. Again, though it is also the contention of Ld. Public Prosecutors that the *prima facie* existence of such a criminal conspiracy hatched between the accused and others has to be presumed from the facts and circumstances of these cases as otherwise, the above mob or mobs could not have been formed or crowd could not have assembled, but even this contention of Ld. Public Prosecutors is not legally tenable as a mob or crowd can assemble or unlawful assembly can be formed even spontaneously to commit some offences and it is not at all necessary that this formation or assembly of the mob or crowd

should be preceded by a criminal conspiracy. The court cannot hold the existence of any such criminal conspiracy, even *prima facie*, merely on the basis of assumptions or presumptions, when there is no evidence at all on record to show the existence thereof.

34. As far as the contention of Ld. Public Prosecutors regarding the offence U/S 120B IPC being a continuing offence and commission of other offences in pursuance thereof is concerned, though there is no doubt that the offence U/S 120B IPC is a continuing offence, but as already discussed, the evidence on record *prima facie* negates the existence of any such criminal conspiracy and even if for a moment it is taken that any criminal conspiracy between the accused Sajjan Kumar and other persons was hatched prior to gathering of the mob near Gurudwara of Gulab Bagh, Nawada on 01.11.1984, at around 11 am, the purpose of that criminal conspiracy could have stood accomplished when the said Gurudwara and houses of Sikhs residing in that locality were put on fire, the articles or property kept therein were/was damaged, destroyed or looted and injuries were inflicted on the persons of Sikhs residing in that locality and that criminal conspiracy could not have been stretched to the incidents of subsequent dates or that taking place in different parts of Delhi only on the basis of the offence of criminal conspiracy being a continuing offence. However, as discussed above, it is hypothetical only as no such evidence of criminal

conspiracy exists on record.

35. It is also necessary to mention here that Section 120B IPC, along with Section 153A IPC, has been added to these cases only on the basis of investigation conducted by the SIT and these two Sections were not there either in the FIRs registered in these cases or even in the final or untrace reports submitted in these cases in the court of Ld. MMs concerned.

36. Therefore, in light of the above facts and circumstances, it can *prima facie* be held that the above two incidents were entirely separate incidents, which took place at two different places and at different times and there is no evidence on record to show that accused Sajjan Kumar was present at the time when the second incident of date 02.11.1984 took place or he was also a part of the mob which attacked the complainant or his other relatives on that day. Thus, he cannot be connected with the second incident dated 02.11.1984 as the evidence and material placed before the court do not *prima facie* show existence of any criminal conspiracy for commission of offences of the above two incidents and these incidents cannot be held to have taken place in continuity or as a part of the same transaction. Hence, the accused could not have been chargesheeted and thus, cannot be charged for the offences alleged to have been committed by the mob during the said incident dated 02.11.1984.

37. The next contention of Ld. Defence Counsels is that there is a delay of more than 10 months on part of complainant in reporting the matter to police or any other authority as his above affidavit tendered before the Hon'ble Mr. Justice Ranganath Mishra Commission is of date 08.09.1985, whereas the incidents of above two cases took place on 01.11.1984 and 02.11.1984 and admittedly, before the said affidavit, there is no other statement or complaint made by him or any other member of his family about these incidents. It is the submission of Ld. Defence Counsels that on the ground of delay alone, the case of prosecution should be disbelieved. However, this submission of Ld. Defence Counsels is not legally tenable as the case of prosecution cannot be thrown out, and too at the stage of charges where only a *prima facie* view is required to be taken by the court, merely on the ground of delay and the effect of above delay, if any, will be seen only at the final stage of appreciation of testimonies of the complainant and other witnesses or victims as they will have an opportunity to step into the witness box and to explain the circumstances leading to said delay. Moreover, one complaint dated 13.11.1984 made by Sh. Manjeet Singh, son of Sh. Nath Singh (on page 243), regarding the above incident dated 01.11.1984 is also found to be a part of the relied upon documents of this case and this complaint was made to the SHO PS Janakpuri and it was made just on 12th day of the above incident.

38. It has also been argued by Ld. Defence Counsels that the accused was not named by the complainant in his above affidavit dated 08.09.1985 and he was even not named by him and his other family members or the other victim Sh. Nath Singh and his family members in their statements made on different dates in the years 1992 and 1993 during the course of investigations conducted by the Riots Cell of Delhi Police and he has been named for the first time by the complainant only in his statement made U/S 161 Cr.P.C. before the IO of SIT in case FIR No.264/92 PS Vikas Puri on 05.09.2016, i.e. after a very long period of around 32 years from the date of incident.

39. Thus, in light of the above, it is the contention of Ld. Defence Counsels that no charges can be framed against the accused for the alleged offences in view of this huge and inordinate delay in naming him by the complainant and other victims and the accused is liable to be discharged. It is also their submission that even in the above statement of complainant dated 05.09.2016, the accused has been named and implicated only because of some political reasons and motives, though he was not involved in the alleged incidents and was not even present on the alleged places of incidents at the relevant time.

40. It is observed on perusal of record that apart from the above affidavit dated 08.09.1985 of complainant Sh. Harvinder Singh, his five statements on different dates are found to have

been recorded in both the above cases/FIRs and one of these statements was made before the Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal on 22.11.1991 (on pages 59-60) and rest of the statements were made before the IO of Riots Cell, Delhi Police. Even different statements of his mother Smt. Jaspal Kaur, sister Smt. Harjeet Kaur i.e. widow of deceased Sh. Avtar Singh and his another sister Smt. Kawaljeet Kaur and the statements of their neighbour Sh. Nath Singh and his daughter-in-law Smt. Manjeet Kaur etc. were recorded by the IO of these two cases. However, in none of these statements, any of the above witnesses had named the accused Sajjan Kumar as the person abetting or instigating the above mob or even as a participant thereof and that is why investigation in both these cases earlier culminated in filing of untrace or closure reports before the Ld. MMs concerned.

41. It is necessary to mention here that all these statements made by the victims and other witnesses during investigation of the above two cases conducted by the Riots Cell have already been directed to be considered as a part of record of these cases vide order dated 20.01.2023 passed by this court on an application dated 12.12.2022 filed on behalf of the accused. It had also been observed by this court in the said order that this consolidated chargesheet filed on the basis of investigation conducted by the SIT cannot be viewed or considered separately and it can only be termed as a supplementary chargesheet filed in

these cases and is required to be considered in continuity of the earlier untrace reports submitted by the Riots Cell of Delhi Police. For this reason, this court had also directed in the said order that the above statements of victims and other witnesses recorded during the course of investigation of Riots Cell, copies of which were supplied to the accused U/S 207 Cr.P.C., could not have been withheld by the prosecuting agency by keeping or placing them in the category of unrelied upon documents and the accused was entitled to get these statements considered by this court for deciding the question of charges to be framed against him. However, apart from these statements which were 26 in number, copy of one polygraph examination report of the accused given by CFSL, New Delhi also formed part of the documents supplied to accused under the provisions of Section 207 Cr.P.C., but it was held by this court vide the above order that this document was not liable to be considered in support of the prosecution case and though it could be considered in defence of the accused, but since it was not of sterling quality, it cannot be used by accused at the stage of charge.

42. Coming to further investigation conducted in these two cases by the SIT, it is observed that different statements of complainant Sh. Harvinder Singh regarding the incidents of above two cases are found to have been recorded by the IO U/S 161 Cr.P.C. on dates 05.09.2016, 09.11.2016, 24.11.2016 and 23.12.2016 and besides these, his one statement U/S 164 Cr.P.C.

dated 20.09.2016 was also got recorded by the IO before the Ld. SDJM, Dera Bassi, Mohali, Punjab, as already discussed. The name of accused Sajjan Kumar has specifically come on record during most of these statements of the complainant as the person who had instigated the mob which set the Gurudwara and houses of Sikhs on fire, looted or destroyed their property and inflicted injuries upon their persons in the incident that took place on 01.11.1984. Though, the statements of his mother Smt. Jaspal Kaur and brother Sh. Tejinder Singh are also found to have been recorded by the IO of SIT during this further investigation, but none of them is found to have named the accused as an offender. However, two sons of Sh. Nath Singh namely Sh. Manjeet Singh and Sh. Tejinder Singh in their statements made before the IO of SIT for the first time have also specifically named and identified the accused as the person who was instigating or abetting the mob in above incident that took place on 01.11.1984, though the other members of their family namely Sh. Trilochan Singh and Smt. Manjeet Kaur and their cousin brother namely Sh. Jaswant Singh in their statements have not named or identified the accused. It also came on record in their statements that their father Sh. Nath Singh had since expired in the year 1996, their mother Smt. Jaswant Kaur died in the year 2003 and even their brother Sh. Gurcharan Singh, who was allegedly thrown alive on a burning truck, had subsequently expired in the year 2008.

43. Thus, it is clear from above that the name of accused as

offender and his involvement in the incidents of above two cases first came on record during the statement dated 05.09.2016 made by complainant (on pages 326-331) in case FIR No. 264/92 and a similar statement dated 24.11.2016 was also then made by him in the other case FIR No. 227/92 (on pages 164-169). Apart from this, his statement U/S 164 Cr.P.C. dated 20.09.2016 (Punjabi version on pages 217-226 and Hindi version on pages 228-231) and his supplementary statements in both these cases on different dates were also recorded and the name of accused surfaced in most of these statements. However, from the family of Sh. Nath Singh, the accused was named as offender for the first time only in statements dated 24.11.2016 made by Sh. Manjeet Singh and Sh. Tejinder Singh (on pages 157-160 and 161-163 respectively). But, still the above witnesses cannot be straightaway disbelieved for the purposes of charge and the case of prosecution cannot be thrown away merely on the ground that the accused was named by these witnesses after a long and inordinate delay of 32 years as it has also come on record during some of these statements that the witnesses were afraid of naming or deposing against the accused, who was an M.P. of their area and an influential political figure. Whether the above explanation or reasons for delay are good enough or not can only be decided during the course of trial, when these witnesses will be stepping into the witness box to depose about the incidents or against the accused. Ld. Addl. PPs on this aspect have also referred to a decision of the Hon'ble Supreme Court in another case of this very accused

titled as **Sajjan Kumar Vs. Central Bureau of Investigation,** SLP (Crl.) No. 6374/2010 decided on 20.09.2010. In the above said case, their Lordships had upheld an order of the Hon'ble High Court refusing to set aside the order of a trial court directing framing of charges against the accused, in a similar matter arising out of and made a part of the FIR No. 416/84 registered at PS Delhi Cantt., for offences punishable U/Ss 153A/295/302/395/427/436/339/505 IPC, while considering and believing the statements made by the witnesses during the course of investigation of the said case and implicating the accused therein after a long gap of around 23/25 years.

44. Similarly, the contradictions or inconsistencies being pointed out by Ld. Defence Counsels in different statements of the complainant and other witnesses regarding number of persons constituting the mob, participation and role of the accused and also on certain other aspects relating to commission of the alleged offences cannot be considered at this stage and the same cannot be made a ground to discharge the accused. The evidentiary value of the oral and documentary evidence collected during investigation of these cases by the two investigating agencies can also be tested and determined during the course of trial only. It will further be a matter of trial only as to what effect or relevance can be given to the failure of complainant to file any complaint or protest petition regarding the above incidents. Again, the submission of Ld. Defence Counsels regarding false

implication of the accused in present case for some political reasons cannot also be accepted at this stage and it will be a matter of defence only.

45. It is well settled that at the stage of charge, the court is required to form only a *prima facie* view on the basis of material or evidence placed before it regarding involvement of the accused in commission of alleged offences and a detailed or meticulous examination or appreciation of the evidence is not at all required. If on the basis of such appreciation and analysis of the evidence, the court comes to a conclusion that there are sufficient grounds for presuming that the accused has committed the alleged offences, then charges are liable to be framed against him. Similarly, if the court comes to form a view that there is no sufficient ground for proceeding further against the accused on the basis of such evidence or material, then the accused is entitled to be discharged. The court is also legally empowered to sift the evidence and material on record for the purpose of deciding the question of framing of charges, but it is well settled that this power is only for the limited purpose to find out whether or not sufficient material or grounds for framing of the charges exist in that particular case. It is also settled that charges against the accused can be framed even if grave suspicion exists on the basis of such evidence and material about involvement of accused in commission of such offences.

46. The relevant provisions dealing with the discharge of accused or framing of charge against him and as contained in Sections 227 and 228 Cr.P.C. are being reproduced herein below :-

> **"Section 227 - Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.**
>
> **Section 228 - Framing of charge (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-**
>
> **(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;**
>
> **(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.**
>
> **(2) Where the Judge frames any charge under**

clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

47. The scope of Sections 227 Cr.P.C. and 228 Cr.P.C. was duly considered by the Hon'ble Supreme Court in case of **R. S. Mishra Vs. State of Orissa & Ors., (2011) 2 Supreme Court Cases 689** and it was observed that the word 'consideration' referred to in these Sections must be reflected in the order of court discharging an accused or directing the framing of charges against him. The relevant propositions of law as laid down in the said case are being reproduced herein below :-

"21. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If, after such consideration". Thus, these words in Section 228 refer to the `consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged),

some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed `after such consideration' and therefore, that consideration must be reflected in the order."

(Emphasis supplied)

48. In case of **Union of India (UOI) Vs. Prafulla Kumar Samal & Ors., Crl. Appeal No. 194 of 1977, (1979) 3 SCC,** also, the following observations were made by their Lordships on the issue of framing of charge :-

"7. …….....

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the

case of State of Bihar v. Ramesh Singh where Untwalia, J. speaking for the Court observed as follows:-

'Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial.'

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.

9.

……

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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;

(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;

(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;

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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."
(Emphasis supplied)

49. Even in the case **Dilawar Balu Kurane Vs. State of Maharashtra, 1 (2002) CCR 61 (SC), 2002 SCC (Crl.) 310 (SC)**, the Hon'ble Supreme Court has made the following observations :-

> **"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

(Emphasis supplied)

50. Again, in the case of **State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption V. N. Suresh Rajan, 2014 134 AIC 1**, the propositions of law laid down by the Hon'ble Supreme Court in the cases of **Prafulla Kumar Samal (supra)** and **Dilawar Balu Kurane (supra)** have been reaffirmed.

51. Hence, when the statements made by witnesses of these cases are considered and appreciated in light of the above factual and legal discussion, it has been observed that the complainant Sh. Harvinder Singh in his statements made U/S 161 and 164 Cr.P.C. during the course of investigation conducted by the SIT has specifically deposed not only about participation of accused in the above mob, but he even deposed about the above incident of putting the Gurudwara on fire, looting of its property and also the attack by mob members on the houses and persons of members of Sikh community. He also stated specifically therein that all this took place at instigation of the accused and he himself had seen the accused talking with participants of mob and the mob attacked the Gurudwara and properties of Sikhs only on his pointing out. The above statements of complainant even find *prima facie* corroboration on material aspects not only from statements made

by some members of his own family, but also from the statements made by members of the family of their neighbour Sh. Nath Singh, who too have claimed themselves to be witnesses of the above said incident dated 01.11.1984 as their house was also attacked and put on fire by the mob, the articles kept therein were looted and their truck and scooter etc. were put on fire, a member of their family was thrown in that fire and injuries were also inflicted on the persons of others.

52. Further, the above oral testimonies of these witnesses or victims are also found *prima facie* corroborated by 13 photographs of the scene of incident dated 01.11.1984 (on pages 238-242), which have been produced during the SIT investigation by PW Sh. Manjeet Singh, son of Sh. Nath Singh and taken into possession by the IO. These photographs not only show their house, truck (half body) and scooter in burnt condition, but also show the destroyed articles and properties of others which were put on fire allegedly by the mob.

53. Again, the oral testimonies of the witnesses regarding attack by the mob upon them and inflicting injuries on their persons are further found corroborated by the medical record or documents pertaining to some of them, which have been seized during investigation and filed with the chargesheet. As per statement made by Dr. R. K. Sharma of DDU Hospital (on pages 360-361) and the medical documents of complainant Sh. Harvinder Singh

Kohli (on pages 116-117), the complainant had allegedly suffered grievous injuries in the above incidents in form of fractures on both his hands and shoulder. However, the statement of complainant dated 05.09.2016 made before the IO of SIT (on pages 326-331) shows that the above injuries were not suffered by him in the incident dated 01.11.1984 and rather, the same were suffered in the second incident which took place on 02.11.1984 at a different place and within the jurisdiction of a different police station. It is so because in his above statement dated 05.09.2016, he accompanied by his brother-in-law though claims to have witnessed the gathering of crowd or formation of an unlawful assembly, and also seeing the accused Sajjan Kumar being a part of the crowd, after coming out of one of the two cars which arrived there, from the side of a wall, but he nowhere claims in this statement that he was beaten by the mob at the above spot or even subsequently on that day. It has already been discussed that both these incidents cannot be considered to have happened in continuity or as a part of the same transaction because the mobs of these two incidents were different. It has also been discussed above that the accused Sajjan Kumar was not present or a part of the mob involved in the incident dated 02.11.1984, which took place near the Congress party office in Uttam Nagar. Hence, even *prima facie*, it cannot be held that the accused was responsible for the above injuries suffered by complainant and therefore, no charge against accused for infliction of these injuries on person of complainant is liable to be framed.

54. Similarly, though PWs Sh. Manjeet Singh and Sh. Trilochan Singh (since deceased), both sons of Sh. Nath Singh, are also being claimed to have suffered some injuries in the above incident dated 01.11.1984, but admittedly, no medical document pertaining to their injuries was produced or could be seized during the investigation. Again, though as per the statements dated 25.10.2016 made by Sh. Manjeet Singh and Sh. Tejinder Singh (on pages 339-345), Sh. Tejinder Singh had also suffered fracture injury on his backbone, but his medical documents produced and seized during the investigation (on pages 254-264) are not *prima facie* found to be linked to the above incident or to the corresponding period as the same are of much later period i.e. of the years 2005-2006. Further, as per these documents, the injuries suffered by PW Sh. Tejinder Singh were due to some fall, which he suffered around 14 years back. The said fall, thus, might have taken place around the years 1991-1992, i.e. after 7/8 years of the alleged incident of riots.

55. However, the oral depositions of complainant, Sh. Manjeet Singh, Sh. Tejinder Singh and other witnesses regarding throwing of Sh. Gurcharan Singh alive on a burning truck by the mob are found duly corroborated by one of the above photograph showing Sh. Gurcharan Singh @ Pintoo in burnt condition and also by the medical documents of the said injured (on pages 243A-253). These documents *prima facie* show that he suffered around 20% burn

injuries in the above incident dated 01.11.1984 and was not able to walk or sit properly for a long period of time and required wheelchair for his mobilization. Though, he is also being claimed to have expired subsequently in the year 2008 allegedly due to the above said injuries, but there is no document on record to *prima facie* connect his death with the above injuries or incident directly as it may be due to some other factors because he is stated to have died after a long gap of around 24 years from the above incident dated 01.11.1984.

56. Further, the medical document of mother of complainant namely Sh. Jaspal Kaur filed on record (on page 234) also corroborates the oral testimony of complainant and other witnesses regarding suffering of injuries by her in the above incident dated 01.11.1984 and as per this document, she suffered injuries on her head and remained hospitalized from 01.11.1984 to 06.11.1984 in a local nursing home. Though, no document regarding the nature of her injuries is available on record, but since the injuries were inflicted on her head and the same even required her hospitalization for a long period of six days, it can *prima facie* be taken that the same were inflicted with such an intention or knowledge and under such circumstances that if her death was caused due to the same, then the offender would have been guilty of culpable homicide not amounting to murder.

57. The oral testimonies of witnesses regarding the above

incident of attack by the mob upon members of these two families and others are even corroborated by the medical documents of Sh. Nath Singh, who is stated to have subsequently expired in the year 1996, and as per his medical documents (on pages 265-267) and the statement made by Dr. Anil Mathani of Dr. RML Hospital (on page 357), he had suffered fractures of both bones of his forearms, fracture on right hand and burns on his chest in the above said incident.

58. As already discussed, the deaths of Sh. Sohan Singh and Sh. Avtar Singh, i.e. father and brother-in-law respectively of the complainant Sh. Harvinder Singh, did not take place in the incident dated 01.11.1984 and the same took place in the second incident dated 02.11.1984 and hence, the accused cannot *prima facie* be linked or held responsible or charged for these deaths. However, it *prima facie* appears from the statement of complainant and other witnesses of his family that his father had also received some injuries in the incident dated 01.11.1984. But since no medical document showing the nature of his injuries is a part of record, the same can *prima facie* be taken as simple only.

59. Therefore, in light of the above factual and legal discussion, this court is of *prima facie* view that the oral and documentary evidence placed on record by prosecution is sufficient to hold that an unlawful assembly or mob consisting of hundreds of persons and armed with deadly weapons like *dandas,* iron rods,

bricks and stones etc. had gathered near the Gurudwara situated in Gulab Bagh, Nawada on 01.11.1984 at around 11 am and the accused Sajjan Kumar was also a part of the said mob and common object of the said mob was to put the above said Gurudwara on fire and to burn and loot the articles lying therein and also to burn and destroy the houses of Sikhs situated in the said locality, to damage, destroy or loot their articles or property and to kill the Sikhs residing in that locality, in order to avenge killing of the then Prime Minister Smt. Indira Gandhi. Further, this court is also of *prima facie* view that the accused had instigated other persons constituting the mob, who remained unknown and could not be identified during the investigation, to achieve the above illegal objectives and as per abetment made by the accused and in furtherance of the common object of above unlawful assembly, the persons constituting the above mob had burnt the said Gurudwara and damaged or looted the articles lying therein, burnt the house of Sh. Nath Singh and their truck and scooter, along with articles and properties of other Sikhs and also attempted to take the life of Sh. Gurcharan Singh @ Pintoo by throwing him on the burning truck and inflicted injuries on the persons of Smt. Jaspal Kaur, Sh. Sohan Singh and Sh. Nath Singh, being armed with the above weapons. Hence, a *prima facie* case is held to be made out against the accused for commission of the offences punishable U/Ss 147/148/149/153A/295/307/308/323/325/395/436 IPC and charges are accordingly directed to be framed against him for the

said offences. Further, in alternative, a charge for the offence of abetment defined by Section 107 IPC and made punishable by Section 109 r/w 114 IPC in relation to the above said offences is also directed to be framed against the accused as the accused being principal abettor was present at the scene of crime, when the offences abetted by him were committed by the other unknown offenders.

60. However, as far as the offences committed during the incident dated 02.11.1984 and which relate to the murder of Sh. Sohan Singh and Sh. Avtar Singh at the hands of members of the mob or crowd, which had gathered on that date near or outside the Congress party office in Uttam Nagar, and also the injuries suffered by complainant Sh. Harvinder Singh in the said incident, are concerned, the accused is being discharged for the offences U/S 302 and 325 IPC respectively committed in the said incident for the reasons already discussed in this order.

Announced in open court on 23.08.2023

(M. K. NAGPAL)
ASJ/Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi.