Alok Kumar Shah vs State Of Punjab & Anr on 13 November, 2026

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
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CRR-3573-2016 (O&M)
Date of decision : 13.11.2026

Alok Kumar Shah ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sunil Chadha, Senior Advocate with
Ms. Kashish Aggarwal, Advocate
for the petitioner.
Ms. Ruchika Sabherwal, Sr. DAG, Punjab.
None for respondent No.2.

MANISHA BATRA, J.(Oral)

CRM-31335-2016 Allowed as prayed for.

Documents are taken on record.

1. CRR-3573-2016 (O&M) The present revision petition has been filed by the petitioner for setting aside the order dated 12.07.2016 passed by the Court of learned Additional Sessions Judge, Kapurthala in Sessions Case No.126 of 21.10.2014, whereby charges for the offences punishable under Sections 302 and 120-B of the Indian Penal Code, 1860 (for short 'IPC') have been framed against him along with co-accused Rajiv Dass in case bearing FIR No.69 dated 17.06.2012 registered at Police Station Sadar Phagwara, District Kapurthala. MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 2

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the statement of respondent No.2-Nathuni, who used to run a stall of flowers on Banga Road, Phagwara alleging therein that his brother Raghu used to reside with him along with his family. They had taken land on lease in Village Sukhchain Nagar for growing flowers. As per the FIR, Raghu had gone to his native place in Bihar and he came back to Phagwara on 16.06.2012. At about 9/10 p.m. on that day, one Rajiv son of Basesar Dass came to meet Raghu along with two other persons. One of them was about 40 years of age and the other was about 25 years of age. They stayed for the night at the house of the complainant. Raj Mangal is another brother of the complainant. On the next morning at about 7.00 a.m., Raghu went to the fields on the motorcycle of the complainant. Rajiv and his two companions followed him on foot. At about 10.00 a.m., Raghu sent the flowers to the shop through Vinod Mahto, a rickshaw puller. Vinod Mahto told the complainant that Raghu and three other persons were consuming liquor and were cooking meat in the quarter. At about 12.30 p.m., Vinod Mahto again came and informed the complainant that Raghu was lying inside the quarter, which was locked from outside. The complainant and his brother went there and broke open the lock. Raghu was found lying dead in a pool of blood with a deep injury on his head. The complainant suspected that his brother had been murdered by Rajiv and his companions, who had also taken away the motorcycle and the mobile phone of Raghu. The motive was stated to be the murder of one Vijay Kumar in a marriage party in Village Badiman, District Sitamarhi, Bihar on 13.06.2012, in which the name of Raj Mangal had been MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 3 taken. It was further alleged that one Shankar Dass from the side of Vijay Kumar had extended threats to kill all the four brothers.

3. During investigation, a raid was conducted at a house in Village Tihar, Delhi on 23.06.2012, where a driving licence of one Yogesh Kumar was found. The complainant identified the photograph affixed on the licence as that of one of the persons who had come with Rajiv. On this basis, Yogesh Kumar @ Joginder Kumar @ Malah was nominated as an accused. On 29.09.2012, the complainant made a supplementary statement before the police. He stated that he had learnt at his own level and from his village that the remaining companion of Rajiv was the petitioner Alok Shah. On the basis of this statement, the petitioner was nominated as an accused and he was arrested on 12.01.2014. Yogesh Kumar surrendered before the police in February, 2014. In his disclosure statement he named Rajiv and one Bharat as the persons who were with him at the time of occurrence. Rajiv Dass was arrested on 11.03.2014. In his disclosure statement, he named Yogesh Kumar and Bharat as his companions. The said Bharat, also referred to as Bharat @ Pandit, could not be arrested and he has been declared a proclaimed offender. After presentation of the report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the case was committed to the Court of Session, vide order dated 13.10.2014.

4. During the pendency of the case before the trial Court, Yogesh Kumar moved an application under Section 307 Cr.P.C. for grant of pardon. He stated in the application that he, Rajiv Dass and one Bhagat @ Pandit, a friend of Rajiv Dass, had come to Phagwara to meet Raghu. They consumed liquor together and Rajiv Dass suddenly hit Raghu on his head with a tawa. MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 4 The application was allowed by the learned Additional Sessions Judge, Kapurthala vide order dated 05.01.2016 (Annexure P-1) and pardon was tendered to Yogesh Kumar. His statement under Section 164 Cr.P.C. was recorded by the learned Chief Judicial Magistrate, Kapurthala on 15.01.2016 (Annexure P-2). In this statement he named only himself, Rajiv and Bharat Jha as the persons who had come to the motor of Raghu on the morning of the occurrence. He did not name the petitioner.

5. Thereafter, the learned Additional Sessions Judge heard arguments on the point of charge. Vide the impugned order dated 12.07.2016, a prima facie case was found against the petitioner and co-accused Rajiv Dass. The relevant part of the impugned order reads as under:-

> "I have paid considerable thought on above said submissions and gone through the police record alongwith other material including supplementary statement of the complainant in which allegations regarding involvement of Alok Shah has specifically come and further there is material and allegations that under a conspiracy of all these accused, Rajiv Dass committed murder of Raghu, brother of the complainant. So the contentions of the Ld. counsel for the accused Alok Shah that no case for framing charge against him made out, is not made acceptable. At the stage of framing of charge Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on record but it can not appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

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Charges under Sections 302 and 120-B IPC were accordingly framed against the petitioner and co-accused Rajiv Dass on the same day. Aggrieved by the said order, the petitioner has filed the present revision petition.

6. Vide order dated 03.10.2016, notice of motion was issued and the further proceedings before the trial Court were stayed qua the petitioner. Vide order dated 08.10.2018, it was clarified that the said stay would not have any bearing on the trial of the co-accused. The trial of co-accused Rajiv Dass was thereafter concluded by the learned Sessions Judge, Kapurthala. Vide judgment dated 16.11.2018 and order on quantum of sentence dated 19.11.2018 (Annexure P-4), he was convicted under Section 302 IPC and was sentenced to undergo rigorous imprisonment for life. He was acquitted of the charge under Section 120-B IPC.

7. Learned senior counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He is not named in the FIR. There is no eye-witness to the occurrence. As per the FIR, only two persons had accompanied Rajiv and the investigation has itself disclosed their identity as Yogesh Kumar and Bharat @ Pandit. The petitioner has been roped in only on the basis of the supplementary statement of the complainant made more than three months after the occurrence. In this statement, the complainant does not claim any personal knowledge. He merely says that he came to know the name of the petitioner from his village, without disclosing the person from whom he learnt it. Such a statement is pure hearsay and it cannot be translated into legal evidence at the trial. Learned senior counsel has further argued that the investigating agency itself found the petitioner innocent in the case diary MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 6 entries (zimnis) No.41, 41-A and 41-B and had sought his discharge, though the request was declined by the learned Judicial Magistrate First Class, Phagwara on 04.02.2014. The interrogation of the co-accused also did not yield anything against the petitioner and they named Bharat @ Pandit as the third person. The statement of the approver under Section 164 Cr.P.C. was before the trial Court and he has not named the petitioner at all. No test

identification parade of the petitioner was ever conducted and he was not even present in Punjab on the day of occurrence. Learned senior counsel has also referred to case FIR No.155 dated 14.09.2002 registered at Police Station Dumra, District Sitamarhi under Sections 364, 379 and 34 IPC against the complainant, his father and his brothers. He has argued that a family related to the complainant by marriage, residing in Village Bishanpur, had land litigation with the grandfather of the petitioner. According to him, the petitioner has been named on the information of that family on account of this enmity. It is further argued that the trial Court has acted as a post office of the prosecution and has not even referred to the statement of the approver. Learned senior counsel has also referred to the depositions of the investigating officer and of the complainant recorded before the trial was stayed qua the petitioner. On the strength of these submissions, it is prayed that the impugned order be set aside and the petitioner be discharged. To buttress his arguments learned senior counsel has relied upon the authorities cited as Neelam Sharma v. State of Punjab and another, CRR- 950-2010, decided on 16.03.2011 by this Court.

8. Per contra, learned State counsel has opposed the petition. It is argued that the complainant has specifically named the petitioner in his supplementary statement as the third person who had accompanied Rajiv Dass. MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 7 At the stage of framing of charge, the Court is only required to see whether a prima facie case is made out and the evidence cannot be appreciated at this stage. The complainant, while appearing as PW-2, has also named the petitioner as one of the persons who had come to his house along with Rajiv Dass. The plea of false implication and the other pleas raised by the petitioner are matters of defence, which can be examined only at the trial. It is thus prayed that the petition be dismissed.

9. Despite service, nobody has appeared on behalf of respondent No.2-complainant.

10. This Court has heard the rival submissions at considerable length, besides going through the material placed on record, including the record of the trial Court.

11. At the outset, it may be noticed that the present petition was filed in the year 2016. In view of Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the matter continues to be governed by the provisions of Cr.P.C. The scope of revisional jurisdiction against an order framing charge was considered by the Hon'ble Supreme Court in Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460. It was held that the revisional power is meant to correct a patent error of law or jurisdiction. It can be invoked where the decision is grossly erroneous, the finding is based on no evidence or material evidence has been ignored. The relevant observations read as under:-

> "8. ... Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 8 an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

12. The test to be applied at the stage of charge flows from Section 227 Cr.P.C., which reads as under:-

> "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."

The principles governing Sections 227 and 228 Cr.P.C. were laid down by the Hon'ble Supreme Court in Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4. It was held that the Judge has the power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case is made out. Where two views are possible and the material gives rise to some suspicion but not grave suspicion, the Judge is entitled to discharge the accused. These principles were reiterated in Sajjan Kumar v. MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 9 Central Bureau of Investigation, (2010) 9 SCC 368., wherein the following observations were made:-

> "17. ... (i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

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(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. The nature of the material on which a strong suspicion can be founded was explained by the Hon'ble Supreme Court in Dipakbhai Jagdishchandra Patel v. State of Gujarat and another, (2019) 16 SCC 547, wherein it was held that a strong suspicion suffices for framing charge, but it must rest on material which can be translated into evidence at the trial. A suspicion based on the subjective satisfaction of the Judge is not enough. The relevant observations read as under:-

"21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 11 question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

To the same effect is the view taken by this Court in Neelam Sharma's case (supra), relied upon by learned senior counsel for the petitioner. It was observed that a criminal Court should not act as a rubber stamp of the investigating officer and it must look into the material collected during investigation before framing charge.

14. Coming to the facts of the present case, it is not in dispute that the petitioner is not named in the FIR. The complainant had seen the companions of Rajiv on the night of 16.06.2012, but he did not know their names. In the FIR, he described them only as two persons aged about 40 years and 25 years. The only material which connects the petitioner with the occurrence is the supplementary statement of the complainant dated 29.09.2012. The same (Annexure P-3) reads as under:-

"Stated that I am the resident of the aforesaid address and I stand by the statement given by me earlier. On 17-6-13 MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 12 (sic), my brother Raghu was murdered by three persons. At that time, Rajiv Kumar was known to me by name, name of whom was mentioned by me in my earlier statement. On conducting raid on 23-6-12 in Delhi, the second person was identified from the photograph affixed on his driving license. The name of the second person was

> Yogesh Kumar. Now, I, at my own level and from my Village have learnt that the name of the second person is Alok Shah s/o Ram Sagar Shah, resident of Bishanpur, Police Station Bathnaha District Sita Mari. All the aforesaid three have together murdered my brother Raghu under a conspiracy. Statement has been heard and is correct."

15. A plain reading of the above statement shows that the complainant does not claim to have identified the petitioner as the person whom he had seen with Rajiv. He only says that he learnt the name of the petitioner at his own level and from his village. The person who gave him this information has not been named. No statement of any such person was recorded during investigation. The statement is, thus, based entirely on information received from an unknown source. Section 60 of the Indian Evidence Act, 1872 (for short 'the Evidence Act'), requires oral evidence to be direct. The relevant part of the provision reads as under:-

> "60. Oral evidence must be direct.- Oral evidence must, in all cases whatever, be direct; that is to say-
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> if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
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> if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
>
> if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 13 witness who says he perceived it by that sense or in that manner;
>
> if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds."

The rule against hearsay was explained by the Hon'ble Supreme Court in Kalyan Kumar Gogoi v. Ashutosh Agnihotri and another, (2011) 2 SCC 532. It was held that hearsay evidence is inadmissible under Indian law. A statement of a witness based on information received from others carries no responsibility and gives scope to rumour. The relevant observations read as under:-

> "21. ... Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross- examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. ...
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> 22. The reasons why hearsay evidence is not received as relevant evidence are: (a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me", (b) truth is diluted and diminished MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 14 with each repetition and (c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....".

It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

Viewed in the light of the above principles, the supplementary statement of the complainant is not material which can be translated into evidence at the trial. Even if it is accepted at its face value, it does not show that the complainant has any personal knowledge about the presence of the petitioner. Therefore, it cannot form the basis of a strong suspicion as explained in Dipakbhai Jagdishchandra Patel's case (supra).

16. There is another aspect which cannot be lost sight of. On 23.06.2012, the complainant identified Yogesh Kumar from the photograph on his driving licence. On 20.02.2014, he again identified Yogesh Kumar in the police station as the person who had run away with Rajiv after the occurrence. The petitioner had been arrested on 12.01.2014, but there is no material to show that the complainant identified him as one of the companions of Rajiv at any stage of the investigation. No test identification parade of the petitioner was held either. Therefore, apart from the hearsay information about his name, there was nothing before the trial Court to connect the petitioner with the persons seen by the complainant on the night of 16.06.2012.

17. More importantly, the material collected by the prosecution itself excludes the petitioner. As per the FIR, Rajiv had come with only two companions. The investigation identified these two companions as Yogesh Kumar and Bharat @ Pandit. In their disclosure statements, Yogesh Kumar MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 15 and Rajiv Dass named one Bharat as the third person, who has been described as Bhagat @ Pandit in the application for pardon and as Bharat Jha in the statement of the approver. The said person could not be

arrested and he has been declared a proclaimed offender. The approver Yogesh Kumar, in his statement under Section 164 Cr.P.C. dated 15.01.2016 (Annexure P-2), has given the following account of the occurrence:-

> "It is an incident of 17 June 2012. It was about 9.00 am at the motor of Raghu in Phagwara. There, I, Rajiv and Bharat Jha had come from Ludhiana to meet Rajiv's uncle (Mama) Raghu. Rajiv had brought us by saying that he wants to meet his uncle (Mama). We came at the motor at Phagwara, Rajiv and Raghu consumed liquor together. All of sudden, Rajiv struck tawa made of steel, which is meant to prepare bread (Roti), on the head of Raghu as a result of which he became unconscious. I became perplexed from the said act of Rajiv. Nothing occurred to me. Out of fear, I came to Ludhiana. Thereafter, I left for Bihar. Later on, I came to know that the said person has died. Thereafter, I appeared before the police."

This statement had been recorded on the directions of the trial Court itself. It was on the record when the impugned order was passed. The version of the approver fully accounts for both the companions of Rajiv mentioned in the FIR. On the case of the prosecution itself, there is no room for a fourth person. The petitioner could have been the companion of Rajiv only if one of the two persons named by the approver and by the co-accused was not present. No such material was collected during investigation and none was before the trial Court when the charge was framed. The impugned order merely notes that the statement of the approver under Section 164 Cr.P.C. had MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 16 been recorded. It does not consider the contents of that statement at all. This is a clear case where material evidence on record has been ignored, which is one of the recognised grounds for interference in revision as held in Amit Kapoor's case (supra).

18. The charge under Section 120-B IPC also does not have any foundation. Apart from the bald assertion in the supplementary statement, there is no material to show any meeting of minds between the petitioner and the other accused. As per the approver, Rajiv Dass struck the blow all of a sudden while they were consuming liquor and the approver himself was taken by surprise. Nothing has been brought on record to show that the petitioner had any connection with the alleged motive arising from the murder of Vijay Kumar. When the very presence of the petitioner is not supported by any admissible material, the question of his being a party to a criminal conspiracy does not arise.

19. The impugned order also suffers from non-application of mind. The trial Court has referred in general terms to the police record and to the supplementary statement of the complainant. It has not considered whether the supplementary statement was based on personal knowledge. It has not discussed the contents of the statement of the approver or the disclosure statements of the co-accused. While noting the submissions, the order even records that the learned Additional Public Prosecutor had argued that there was no evidence to connect the accused and that no ground for framing charge was made out against the petitioner. These were evidently the submissions of the defence. Framing of charge in such a mechanical manner amounts to acting as MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 17 a post office of the prosecution, which is not permissible as held in Prafulla Kumar Samal's case (supra) and Sajjan Kumar's case (supra).

20. The above conclusion rests on the material which was available before the trial Court at the stage of charge. However, it may be noticed that six prosecution witnesses were examined in the presence of the petitioner before the proceedings were stayed qua him. The investigating officer, SI Ashok Kumar, while appearing as PW-1, admitted in his cross-examination that, except the supplementary statement of the complainant, no other evidence or incriminating material came on the file against the petitioner. He also admitted that the petitioner was found to be innocent during investigation. He further stated that on 20.02.2014, the complainant did not identify the petitioner. The complainant, while appearing as PW-2, did name the petitioner in his examination-in-chief. However, in his cross-examination, he admitted that he had seen the petitioner for the first time after the occurrence when he was produced in the Court by the police. He further deposed that his sister-in- law Raj Kumari had come to know from the village about the presence of the petitioner. He also admitted that Raj Kumari did not disclose the name of the person who told her so. He also deposed that this fact was told by someone to his sister-in-law, as he had not gone to the village personally. In his examination-in-chief, PW-2 claimed that Raghu had told him on telephone that Rajiv, Alok Shah and Joginder were sitting with him. PW-6 Shiv Nath, another brother of the complainant, similarly deposed that the complainant had told him about the presence of the petitioner with Raghu. Both these versions were put to them as omissions from their earlier statements, which do not contain any such fact. PW-6 also admitted that it was for the first time after the MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 18 occurrence that he was naming the petitioner, Rajiv and Yoginder as the murderers, though he denied the suggestion that he was naming the petitioner for the first time on that day. These improvements are wholly inconsistent with the supplementary statement dated 29.09.2012, wherein the complainant himself stated that he had learnt the name of the petitioner from the village. Rather, the depositions show that the source of the name of the petitioner remains unknown to this day. It is true that PW-2 also stated in his cross- examination that Bharat @ Pandit was not present with Rajiv at the time of occurrence and that it was the police who had nominated him. This statement was made after the charge had been framed. It runs contrary to the statement of the approver, the disclosure statements of the co-accused and the investigation conducted by the police. The

complainant himself did not see the occurrence and he did not claim to know the names of the companions of Rajiv. His bare denial of the presence of Bharat @ Pandit does not, therefore, furnish any admissible material to place the petitioner at the spot.

21. The submission of learned State counsel that the petitioner was named by the complainant during his deposition does not advance the case of the prosecution. The identification of an accused for the first time in the Court, after the witness has already seen him in custody, has little value. In the present case, the complainant has admitted that he saw the petitioner when the police produced him in the Court. It may also be argued that the late naming of an accused is a matter to be examined at the trial, as held in Sajjan Kumar's case (supra). However, in that case, the witnesses claimed to have seen the accused personally and the delay in naming him was held to be a matter for trial. In the present case, the supplementary statement itself discloses that the complainant MOHAMMAD WASEEM ANSARI 2026.11.13 17:40 I attest to the accuracy and integrity of this document CRR-3573-2016 (O&M) 19 had no personal knowledge and that he was only repeating what he had heard in the village. The defect is thus not one of delay alone. It goes to the very nature of the material, which is inadmissible in law. It may also be noticed that the petitioner challenged the order framing charge without any delay and the proceedings against him have remained stayed since 03.10.2016. This Court is, therefore, testing the legality of the order framing charge itself and is not discharging the petitioner after a trial against him.

22. In view of the above conclusion, this Court does not consider it necessary to go into the plea of the petitioner regarding the old enmity between his family and the relatives of the complainant. The plea regarding the absence of the petitioner from Punjab on the day of occurrence is also not required to be examined. Nor is it necessary to examine the averments regarding the case diary entries (zimnis) and the application for discharge moved by the police before the learned Judicial Magistrate.

23. This Court is of the considered opinion that the material placed before the trial Court did not give rise to a grave suspicion against the petitioner. At best, it gave rise to a suspicion founded on hearsay, which is contradicted by the material collected by the prosecution itself. If the entire material is accepted at its face value, it would still not show the presence of the petitioner at the spot or his participation in any conspiracy. Asking the petitioner to face a trial for murder on such material would be an abuse of the process of the Court, more so when the FIR is of the year 2012. The learned trial Court has failed to apply its mind to the material on record and the impugned order cannot be sustained.

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24. Accordingly, the present revision petition is allowed. The impugned order dated 12.07.2016 passed by the learned Additional Sessions Judge, Kapurthala is set aside in so far as it relates to the petitioner. The charges framed against the petitioner under Sections 302 and 120-B IPC are quashed and the petitioner is discharged. His bail bonds and surety bonds, if any, stand discharged. However, nothing stated herein shall be construed as an expression of opinion on the merits of the case against co-accused Bharat @ Pandit, who has been declared a proclaimed offender.

25. The record of the learned trial Court be sent back forthwith along with a copy of this judgment.

13.11.2026 (MANISHA BATRA)
Waseem R. Ansari JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

MOHAMMAD WASEEM ANSARI
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