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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 20.03.2025*+ **CRL.REV.P. 1200/2024 & CRL.M.A. 30101/2024**

NARESH KUMAR JAINPetitioner

Through: Counsel (appearance not given).

versus

STATE NCT OF DELHIRespondent

Through: Mr. Manoj Pant, APP for the State.

+ **CRL.REV.P. 16/2025**

ARUN SINGHPetitioner

Through: None.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of these revision petitions, the petitioners seek setting aside of the order dated 07.03.2024 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge, North-West District, Rohini Courts, Delhi [hereafter '*learned ASJ*'] in SC No.



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149/2020 and SC No. 1067/2020, whereby charges have been framed against the petitioners in case arising out of FIR No. 506/2019, registered at Police Station Bharat Nagar, Delhi for the offence punishable under Section 363 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

2. Briefly stated, the facts of the present case are that on 16.10.2019, a missing complaint was filed by the complainant, i.e., the mother of the victim 'A'. It was stated by the complainant that A, who was 13 years old, had gone out on 15.10.2019 along with her friends, Tana and Taniya, but had not returned home, even though her friends had. The complainant further stated that around 7-8 months ago, one FIR No. 139/2019 under Section 363 of IPC had also been lodged, as A had gone missing; however, she had returned home after four days. On the basis of the complainant's statement, the present FIR was registered. The investigation of the case was transferred to the Anti-Human Trafficking Unit, and documents regarding the age proof of victim A were collected. As per school records, her date of birth was found to be 01.01.2008.

3. On 25.12.2019, the victim A, along with another victim N (aged about 10 years and reported missing in FIR No. 556/2019 under Section 363 of IPC, P.S. Bharat Nagar, Delhi), was recovered. In her statement recorded under Section 161 Cr.P.C., victim A disclosed that she frequently visited clubs such as Mixx Club & Lounge, and Don's Den at NSP, where she met acquaintances like Pinki, Naveen, and Rosy. She stayed overnight at various flats in



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Azadpur, Burari, and Shakurpur with her friends and their acquaintances. During this period, accused Naveen allegedly established physical relations with her multiple times. Victim N, who accompanied her, also alleged that accused Govinda had physical relations with her. The victims consumed hookah and liquor at clubs and stayed at different locations until they were eventually found by the police.

4. In her statement recorded under Section 164 of Cr.P.C., the victim A disclosed that she had left her house on 15.11.2019 and, on 22.11.2019, fled with her boyfriend N, as her mother frequently scolded her and did not allow her to go out or wear 'good clothes'. She revealed that her boyfriend had introduced her to Mixx Club & Lounge and Don's Den Club, which she began visiting frequently. At Don's Den Club, she had met Pankaj, a bouncer who was friendly with her friend Alisha. Pankaj had taken them to the house of accused Pooja, who had arranged for their stay. When the police had traced Pooja's phone, she had asked victim A to return home, following which the police had found her. Victim A further disclosed that she had established physical relations with accused Naveen. The victim was medically examined, and relevant exhibits were collected.

5. During the investigation, notices under Section 91 of Cr.P.C. were issued to the owners of Don's Den, Mixx Club & Lounge, and Moments Lounge and Bar to provide CCTV footage and relevant licenses. However, Tarsem, the owner of Don's Den, and Amit, the co-owner of Mixx Club & Lounge, failed to provide the footage, later



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disclosing that they had allegedly deleted it to conceal their illegal activities of serving hookah and liquor. The manager of Moments Lounge, Digbahadur, submitted a DVR, claiming it was non-functional. Arun, the owner of Moments Lounge, was found violating licensing norms by renting the club through an MoU dated 13.05.2019 to co-accused Vijay Kumar, Vivek Mehra, and Praveen Dahiya, who also failed to provide CCTV footage. Accused Naresh Kumar Jain had purchased Mixx Club & Lounge from Arun Singh in December 2017 and later sold it to Akash, who had formalized the documentation in the name of Amit and Nitin Sharma. On 06.02.2019, Naresh Kumar Jain had executed a partnership deed with Amit and Nitin Sharma. The excise license and the rent agreement of the club were in Naresh Kumar Jain's name. The owners of Mixx Club & Lounge also failed to provide CCTV footage.

6. On 13.01.2020, both the victims identified Don's Den, Mixx Club & Lounge, and Moments Lounge and Bar as the clubs they visited frequently, where they were served *hookah* and liquor and indulged in drinking and dancing. Accused Naveen had served *hookah* at the club, while accused Pankaj, the bouncer at Don's Den, had taken the victims to Pooja's house, where they had stayed for a month. Accused Pooja had taken the victims for a makeover at a beauty parlour, bought them modern clothes, and had facilitated their visits to the club, despite knowing they had run away from their homes.

7. The allegations against the accused persons include Pankaj



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luring the victims to stay at his friend Pooja's house. Arun Singh, the owner of Moments Lounge and Bar, along with Vijay Kumar, Vivek Mehra, and Praveen Dahiya, had allegedly rented out their club in violation of norms and destroyed CCTV footage to conceal their illegal acts of serving liquor and *hookah* to child victims. Naresh Kumar Jain, who owned Mixx Club & Lounge, is accused of executing a partnership deed with Amit and Nitin Sharma, with all three allegedly deleting CCTV footage to hide their illegal activities. Praveen Dahiya and his partners at Moments Lounge are also accused of erasing CCTV evidence to cover up their unlawful conduct. Similarly, Tarsem, the owner of Don's Den Club, is accused of failing to report the missing victims and illegally serving them liquor and hookah despite them being minors.

8. After completion of investigation, chargesheet and supplementary chargesheets were filed against the accused persons.

9. Vide the impugned order, the learned ASJ was pleased to frame charges against the present petitioners, namely Naresh Kumar and Arun Singh, on the ground that being the owners of the concerned bars/lounge, they had disposed off the evidence by destroying the CCTV footage of their bars/lounge from the period 22.11.2019 to 25.12.2019 and 15.10.2019 to 25.12.2019 respectively, as well as had failed to report that the victim N and A were missing from their houses and they had apprehension that an offence under the POCSO Act was likely to be committed against them, and that they had also served illegal *hookah* and liquor at their bars/lounges,



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thereby committing offence under Section 201/34 of IPC, Section 19(1) read with Section 21 of the POCSO Act, Section 77 of JJ Act, Section 42 of Delhi Excise Act, and Section 28 read with Section 110 of Delhi Police Act.

10. The learned counsel appearing on behalf of the petitioners argues that the learned ASJ committed great illegality by not appreciating the established legal proposition that criminal liability cannot be based upon constructive liability and also committed illegality by not appreciating the fact that there are no specific allegations against petitioners regarding the offence charged, even not a single instance had been mentioned when petitioner was instrumental for the commission of the offence charged. It is further submitted that Naresh, the petitioner, is a sleeping partner in the partnership firm namely, Mixx Club & Lounge, and is unaware of the day-to-day management and has given complete control of the firm to the co-partners, namely Amit and Nitin Sharma. It is also contended that the petitioner has dissolved the partnership by serving a legal notice to his co-partners; therefore, charges framed against him are without any basis.

11. It is further submitted that the petitioner Arun Singh, being the owner of Moments Bar and Lounge and holder of the required license/permission, had entered into a Memorandum of Understanding (MOU) dated 13.05.2019 with co-accused namely, Vivek Mehra, Vijay Kumar, and Praveen Dahiya, to run the said bar for a period of nine years. As per the MOU, the petitioner Arun Singh



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had agreed to receive a sum of Rs. 2,50,000/- on a monthly contract basis from the aforementioned three accused, as the petitioner was not interested in actively running the said bar. Therefore, the petitioner Arun Singh, not being involved in the management of the bar, cannot be charged for the alleged offences.

12. It is therefore prayed that the impugned order passed by the learned ASJ be set aside, and the petitioners herein be discharged.

13. On the other hand, the learned APP for the State argues that there are specific allegations against all the accused persons, and sufficient evidence has been collected against all the accused persons during the course of investigation. It is contended that the present petitioners, being the owners of the bars and clubs, had failed to produce the CCTV footage of their bar, and rather had deleted/destroyed the same, and had also not reported about the missing victims being brought to their bars. It is further argued that being the owners, they had served illegal liquor and *hookah* in their bars to victim N and A in contravention of regulations of issuance of licence for their said bars. The learned APP for the State, thus, submits that there is no infirmity with the impugned order, which is a detailed one, and prays that the present petitions be dismissed.

14. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

15. Before appreciating the material collected by the prosecution and the contentions raised before this Court, it shall be relevant to



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briefly discuss the settled law on charge and discharge. In case of *Manendra Prasad Tiwari v. Amit Kumar Tiwari*: 2022 SCC OnLine SC 1057, the Hon'ble Supreme Court, while explaining the law on exercise of powers under Section 397 and/or Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), had observed as under:

“21. ...The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. **To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person...**

22. ...At the stage of framing of a charge, **the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt.** The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure...”

(Emphasis added)

16. On the aspect of standard of proof at the stage of charge, the Hon'ble Supreme Court in *Bhawna Bai v. Ghanshyam*: (2020) 2 SCC 217 has observed as under:

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



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17. It is the prosecution's case that petitioner Arun Singh, the owner of Moments Bar & Lounge, operated the club under the name and style of Armaan Enterprises. All licenses, including those from the Department of Tourism, Department of Food Safety, MCD, Excise, and Delhi Police, were issued in the name of Arun Singh and that of his company. Despite being the license holder, petitioner Arun Singh breached licensing norms by executing a Memorandum of Understanding (MoU) dated 13.05.2019 with co-accused Vijay Kumar, Vivek Mehra, and Parveen Dahiya, thereby renting out the club along with its licenses for a monthly fee of ₹2.5 lakhs for a period of nine years. During the investigation, the petitioner Arun Singh failed to provide relevant CCTV footage of the club. It is the prosecution's case that during investigation, it was found on the basis of statements of the witnesses and circumstances that he was aware of the illegal activities being carried out at the premises rented by him, including serving of liquor and *hookah* to minors. It is further revealed during investigation that, under his direction, the co-accused Vijay Kumar, Vivek Mehra, and Parveen Dahiya had deleted the club's CCTV footage to destroy evidence and conceal their illegal activities. It is also alleged that all the said four accused persons, i.e. Arun Singh (petitioner), Vivek Mehra, Vijay Kumar and Praveen Dahiya, in furtherance of their common intention, had destroyed the CCTV footage from the period 15.10.2019 to 25.12.2019 of Moments Bar & Lounge, which was being run on the property/premises owned by the petitioner Arun Singh.



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18. Further, the chargesheet also reveals that petitioner Naresh Kumar Jain had purchased Mixx Club & Lounge from Arun Singh in December 2017. He had later sold the club to one Akash for ₹20 lakhs. However, the formalities and documentation were carried out in the names of co-accused Amit and Nitin Sharma. On 06.02.2019, Naresh Kumar Jain had executed a partnership deed with Amit and Nitin Sharma, wherein the latter held 90% of the profit share, while Naresh retained a 10% share. However, it was revealed during investigation that despite this arrangement, the excise license of Mixx Club & Lounge remained in the name of petitioner Naresh Kumar Jain, and the rent agreements with the landlords were also executed by him. During the investigation, petitioner Naresh's role in facilitating the ownership transfer through Akash, while keeping the licenses and agreements in his name, was also discovered.

19. It is the case of prosecution that the owners/co-owners of the clubs in question, including the petitioners herein, were facing low income at their clubs, and had therefore resorted to serving *hookah* and liquor to minors at their clubs to boost their earnings. It is alleged that minor children frequently organized parties at such clubs, and in order to capitalize on this, the accused persons used to unlawfully serve them alcohol and *hookah*. The evidence also *prima facie* indicates that, in an attempt to conceal their illegal activities, the accused persons had deliberately deleted the CCTV recordings from the DVR to prevent the investigating agency from uncovering their illegal activities.



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20. As regards the contention raised on behalf of petitioner Naresh Kumar, that he is a sleeping partner in the partnership firm namely Mixx Club & Lounge, and is unaware of the day-to-day management of the club, is concerned, this Court notes that the learned ASJ has correctly observed in the impugned order that a perusal of the partnership deed executed between Naresh Kumar and his partners/co-accused persons reveals that the petitioner has nowhere been mentioned as a sleeping partner, and rather, his name is mentioned as a working partner in para 8 of the said partnership deed. Therefore, this argument can be of no help to the petitioner Naresh Kumar at this stage.

21. Therefore, this Court is of the opinion that the petitioners, being the owners and/or partners of the clubs in question, had non-delegable responsibility to ensure that their clubs were not used for illegal activities. Their failure to prevent or report the serving of liquor and *hookah* to minors, the alleged destruction of evidence, and the omission to report the missing girls cannot be viewed as mere oversight. It is also important to note that the victim in this case was merely 13 years old (as per her mother's complaint)/ 11 years old (as per school records), who was repeatedly served liquor and *hookah* at the clubs in question. At the stage of charge, the Court has to only take a *prima facie* view of the matter, on the basis of material placed on record by the prosecution. However, the exact role played by the petitioners, the extent of their involvement in the commission of alleged offence, and their defence can only be appreciated during the



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course of trial.

22. Thus, in this Court's view, the learned ASJ has rightly framed charges against the petitioners for offence under Section 201/34 of IPC (*for destruction of evidence i.e. CCTV footage*), Section 19(1) read with Section 21 of the POCSO Act (*for non-reporting of offences under POCSO Act*), Section 77 of JJ Act (*penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child*), Section 42 of Delhi Excise Act (*penalty for employing minors or selling liquor to minors*), and Section 28 read with Section 110 of Delhi Police Act.

23. In view thereof, this Court finds no infirmity with the impugned order passed by the learned ASJ. The same is accordingly upheld.

24. The present revision petitions are dismissed, alongwith pending applications if any.

25. It is however clarified that this Court has not given any opinion on merits of the case and the observations made herein-above are only for the purpose of deciding the present petition.

26. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 20, 2025/ns