



CNR NO. DLCT12-000191-2026
Cr Case NO. 05/2026
FIR No. 191/2023
U/s 387/201/174A/120B IPC
PS Mohan Garden
State Vs. Kapil Sangwan @ Nandu & Ors.

31.07.2026

ORDER ON CHARGE/ DISCHARGE

1. The present Order shall decide on framing of charge/ discharge against accused no.2 Naresh Baliyan.
2. The present police report has been forwarded against two accused persons namely, 1. Kapil Sangwan @ Nandu (Proclaimed Person); and 2. Naresh Baliyan for offence punishable under Section 387/120B of the Indian Penal Code (hereinafter referred to as 'IPC'). Accused no.1 is also alleged to have committed offence punishable under Section 174A of the IPC and accused no.2 is alleged to have committed offence punishable under Section 201 of the IPC. The accused no.2 Naresh Baliyan, who is former Member of Legislative Assembly (MLA) of National Capital Territory of Delhi, representing Uttar Nagar Constituency. This Court has been setup for trials against sitting and former Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) and as such has jurisdiction to try the present case.

3. The allegations are that on 31.05.2023, complainant Gurcharan Singh received a Whatsapp call from international number mentioning his name as Kapil Sangwan @ Nandu and threatened him that he would be eliminated like Suriender Matiala was, unless he pays Rupees One Crore extortion money. Since the voice was not clear, a voice note was received containing the same threatening message. Repeated calls were further received on 01.06.2023, 08.06.2023 and 01.07.2023, following which a complaint was filed and present FIR was registered on 05.07.2023. To commence investigation, complainant's son Mr. Deepak provided the five audio files in a pen drive and also furnished a Certificate under Section 65B of the Indian Evidence Act, 1872 (hereinafter referred to as 'IEA'). The said pen drive was thus taken into police possession as a piece of evidence and statement of the son of the complainant was also recorded. The CDRs were analyzed and since the alleged threatening calls were received on WhatsApp messaging service, request letter was sent to the portal of WhatsApp for getting the registrant details, source and destination IPs of alleged WhatsApp number used by accused for extending threat to the complainant. Thereafter, the investigation was referred to Crime Branch and again request letter was sent, to which the nodal officer of WhatsApp replied that no detail is available as the alleged numbers are not in use. Investigation was made to search the last available address of accused no.1, however no whereabouts of the accused was found. IPDR details of the mobile number of complainant was obtained and analyzed, and it revealed that on the alleged date and time, the IP and port from which the complainant had received calls were routed through Facebook server, however further details of IPs of Facebook could not be obtained.

4. The police investigation received a shot in the arms in August 2023, when through social media, investigating officer noticed an audio clip circulating in respect of extortion money dealing between Kapil Sangwan and Naresh Baliyan, which got viral on various social media platforms i.e. Facebook, Twitter (now X), etc. Investigation revealed that said viral audio/ video was collected by ACP/ AGS, Crime Branch, Delhi from Times Now in case FIR No.60/2023 u/Ss. 387/336/506/507/34 of the IPC and 27 Arms Act PS Mohan Garden, Delhi. In the present investigation, the said viral audio/ video communication between Kapil Sangwan and Naresh Baliyan were obtained. The said audio were also telecast on news in programme 'Operation PAAP' by Times Now Navbharat channel. The audio recording of the news programme was also seized. Next these audio resurfaced in November 2024. The investigation thus reached accused no.2 Naresh Baliyan and he was arrested on 30.11.2024. During investigation from accused no.2, his mobile phone was seized and analyzed at the CFSL, Lodhi Colony, but nothing incriminating was found in the data. Investigation also sought mobile phone of the accused Naresh Baliyan used in the year 2023, which he replied was lost in a public rally and finding the reply not supported by any lost report/ NCR with effect to his lost phone, investigation found reasons to believe that accused Naresh Baliyan was willfully causing disappearance of evidence and therefore Section 201 of the IPC was added.
5. Investigation qua the offence against accused no.2 Naresh Baliyan is further said to be fortified after his arrest in November 2024, when two more victims joined investigation namely Ashwini Mudgal and Prem Singh, who stated that they were threatened of dire consequences by accused no.1 Kapil, therefore they were examined in detail and their statements were recorded. Also

supplementary statement of complainant Gurcharan was recorded that accused Naresh Baliyan had approached him for settlement/ compromise with gangster Kapil Sangwan @ Nandu.

6. The final part of the investigation to support the allegations is CFSL report. Initially report was received from the CFSL that the audios seized from FIR no. 60/2023 were not readable. Since the alleged Facebook audios between accused Kapil Sangwan and Naresh Baliyan were telecast by a news channel, the copy of the entire show 'Operation PAAP' was sent to the FSL for analyses, which found that voice of accused no.2 Naresh Baliyan and that purported of accused no.1 Kapil Sangwan @ Nandu were matching. The report also opined that it was continuous and there was no tampering.
7. Thus the present police report has been filed before this Court to proceed against both the accused persons for offence punishable under Sections 387/120B of the IPC. Further accused no.1 Kapil is also charge-sheeted for offence punishable under Section 174A of the IPC and accused no.2 is separately charge-sheeted for offence punishable under Section 201 of the IPC.
8. Cognizance in the present case was taken vide Order dated 25.06.2026. Since accused no.1 is absconding and has been declared proclaimed person vide Order dated 06.06.2026 the matter is to continue in-absentia against the said accused. Accused no.2 has appeared and Section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC')/230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') was complied with.

9. Detailed arguments heard on behalf of the accused no.2 on charge/ discharge. The accused has also filed written submission.
10. The Id. Additional PP for the State has argued that statement of the victims are available to support the allegations and even CFSL report suggests a nexus between both the accused to commit offence and hence the prosecution ought to be given opportunity to prove its case. The sections invoked by the prosecution against accused no.2 is Section 387 r/w 120B, and also Section 201 of the IPC. Section 387 of the IPC punishes whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other. Since there is no allegation that accused no.2 threatened the complainant, his role is alleged to have been unearthed from conversation between both accused persons which surfaced online on Facebook in August 2023. In the said audio, the prosecution alleges that both accused can be heard to conspire to threaten complainant so that he could approach the accused no.2, who would then agree to pay the protection money (such term being used in threatening calls, to pay for protection against any harm from the called itself). In light of such evidence, the prosecution seeks to invoke Section 120B r/w 387 of the IPC against accused no.2, which punishes for criminal conspiracy. Such term finds its definition in Section 120A of the IPC, that when two or more persons agree to do, or cause to be done,— 1. an illegal act, or 2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. The prosecution has finally sought to charge accused no.2 under Section 201 of the IPC which punishes whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment,

or with that intention gives any information respecting the offence which he knows or believes to be false. The prosecution alleges that investigation has revealed sufficient material to charge the accused and veracity of the testimony as well as reliability of evidence shall be subject matter of trial.

11. The accused no.2 on the other hand has raised thirteen grounds seeking discharge in the present case. These are – a. no allegation of any participation or overt act by accused no.2 in the complaint or FIR; b. foundation digital evidence is not an admissible piece of evidence under Section 65B of the Evidence Act (hereinafter IEA); c. details international number from which threats allegedly made – not identified and verified; d. audio clips – not authentic – without the knowledge of its origination/ source and without verification; e. no legally tenable identification of gangster in the audio clip; f. other persons having the alleged offending conversation with the alleged gangster and not accused no.2; g. unreliable CFSL report; h. grossly delayed supplementary statement of the complainant; i. unreliable and unsustainable 161 statements of alleged two more victims; j. no case under Section 387 is made out; k. no case under Section 201 is made out; l. no meeting of mind- no case under Section 120-B; and m. when two views are possible- view favoring accused to be adopted. The accused no.2 also relied on a set of sixteen judgments to buttress his arguments for making case a discharge at this stage.

12. Submissions heard. File perused.

The lost time

13. This Court failed but noticed the timeline of investigation in the present case. FIR was lodged on 05.07.2023 on written complaint of Mr. Gurcharan wherein

he specifically stated that he received via Whatsapp threats in audio recorded files dated 31.05.2023, 01.06.2023, 03.06.2023, and 04.06.2023. Mr. Deepak, son of complainant Gurcharan, then produced one pen drive containing five audio recordings before the then IO and same was seized on 07.07.2023. The audio recording which surfaced online in August 2023 was subject matter of news programme 'Operation PAAP' on a news channel and said programme was also seized in a pen drive, having already been collected by ACP/ AGS, Crime Branch, Delhi from Times Now in case FIR No.60/2023, PS Mohan Garden, u/Ss. 387/336/506/507/34 of the IPC and 27 of the Arms Act. IO himself came across the Facebook audio on 30.11.2024, he downloaded the audio files, transferred the same on a pen drive, and himself seized the said pen drive in his investigation while himself submitting certificate u/S. 65B of the IEA. Voice sample of accused no.2 Naresh Baliyan was taken in CFSL, Lodhi Colony on 28.03.2025 under the Orders of this Court. When the analyses was done, the earlier pen drive containing audio files uploaded on Facebook were not readable and CFSL sought another pen drive which had readable audio recordings. Vide another seizure memo, the IO submitted a pen drive of news reporting 'Operation PAAP' from the news channel which is dated 16.04.2026.

14. Apart from the above seized articles, there are statements of the witnesses recorded, namely complainant and his son on 04.07.2023 and 07.07.2023; police witnesses gave their statements on 30.11.2024 and 01.12.2024; other two victims who came forward later gave their statements on 06.12.2024; and remaining witnesses are police officials who participated in the police investigation particularly of depositing various exhibits in the CFSL.

15. Now upon perusal of these dates, clearly there is lost time. An investigation registered in July 2023, reached its conclusion only in June 2026. The evidence collected were in piecemeal and in about 36 months there were burst of investigation for couple of day followed by weeks and months of silence. Certainly, the accused no.1 is absconding, however it was only in January 2026 that coercive steps were taken against the said accused, and ultimately he was declared proclaimed person by this Court vide Order dated 06.06.2026. Between July 2023 to August 2023, the audio recordings were seized, however never the originals traced i.e., complainant's mobile or the source from where the audio surfaced online on Facebook or reached the news channel. Until November 2024 there is little to no progress to the investigation, especially against accused no.2. Again a short burst to the investigation was made in November 2024 to January 2025 in form of arrest of accused no.2, recording statements of two more victims, recording supplementary statement of complainant, however the new allegations by all said three witnesses were not investigated. The witnesses made statements as to coercion in land deals and receiving constant threats, as well as that of being approach by the accused no.2 for settling their scores with accused no.1 at lower amounts. However, like complainant's CDR and IPDR, nothing of that sort was done qua other two victims namely Ashwini Mudgal and Prem Singh. Their phones and records were never investigated, their allegations qua land deals were also not investigated and no documents were seized.
16. It is here that the defense argues that accused no.2 was politically targeted since audio of August 2023 resurfaced in November 2024 and it led to his arrest, just before the announcement of Delhi Assembly Elections of February 2025. The defense has argued that these timelines of investigation, has failed

the purpose of objective investigation. An investigation which ought to serve justice, was allowed to be delayed and crucial evidence allowed to go stale.

17. There is no explanation as to what hindered police to launch investigation as soon as FIR was registered in July 2023 or in August 2023 when the audio surfaced online on Facebook. The same two Facebook audios were even seized by Crime Branch (same investigating agency), yet its source was not traced. When the investigation was again picked up in November 2024, again no request letter was sent to the portal of Facebook for getting the registrant details, source and destination IPs of alleged profile which uploaded the two audio files. At no point in time, the original audio files or source has been disclosed in the entire police report, despite 36 months taken in the investigation to file this police report.

Missing direct evidence

18. Apart from the unexplained delays, the police report without explanation relies heavily upon secondary evidence, and there is also no explanation why primary evidence have not been seized or produced. When the complainant Gurcharan lodged the complaint that threatening messages in audio files were received on his mobile on Whatsapp, his statement to this effect was also recorded on 04.07.2023 i.e. the date of FIR. Yet on 07.07.2023, complainant's son Mr. Deepak came to the police station, handed over a pen drive containing some audio files. Here, objectivity demands that when complainant's phone was available, why was not the same seized and sent for analyses? Why secondary evidence in form of pen drive was seized, which was never compared with original recordings in the mobile? The police report records seizure memo of pen drive and certificate under Section 65B of the IEA given

by Mr. Deepak. Had the mobile phone been seized and sent to the FSL for forensic mirroring, would have been incidental to verify the integrity, metadata and true origin of the files. A similar exercise would have been possible, had original source of audio on Facebook was investigated from the Facebook user/ registrant.

19. The certificate does not show how complainant's son was authorized to sign certificate under Section 65B of the IEA, when the mobile phone belonged to the complainant. Even the certificate in support of Section 65B of the IEA by the IO, is silent as to original device, metadata or true original of the audio files. The seizure memos or the certificate, does not show how the audio files were transferred into pen drive.
20. This is major lapse in the investigation and unexplained. The police report has charge-sheeted the accused no.2 of offence punishable under Section 201 of the IPC, on the basis that he could not provide his old mobile phone and no NCR/ Lost report was produced. The IO thus understands the importance of mobile phone as crucial piece of evidence, yet no effort was made when complainant's mobile phone was indeed available.
21. Similar lacunae is observed in other evidences as well. The IO found some audio recording to have existed on one particular Facebook account <https://www.facebook.com/BJP4India?mibextid=ZbWKwL>, which the IO transferred in a pen drive and himself seized the same. The IO has not explained why no notice was given to Facebook or the user who uploaded the audio and IO himself chose to download some audio file, transferred the same into a pen drive and seized the same vide seizure memo, while also giving

certificate of authenticity himself. This very much makes the IO himself as an interested witness to the outcome of the case and this conduct loses all objectivity an IO must hold in an investigation. Investigation is not merely to fix culpability of a suspect, rather it is a quest to unearth and gather all the evidences which would be necessary to reach a definite conclusion of a criminal process set in motion. The conduct of the present investigation fails to uphold the said principles and it appears that the investigation has been conducted on assumption that both suspects are the culprits since the very beginning.

22. Another audio file was seized from a news channel. IO firstly issued notice to Times Now Navbharat on 07.04.2026 to provide a copy of video titled 'Operation PAAP' in pen drive. This was necessitated because earlier recording of the programme was not readable under analyses by the CFSL. The Operation PAAP is a whole programme telecast by the news channel in August 2023 in which the same two audios which surfaced on Facebook have been played with necessary commentary, analysis and debate amongst various panelists. The IO again never questioned the news channel as to the source of the audio and no original audio files were seized, rather the news programme containing all the audio files as well as news analyses have been seized and made part of the chargesheet. The news programme can be said to be original content of the news commentary, analyses, and debate, but the two audio files played in that programme is not originally owned by the news channel. In the entire programme, the anchor/ host does not disclose the source or claim authenticity, genuineness or owns the audio clips as to have been recorded by them.

23. This leads the police report back to where it started. No originals have ever been seized. Neither the complainant's mobile phone has been seized, nor any device which originally recorded audio files available on Facebook or run in Operation PAAP programme are on record. This non-explanation in the police report seems one of the reason why the investigation was dragged on for about three years and only when the accused no.2 was running in custody, that the investigating agency was forced to file police report. If not for judicial custody period of the accused no.2, the investigation would have never culminated.

No meeting of minds

24. When the audio files above are discarded for want of technical and legal sanctity as well as relevance as per law, there is not a single piece of evidence to show that there exists any prior meeting of minds between the accused persons. There is no evidence that both accused ever had any prior meeting of minds or entered into a conspiracy to commit the offence under investigation in the present case. The complainant in his original complaint dated 04.07.2023, never alleged that he was threatened to take refuge before the accused no.2. Complainant never stated that he was approached by accused no.2. Not even the son of complainant stated that accused no.2 approached him. Complainant or his son have not been examined in light of audio clip of August 2023. If only the earlier material seized by the IO is considered there is nothing on record that accused no.2 is remotely involved in the commission, abetment or conspiracy to commit the offence. The same stands true from the investigation itself, until November 2024 the accused no.2 was never called to join investigation.

25. The defense at this stage argued that Delhi Assembly Elections, 2025 were approaching and many of his party members were targeted, and at the same time the purported audio files resurfaced on Facebook and based on an earlier available material, allegations were re-raised and facts concocted. On 30.11.2024, same resurfaced Facebook audio was seized by the IO himself even though it was already in police possession since August 2023, and then accused no.2 was arrested. Immediately thereafter two victims approached police, and complainant gave supplementary statement, now incriminating the accused no.2. What here is questionable is that IO has not checked the veracity of the claims of two new victims and complainant's motive to give additional statement after about 18 months of the incident. The two victims deposed that they received threatening calls and they were put under coercion to sign an unfavorable land deal, however no such evidence was gathered if indeed any calls were received or any land deal was entered by them.
26. It is also not explained that complainant who simply alleged threatening calls from accused no.1, with no connection of being in conspiracy with accused no.2, can be equated in condition and circumstances same as two purported victims – Ashwini Mudgal and Prem Singh. The allegations of Ashwini Mudgal and Prem Singh is not in continuation or under same transaction as that of complainant. Ashwini Mudgal spoke about some land deal of year 2020, which is much prior in time to the alleged incident of complainant. Also the allegations of Ashwini Mudgal are in the form of hearsay, and he has not alleged ever meeting accused no.2 or being called by accused no.2 to threaten or coerce him into entering land deal. Moreso, not even an iota of evidence has been produced to actually show that Ashwini Mudgal owned any piece of land or entered any unfavorable land deal in the year 2020.

27. Statement of Prem Singh points directly towards role of accused no.2, however even his allegations have not been supported by any investigation. He stated that he owned some land in Matiala which was tried to be grabbed by one R.K. Aggarwal, qua which he received threatening calls to transfer it to accused no.2, who shall deal with R.K. Aggarwal. Again no investigation was conducted to trace any property document in the name of said victim. Also it is not explained as to how the said allegations were similar to, in continuation or under same transaction as that under investigation on the complaint of Gurcharan.
28. Complainant however again joined investigation on 30.11.2024 wherein he gave his supplementary statement that he was called by accused no.2 to suggest that he can get his matter settled with accused no.1. This supplementary statement was recorded after 18 months of the complaint and even this even has not been investigated. There is no detail as to the time, date or place of the said meeting. The complainant in this supplementary statement did not state if after June 2023, he had received any further threats or if he had paid any protection money. It is highly improbable that complainant, under no further threat since June 2023 would entertain any communication from accused no.2 or anyone on his behalf. Be that as it may, when the original complaint of 04.07.2023, was so detailed, the supplementary statement of complainant, does not inspire any confidence, being bereft of any details as to date, day, time or place of meeting with accused no.2.

Other lacunae in the investigation

29. The IO called one ACP Anil Chauhan, who identified the voice of accused no.1 from audio files he heard at the instance of the IO. The said witness stated that about eight years ago, he had arrested the accused Kapil in some other FIR and hence he was in a position to identify the voice of accused Kapil. The said witness is not an expert, rather relies on his long memory. This Court finds serious doubt on the conduct of such an investigation. When ACP Anil Chauhan was called to identify the voice of accused no.1 Kapil, the audio recordings were themselves not established to be genuine, authentic or known about its original source. The IO assumes that whatever audio files he received from son of complainant as well as from Facebook, were original and authentic, and genuine conversation containing voices of accused persons. In such assumption, he proceeds to call witness Anil Chauhan to identify a voice which he had last heard eight years ago. Such an approach slams at the very root of criminal investigation, which hinges only on establishing culpability of, rather than objectively investigating each allegation.
30. When ACP Anil Chauhan was called there is no proceedings drawn of that date. The witness merely heard conversation, identified the voice of accused no.1 and gave his statement to the IO. The defense has ably countered said investigation as opposed to mandate of law settled by the Hon'ble Court in the case of **Nilesh Dinkar Paradkar v. State of Maharashtra, (2011) 4 SCC 143**. The judgment specifically laid down various safeguards that are required to be followed for voice identification process and some of those factors are – a. the quality of the recording of the disputed voice; b. the gap in time between the listener hearing the known voice and his attempt to recognize the disputed voice; c. the ability of the individual to identify voice in general (research showing that this varies from person to person); d. the nature and duration of

the speech which is sought to be identified; and e. the familiarity of the listener with the known voice; and even a confident recognition of a familiar voice by a way listener may nevertheless be wrong. The Hon'ble Court reiterated the minimum safeguards which are required to be observed before a court can place any reliance on the voice identification evidence, as – a. the voice recognition exercise should be carried out by someone other than the officer investigating the offences; b. proper records should be kept of the amount of time spent in contact with the suspect by any officer giving voice recognition evidence, of the date and time spent by any such officer in compiling any transcript of a covert recording, and of any annotations on a transcript made by a listening officer as to his views as to the identity of a speaker; and c. any officer attempting a voice recognition exercise should not be provided with a transcript bearing the annotations of any other officer.

31. The exercise taken by the IO to call ACP Anil Chauhan to identify the voice of accused no.1 Kapil, is clearly in teeth with the mandate of law and directly opposed to the safeguards laid down by judgments of the Hon'ble Courts.

Audio files and CFSL report

32. This is a pivotal piece of evidence, which the prosecution alleges binds the entire police report together. The prosecution states that only when evidence is allowed to be led, can the veracity and authenticity be questioned. This Court would accept such an argument that establishing electronic evidence shall be subject matter of trial and due certificate as per law can be brought at any stage, as is established principles of law. There are judgments from the Higher Courts, that certificate in support of an electronic evidence can even be produced at any stage, even final stage. However, such a certificate under

Section 65B of the IEA is given to prove secondary evidence, however it has to be first shown that the original/ primary evidence cannot be obtained, or produced. The prosecution has to establish first the foundational fact for leading secondary document contained in electronic form.

33. It is true that document under the IEA covers within its definition any information contained in an electronic record which is stored, recorded or copied in optical or magnetic media produced by a computer (called computer output). To prove the same, Section 65B(1) of the IEA provides a precondition in relation to the information and computer in question to be fulfilled before such document shall be admissible in any proceedings. The four conditions are stated in sub-section (2) of Section 65B of the IEA that (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

34. In the facts and circumstances of the present case, two computer/ primary devices exists – one, the complainant's phone which received audio files on Whatsapp; and second, unknown device on which two conversations were recorded (which were uploaded by unknown user on Facebook). Neither, Whatsapp nor Facebook is the original source, original source was device which was used to record or transmit the same. The complainant's mobile was clearly within the reach of the investigating agency. The other unknown device used to record two conversations was not even attempted to be identified. The investigation saw neither notice being served upon the Facebook user to produce the original device, nor any notice was issued to the Facebook itself to ascertain the details, source and destination IPs of alleged uploader/ user.
35. The prosecution when put three foundational questions qua the audio files, has failed to answer or give any reasonable explanation. First, whether audio file in pen drive given by Mr. Deepak (son of complainant Gurcharan) is actually the original audio threats received on Whatsapp by complainant Gurcharan? Second, whether audio file taken into pen drive by the IO is original what was available on Facebook? Third, whether audio file played in news programme 'Operation PAAP', is from its original device/ source? The prosecution cannot explain how pen drive give by Mr. Deepak has been generated, further it cannot explain who uploaded audio file on Facebook.
36. Thus the pen drives which have been seized are themselves secondary devices to secondary source i.e. Whatsapp or Facebook and original devices i.e. complainant's mobile which received audio files and unknown device used to record the two purported conversations, were neither identified or seized. The only explanation forthcoming is report of the CFSL, that the audio files

were analyzed, which found audio to be in continuation and without any tampering. The CFSL also finds that Facebook audio submitted when analyzed with audio files given by complainant's son in pen drive, there was voice match with that of accused no.2. The CFSL report further found that Facebook audio submitted found a positive voice match with alleged voice of accused no.1 when compared with audio files given by complainant's son in pendrive.

37. The CFSL report found that file marked Q-1 is Facebook audio which further contained two separate file Q-1(1) of 05 minutes : 23 seconds and Q-1(2) of 06 minutes : 57 seconds. Further, the recording of programme 'Operation PAAP' which is Q-2(1) was found to be 10 hours : 59 minutes : 54 seconds. The CFSL took voices from Q-2 for comparison and since there are two way conversations, Q-2(1)(N) is attributed to accused no.2 Naresh Baliyan and Q-2(1)(K) is attributed to accused no.1 Kapil Sangwan. The CSFL received five audio files from pen drive Q-3, which are purportedly from Whatsapp chat of complainant wherein alleged threatening calls/ audio files were received. There are a total of five audio files, hence further marked Q-3(1) to Q-3(5). CFSL also made endeavour to obtain voice sample of accused no.2 Naresh Baliyan in its lab which is S-1(1). The CFSL based on the material presented was of the opinion that S-1(1) i.e. sample voice of accused no.2 Naresh Baliyan found similarities in spectrogram with portions of questioned voice in Q-2(1). Further, similarities in spectrogram was also found in Q-3(1) to Q-3(5) with portions of questioned voice in Q-1(1), Q-1(2) and Q-2(1).

38. The CFSL report is silent qua sample voice of accused no.1 Kapil Sangwan @ Nandu and understandable because he is absconding and unlike accused no.2, could not be produced before CFSL for giving his voice sample.

However, there is no whisper in the CFSL report about chain of custody being maintained, original device being presented for extraction of audio recordings or the source of audio files being authentic. The CFSL report is silent as to hash value, metadata or original source being preserved. The CFSL report does not even caution upon reliance of secondary evidence for comparison, while also not stating the process vide which different audio recordings were transferred to various pen drives to maintain their authenticity and assurance that secondary document is indeed similar to primary document.

39. Such an approach from the CFSL is expected in view of the ratio decided by the Hon'ble Supreme Court of India in **C. Kamalakkannan v State of Tamil Nadu, 2025 INSC 309** that prosecution case cannot be solely based on expert opinion where original document have not been produced for examination.
40. The above issue is critical since Q-1(1) and Q-1(2) appeared online, of which no authentic or original source is found. The recordings allegedly contained voices of both accused persons, as well as certain 'Aid of AAP MLA' and one Golu Jindal. Neither accused no.2 Naresh Baliyan, nor accused no.1 Kapil Sangwan, or so called aid of AAP MLA or Golu Jindal have stated about the source of these two conversation. The method, device, date, time or place of recording is also not established. No investigation has been made as to who is so called 'Aid of AAP MLA' and one Golu Jindal. Another important fact which cannot escape judicial conscience is why the so called Aid of AAP MLA was not identified or examined and why one Golu Jindal has not been interrogated. Clearly, if the prosecution wants to rely on these two recordings to prove a case of criminal conspiracy, the role of these two persons also needs to be investigated.

41. Similarly, Q-2(1) is programme recording run by the news channel, the entire recording is almost 11 hours long, however only former portion deal with news containing recording, analyses, debates, etc. The remaining recordings are pertaining to other news programme of the date of 17.08.2023. In the entire news, there is no claim as to original source of the recordings. Even the audio recordings are run in piecemeal and at no given point, the entire conversation have been run at full length. In such a scenario, it was imperative upon the IO to have examined the original source of recordings from the news channel. The news channel also has not disclosed any original source for their recordings. It is pertinent to note that the said news was played on 17.08.2023, which was after the audio recordings already having surfaced online on Facebook. There were two recordings already Q-1(1) and Q-1(2), which find their screen time in bits and pieces in the news programme, which were never recorded originally by the news channel.
42. It is established, that neither Q-1(1), Q-1(2) nor Q-2(1) are from any original source, and were picked up by the IO from secondary sources. There was no investigation of tracing the original source/ computer so as to prove its authenticity. In absence of such investigation, there is no identity of device used to record any of the conversation/ audio files. This severely hits the requirement of maintaining legal chain of custody of electronic device sought to be relied upon by the prosecution.
43. The Hon'ble Supreme Court of India in **R.M. Malkhani v. State of Maharashtra, 1973 AIR SC 157**, held that tape recorded conversation is admissible provided – first, the conversation is relevant to the matters in issue;

second, there is identification of the voice; and third, the accuracy of the recorded conversation is proved by eliminating the possibility of erasing the record. Further, in **Ram Singh v. Col Ram Singh, 1986 AIR SC 3**, the conditions for admissibility of telephonic conversation as evidence were settled as – a. the voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who knew it; b. accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstances had to be there so as to rule out possibilities of tampering with the record; c. the subject matter had to be shown to be relevant according to rules of relevancy found in the Evidence Act; d. the recorded cassette must be carefully sealed and kept in safe or official custody.

Conclusion

44. In view of the above discussion, prosecution case is that complainant Gurcharan, received a phone call of threat/ extortion and also voice recordings. The perpetrator is said to be accused no.1 Kapil Sangwan (since declared proclaimed person). Nothing incriminating has been deposed against the accused no.2. Two audio recordings of purported conversation between accused persons were found online on Facebook, which was even subject matter of news programme ‘Operation PAAP’. The IO also found two other victims Ashwini Mudgal and Prem Singh, who deposed that they were also threatened and coerced to transfer their property on threats of accused no.1 on behest of accused no.2 who was in active conspiracy. In all the above allegations, the IO has not seized mobile phone of the complainant, or investigated who uploaded the two audio conversations. Their originating source is unknown and there is no original device which could establish the

complete chain of custody of the devices used. The news programme 'Operation PAAP' does not run the entire conversation without running commentary, analyses, debates, etc. on these two audio files. Noteworthy, is that news programme neither claims originality to these audio files, nor does it state the source of receiving the said information. Nevertheless, the IO also fails to question the Anchor/ news channel or the Facebook profile owner about the source of the recordings.

45. Accused no.2 is alleged to be co-conspirator, therefore the allegations must be prima facie established that he alongwith accused no.1 conspired to commit the offence as alleged. There is no iota of evidence that both accused persons ever conversed before receipt of threatening messages/ audio recordings by the complainant. There is no evidence even prima facie that accused no.2, or any one on his behalf approached the complainant or met him when the threats were advanced in May/ June 2023. There is not even evidence that complainant met or talked to the accused no.2. Only one supplementary statement of complainant dated 30.11.2024 is on record that accused no.2 had approached him that he could get his matter settled with accused no.1. Even this statement is highly suspicious, since when in May 2023/ 2024 original threats were received, the CDR as well as IPDR of complainant were analyzed and investigated, however no such effort was made to establish if and when complainant met accused no.2. The supplementary statement has been recorded after about 18 months of the incident and same raises high suspicion of filling the lacunae in the investigation, when no other direct evidence linking both the accused persons was found.

46. It is settled preposition that conspiracy is seldom hatched in secrecy and hence there cannot be direct evidence. However, a crime does not go without evidence, only if the investigating agency are eager to look in the right direction. Once August 2023 audio files were found, the investigation could have been made to trace the 'Aid of AAP MLA' and Golu Jindal, who are stated to be part of the conversation in two audio files. They were missing link to the conspiracy, if there existed any. Also, a timely notice to Facebook or user who uploaded the audio files, could have been a boon to trace the original device as well as originator of the audio files. These audio files which surfaced in August 2023, were not even taken cognizance of by the investigating agency until November 2024.
47. Such missing crucial link is detriment to the prosecution story, when the entire case is based on circumstantial evidence. The audio files, about eight in numbers – five files from mobile of complainant, two from Facebook, and one news programme, have no authentic source or original device, which could establish there continuity, rule out tampering, and provide their hash value or matadata. No effort was made to seize any original, what has been seized is transferred files into pen drive and even their hash value and authenticity have not been established by the certificates on record, purported to be in compliance of Section 65B Indian Evidence Act. The certificates are on behalf of son of complainant, investigating officer and Authorised Representative of Benett, Coleman and Company Ltd., none of whom fulfill the condition to be a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities. None of the above three persons state what device they used to record, transmit or transfer the audio files in pen drive.

48. Another allegation against accused no.2 is of him having committed the offence of causing disappearance of evidence of offence punishable under Section 201 of the IPC, which clearly requires that a person has caused any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment. The provision clearly stipulates and lays down essential ingredient for the prosecution to establish first as to what evidence has been caused to be disappeared. In the entire police report there is nothing to show what evidence was present in the mobile phone of the accused no.2 which has been caused to be disappeared. Merely stating that accused no.2 failed to hand over his mobile phone, would not attract Section 201 of the IPC, without first establishing that there was evidence on the mobile phone of the accused no.2, which was sought for police investigation and accused no.2 thus deliberately failed to hand over his mobile phone.
49. The same is also relevant since the mobile phones sought by the police from accused no.2, was the one he used in year 2023 and said notice was put to the accused only in November 2024. The accused even handed over his mobile phones he used in November 2024, from which nothing incriminating was found. The said statement is made in the police report itself and thus the police report ought to have stated in the first place that accused no.2's mobile phone of year 2023, contained some evidence, which accused no.2 deliberately caused to disappear. It is even more relevant to note that the IO never called the complainant to hand over his mobile phone, which contained crucial evidence of receiving threatening messages and audio recordings, yet he has alleged offence punishable under Section 201 of the IPC against the accused no.2.

50. Clearly, the above discussion, would show that accused no.2 cannot be charged with any offence punishable under Section 187/120B of the IPC or 201 of the IPC, since the foundational facts and direct evidence are missing. The prosecution has failed to even prima facie show that any of the founding facts to charge the accused no.2 are made out sufficient to proceed to trial.

Judicial pronouncements

51. The prosecution has only submitted that at this early stage of framing of charge, the evidence cannot be weighed in golden scales and such exercise ought to be kept for trial. The prosecution even asserts that where two views are possible, the one favoring the prosecution ought to be taken, so as to afford it an opportunity to present its evidence for the ends of justice.
52. The defense for accused no.2 however has already burdened the prosecution with a set of 16 judgments to counter at this very stage. The defense starts with the judgment of **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, to argue that ‘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. The defense has also relied upon the judgment of **B.N. John v. State of U.P., 2025 SCC OnLine SC 7**, that belated Section 161 of the CrPC statements, material improvements, afterthoughts, and omissions from the earliest version favors the accused and dents prosecution story. The defense has also tendered argument that electronic evidence and voice recordings, identification, authenticity, as well as compliance of Section 65B of the IEA are not mere empty formality but a

substantive part of evidence and when questioned by the defense, ought to be established. The law is settled vide judgments of **P.V. Anwar v. P.K. Basheer, (2014) 10 SCC 473** and **Nilesh Dinkar Paradkar v. State of Maharashtra, (2011) 4 SCC 143**. Coming to the facts and circumstances of the present case, the defense for accused no.2 argued that the objection is not merely of non-compliance of Section 65B of the IEA, rather prosecution cannot even take aid of Section 65B of the IEA, since the primary document/ original computer has not been seized. What has been seized is secondary document, without explanation, why primary was not traced and seized. Now even the process of generating secondary document has been explained to confirm to legal principles. The defense said that the very principle of evidence law, that primary defeats secondary evidence has been challenged by the investigation. The accused no.2 argued that he is being sought to put to trial, based on electronic evidence, primary of which was never seized.

53. Coming to the specific allegations, the defense stated that none of the facts in the police report makes out any case of extortion, criminal conspiracy and destruction/ disappearance of evidence against accused no.2. To argue upon the required ingredients of offence of extortion, judgments relied are **R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716**; and **Balaji Traders v. State of U.P., (2025) 10 SCC 638**. Qua required ingredients of disappearance of evidence, reliance is placed on **Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177**; **V.L. Tresa v. State of Kerala, (2001) 3 SCC 549**; and **Sukhram v. State of Maharashtra, (2007) 7 SCC 502**. Further, qua required ingredients of criminal conspiracy, reliance is placed on **Topandas v. State of Bombay, (1955) 2 SCC 254**; **Kehar Singh v. State (Delhi Admn.), (1986) 3 SCC 609**; and **Yogesh v. State of Maharashtra, (2008) 10 SCC 394**. Finally, qua

ingredients required to prove circumstantial evidence, the defense relies on judgment of **Sharad Birdichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, which is celebrated to have laid down the five golden principles to prove cases based on circumstantial evidence called the ‘Pancheel of criminal jurisprudence’.

54. This Court does not deem it appropriate to appreciate the facts and ratio decidendi in each of the above cases relied upon the defense. It is also not deemed necessary since none of the cases have similar set of facts as the case in hand of this Court. However, the principles are clear that at the framing of charge, the prima facie allegations must exist to proceed to trial. Mere suspicion is also not sufficient to hold a case prima facie established, and in fact the prosecution must establish a grave suspicion against the accused, to which the defense could have no plausible explanation.
55. In the facts and circumstances of the present case, the defense for accused no.2 argued that maybe allegations in the FIR are true that complainant received threatening audio files, however said mobile was not seized to preserve original device. Similarly no originating source of two audio uploaded online on Facebook was traced and there is no witness to establish the chain of custody of device used to record these two audios. The defense then cast strong doubts on how the investigation was picked up against accused no.2 from November 2024, just before Delhi Assembly Election were to be held in February 2025. The defense argued that complainant's mobile was not seized or analyzed, IO obtained a pen drive of so called five audio files. Next the IO never seized original audio files from its source which were on Facebook in August 2023, and it was only in November 2024, that IO

himself downloaded the two audio files on a pen drive and seized the same from his own possession vide seizure memo. It is argued that if these two pieces of evidence coming from IO are removed, there is nothing in the entire police report against the accused. It is also argued that even if these audio files are taken into consideration, they would never be read in evidence being inadmissible for being opposed to rule of evidence.

56. This Court is reminded of the judgment in **Prafulla Kumar Samal (Supra)** cited by the defense. The said judgment has been echoed and reiterated in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76; Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368I; and P. Vijayan v. State of Kerala, (2010) 2 SCC 398**. At the stage of charge, the Court has to satisfy the requirements of ‘the foundational threshold test’, ‘grave suspicion standard’ and ‘broad probability test’, to ensure that the framing of charge must not become an empty formality.
57. This Court thus finds that prosecution cannot cast grave suspicion upon the accused no.2 sufficient to frame charges either for entering into criminal conspiracy with accused no.1 to commit extortion or disappearance of evidence. **Accused Naresh Baliyan is accordingly discharged of all offences** under which chargesheet has been presented.

Pronounced in Open Court

**[PARAS DALAL]
ACJM-01, RADC,
New Delhi, 31.07.2026**