

Neutral Citation No. - 2025:AHC:144828

Reserved on : 04.08.2025

Delivered on : 22.08.2025

Court No. - 80

Case :- APPLICATION U/S 482 No. - 34746 of 2024

Applicant :- Saurabh And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vinod Singh

Counsel for Opposite Party :- Mukul Srivastava, Vikas Srivastava,G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vinod Singh, the learned counsel for applicants, the learned A.G.A. for State/opposite party-1 and Mr. Pankaj Kumar Singh, Advocate, holding brief of Mr. Vikas Srivastava, the learned counsel representing first informant/opposite party-2.

2. Perused the record.

3. Applicants- Saurabh And 2 Others, who are named as well as charge sheeted accused and facing trial before Court below, have approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:

"It is therefore most respectfully prayed that this Hon'ble court may be pleased to quash the Order dated 17.09.2024 passed by Additional Sessions Judge, Khurja, Bulandshahar in Session Trial No. 30 of 2023 (State Vs Saurabh & Others) arising out of Case Crime No. 1171 of 2020 under section 302, 307, 325, 506, 323 IPC, Police Station Khurja Nagar, District Bulandshahar, otherwise Applicants shall suffer irreparable loss and injury.

It is further prayed that this Hon'ble Court may be pleased to stay the further proceedings of Session Trial No. 30 of 2023 (State Vs Saurabh & Others) arising out of Case Crime No. 1171 of 2020 under section 302, 307, 325, 506, 323 IPC, Police Station Khurja Nagar, District Bulandshahar, during the pendency of present application under section 482 before this Hon'ble court, otherwise Applicants shall suffer irreparable loss and injury.

And/or pass such further order as the Hon'ble Court may deem fit and proper in the circumstances of the case.

4. Record shows that in respect of an incident which is alleged to have occurred on 16.11.2020, a belated F.I.R. dated 5.12.2020 was lodged by first informant/opposite party-2 Sanjay Singh (elder brother of the deceased) and was registered as Case Crime No. 1171 of 2020, under sections 302, 307, 325, 506, 323 IPC, Police Station- Khurja Nagar, District Bulandshahr. In the aforesaid F.I.R. four persons namely, Saurabh, Pawan, Neeraj and Rajkumar have been nominated as named accused.

5. Gravamen of the allegations made in the F.I.R. is to the effect that named accused Saurabh and Pawan came to the house of the first informant and called Gaurav, younger brother of the first informant, and thereafter the younger brother of the first informant accompanied aforementioned named accused. When the party reached Agarwal Phatak, aforesaid named accused called the other two named accused i.e. Neeraj and Raj Kumar. Thereafter all the named accused assaulted the brother of the first informant on account of which he sustained injuries.

6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. On the basis of material collected by him during course of investigation, he came to the conclusion that complicity of all the named accused is fully established in the crime in question. He, therefore opined to submit a charge-sheet. Accordingly, Investigating

Officer submitted the charge sheet/police report dated 28.1.2021, in terms of Section 173(2) Cr.P.C. whereby and whereunder all the named accused were charge sheeted under sections 307, 325, 323 and 504 IPC. After aforementioned charge sheet was submitted, cognizance was taken upon same by the Jurisdictional Magistrate. Accordingly, accused/applicants were summoned. Subsequent to above, concerned Magistrate complied with the provision of Section 207 Cr.P.C. However, as offence complained of is triable by the Court of Sessions, therefore, the concerned Magistrate in line with Section 211 Cr.P.C., committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 30 of 2023 (State Vs. Saurabh and Others), arising out of Case Crime No. 1171 of 2020, under sections 302, 307, 325, 506, 323 IPC, Police Station- Khurja Nagar, District Bulandshahr came to be registered and is now said to be pending in the Court of Additional Sessions Judge, Khurja, Bulandshahr.

7. At this juncture, accused-applicants filed an application dated 21.6.2024, in terms of Section 227 Cr.P.C. before Court below seeking their discharge in aforementioned Sessions Trial. Discharge was claimed by accused/applicants primarily on the ground that the death of deceased has occurred on account of a road accident and not due to any deliberate act of assault committed by accused applicants. Various ancillary pleas in support of said ground were also raised before Court below.

8. The discharge application filed by accused applicants were vehemently opposed by the prosecution as well as the first informant/opposite party-2, who filed their separate objections to the same.

9. Court below thereafter considered the discharge application filed by accused/applicants. It, accordingly, evaluated and examined the plea raised in the discharge application in the light of material on record. Having undertaken the aforesaid exercise, Court below came to the conclusion that after the occurrence had taken place, the injured was examined and his statement under section 161 Cr.P.C. was recorded, wherein he has clearly implicated the applicants in the crime in question,

by stating that named accused had assaulted him by fists and legs and on his stomach also.

10. Court below further found that it is also evident from record that deceased went in the company of two of the named accused i.e. Saurabh and Pawan. The medical record of the deceased clearly goes to show that deceased had to be operated upon, as he had sustained injuries in his stomach on account of assault by named caused. In view of above, Court below came to the conclusion that no good ground for discharge of accused is made out. Accordingly, Court below by means of order impugned dated 17.9.2024, negated the prayer for discharge prayed by accused-applicants.

11. Thus feeling aggrieved by the order dated 17.9.2024, passed by the Additional Sessions Judge, Khurja, Bulandshahr, applicants have now approached this Court by means of present application under section 482 Cr.P.C.

12. Mr. Vinod Singh, the learned counsel for applicants submits that the order impugned in present application is not only illegal but also arbitrary. As such the same is liable to be quashed by this Court. Elaborating his submission, the learned counsel for applicants submits that as per the material record, it is apparent that the death of the deceased is an accidental death and not on account of any deliberate act of assault by accused applicants, upon the deceased.

13. To buttress his submission, the learned counsel for applicants took the Court to the impugned order and with reference to the same has referred to the documents pertaining to medical treatment of the injured. He submits the description RTA has been mentioned therein, which means Accidental death. The deceased has not sustained any such external ante-mortem injury on his body on the basis of which it can be conclusively concluded that deceased died on account of the injuries inflicted upon him by named accused. Court below instead of answering the issue as to what

is the meaning of term RTA has deferred the matter and has held that meaning of the term RTA shall be decided and considered after the evidence of the Doctor, who had made the said description in the papers, is produced in evidence. It is further contended by the learned counsel for applicants that there is no eye witness of the occurrence in question. As such, present case is a case of circumstantial evidence. Since no strong motive has emerged against accused applicants for committing the crime in question nor there is a link in the chain of events, no inference regarding complicity of accused-applicants in the crime in question can be inferred either. On the cumulative strength of above submission, the learned counsel for applicants tried to impress upon the court that Court below has erred in law in rejecting the discharge prayed by accused applicants. He, therefore, urged that in view of above, the order impugned in present application is liable to be quashed and the application be allowed.

14. Per contra, the learned A.G.A. for State/opposite party-1 and Mr. Pankaj Kumar Singh, Advocate, holding brief of Mr. Vikas Srivastava, the learned counsel representing first informant/opposite party-2, have vehemently opposed the present application. They submit that order impugned in present application is perfectly just and legal and is not liable to be interfered with by this Court. The grounds raised in support of present application qua discharge of accused/applicants in aforementioned Sessions Trial appear to be attractive and fanciful at the first flush, however, upon deeper scrutiny, the same are devoid of substance. The occurrence giving rise to present criminal proceedings had occurred on 16.11.2020, whereas the F.I.R. was lodged on 5.12.2020. On account of assault committed by named accused which fact is established from the statement of the injured/deceased recorded under section 161Cr.P.C. by Investigating Officer but before his death clearly implicates the applicants in the crime in question. Apart from above, previously also a complaint was lodged by first informant against named accused regarding the crime

in question which was registered as a NCR report. The injured was treated at different hospitals but ultimately, he succumbed to the injuries sustained by him. On the above premise, what is thus sought to be urged before this Court is that present case is not a case of no evidence. The injured in his statement under section 161 Cr.P.C. has clearly and categorically implicated the applicants in the crime in question. He has categorically stated that he was assaulted on his stomach also by the named accused by fists and legs. On account of above, he sustained injuries, due to which his stomach was operated upon. As such, there is evidence of an injured eye-witness regarding the crime in question. The evidence of an injured eye-witness has greater evidentiary value and therefore, the same can be discarded on compelling reason. There being no such compelling reason on record to discard the statement of the injured eye witness, therefore no good ground for discharge of accused in the crime in question is made out. As such, present application is liable to be dismissed by this Court.

15. Having heard the the learned counsel for applicants, the learned A.G.A. for State/opposite party-1, Mr. Pankaj Kumar Singh, Advocate, holding brief of Mr. Vikas Srivastava, the learned counsel representing first informant/opposite party-2, and upon perusal of record, this Court finds that the solitary question, which arises for consideration in present application is whether in view of the facts and circumstances as have emerged on record, the prosecution of the accused/applicants can be sustained/they are liable to be discharged.

16. The ambit and scope of Sections 227/239 Cr.P.C. now stands crystalized by a three Judges Bench Judement of Supreme Court in **Tarun Jit Tejpal Vs. State of Goa, (2020) 14 SCC 556**, wherein the Court has observed :

(a) the prosecution of an accused can be sustained, if as per the papers accompanying the police report, commission of an offence, complained of, is established.

(b) there is evidence against accused.

(c) As per the papers accompanying the police report, grave suspicion can be inferred against the accused.

17. In the present case, it cannot be said that present case is a case of no evidence or no offence is made out against applicants. The injured/deceased before his death in his statement recorded under section 161 Cr.P.C., has clearly implicated that all the named accused in the crime in question. Court below has also the jurisdiction to treat the statement of the deceased as a dying declaration. Complicity of the applicants in the crime in question has emerged on the basis of disclosure made by the injured/ deceased himself to the Investigating Officer. The statement of the injured/deceased is further stands corroborated from the fact that the injured/deceased in his statement had stated that he was assaulted by named accused on his stomach and the deceased was operated upon, on account of injuries sustained by him in his stomach. The submission urged on behalf of accused/applicants before Court below that death of deceased occurred on account of an accident, does not dislodge the said evidence which has emerged on record. Furthermore, it is the case of prosecution that the injured/deceased was at his home and two of the named accused namely, Saurabh and Pawan came to the house of the applicants and thereafter took the injured/deceased with him. As such, there is an eye witness account of last seen. The said adverse circumstance has also not been explained in the application under section 227 Cr.P.C. filed before this Court.

18. In view of the discussions made above, the prosecution of applicants can be sustained in the facts and circumstances of the case, as there is sufficient evidence on record against accused applicants to sustain their trial.

19. As a result, no illegality has been committed by Court below in rejecting the discharge application filed by applicants.

20. In view of above, the present application fails and is liable to be dismissed.

21. It is, accordingly, **dismissed**.

Order Date :- 22.08.2025

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