



(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.144 OF 2026

Dhiraj Santosh Thorat,
Age: 25 years, Occu: Agriculture,
R/o. Plot No.36, Vishwas Nagar,
Mayur Park, Harsul,
Chhatrapati Sambhajanagar

....APPLICANT

VERSUS

State of Maharashtra,
Through Officer in Charge,
Police Station M.I.D.C. Cidco,
Chhatrapati Sambhajanagar

....RESPONDENT

.....
Mr S. J. Salunke, Advocate for Applicant
Ms B. B. Gunjal, APP for Respondent/State

.....
CORAM : SUSHIL M. GHODESWAR, J.

DATE : 31st AUGUST, 2026

JUDGMENT :

1. The applicant is challenging the order of framing of charge, dated 03/01/2026, passed by the learned Additional Sessions Judge, Aurangabad in Session Case No.01/2026 below Exh.7. The said charge came to framed against five accused persons, out of which present applicant is accused No.2, namely, Dhiraj Santosh Thorat. In view of the said order, charge came to be framed under Section 109

(2)

read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short “the BNS”) against the accused persons.

2. Heard Mr Salunke, learned Advocate for the applicant and learned APP Ms Gunjal for the respondent/State.

3. According to learned Advocate Mr Salunke, after filing of charge-sheet, the case came to be committed to the Sessions Court under Section 232 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “the BNSS”) by learned Judicial Magistrate First Class, Aurangabad vide order 20/12/2025. The matter before the learned Sessions Court was for appearance on 03/01/2026, and accordingly, accused appeared on the very first date. He further submits that, on the very same date, the charge came to be framed for the offence punishable under Sections 109 read with 3(5) of the BNS.

4. He further submits that five accused persons came to be charge-sheeted in the Court of learned Judicial Magistrate First Class, Aurangabad in pursuance of the report lodged by informant, alleging therein that in the intervening night of 21/09/2025 and 22/09/2025, the accused persons fired bullets from the firearm with intention to kill him. However, the informant survived, and therefore, Crime No.554/2025

(3)

came to be registered with the Police Station M.I.D.C. CIDCO, Aurangabad. Hence, investigation came to be completed and charge-sheet came to be filed against the accused persons under Sections 109(1), 324(4), 49, 3(5) of the BNS; under Sections 3 and 25 of the Arms Act, 1959, and under Section 135 of the Maharashtra Police Act, 1951.

5. As the offence punishable under Section 109 of the BNS, is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, vide order dated 20/12/2025 committed the said case to the Sessions Court, Aurangabad. Vide said order, accused persons were directed to remain present before the learned Sessions Court, Aurangabad on 03/01/2026. They appeared before the learned Sessions Judge on the 03/01/2026. On the very same date, charge came to be framed against the accused persons by the learned Sessions Court.

6. Mr Salunke. Learned Advocate for the applicant submits that Section 250 of the BNSS, particularly sub-section (1) provides that 60 days time has been prescribed to be given to accused to prefer an application for discharge from the date of committal of case to the Sessions Court. In earlier corresponding provision i.e. under Section

(4)

227 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), such time frame of 60 days to apply for discharge was not provided. However, by virtue of new code i.e. the BNSS, the legislature has introduced the provisions of providing 60 days period for preferring an application for discharge from the date of committal of the case, till the framing of charge. On the very first date, the learned Sessions Court thereby framing charge, has not provided opportunity to the accused persons to prefer an application for discharge under Section 250 of the BNSS. He, therefore, submits that the impugned order is, therefore, totally in contravention of the newly introduced provisions, and as such, accused persons were required to be given opportunity to prefer an application for discharge. The learned Sessions Court framed the charge below Exh.7 in a very routine and casual manner. He vehemently submits that the accused have not been given opportunity of legal right to apply for discharge. He prays that the accused persons be provided an opportunity by quashing the impugned order of framing charge.

7. In support of his submissions, learned Advocate Mr Salunke relies upon the judgment delivered by the Nagpur Bench of this Court in the matter of **Ambadas Kashirao Kharad Vs. State of Maharashtra, [2007 ALL MR (Cri.) 1916]**. In the said case, learned

(5)

Sessions Judge had directly proceeded to frame charge against the accused therein, without complying the provisions of Sections 226 and 227 of the Cr.P.C. The learned Judge of the High Court, while passing aforesaid judgment, observed that the said practice ex-facie contrary to Chapter XVIII of the Cr.P.C., and as such, cannot be countenanced. It was further directed the Registry to circulate the said judgment to all the Sessions Judges, who have been directed to follow the procedure contemplated under the provisions of Sections 226 and 227 of the Cr.P.C. before passing the order of framing charge against the accused persons.

8. Learned Advocate Mr Salunke for the applicant further relies upon the judgment delivered by the Orissa High Court at Cuttack Bench in the matter of **Narottam Prusty VS. State of Odisha and another** in case **No. CRLMC No.1731/2025** and points out that in exactly similar situation under the new legislation as like in this case, the said High Court of Orissa quashed the impugned order, thereby providing an opportunity to accused to prefer application for discharge within 60 days as per Section 250(1) of the BNSS. Thus, Mr Salunke further submits that, as the accused has not been provided an opportunity to prefer an application for discharge, he has been

(6)

deprived of his legal rights, and therefore, the impugned order is not sustainable in the eyes of law. Hence, he prays for quashing of the same by providing opportunity to apply for discharge to the accused.

9. *Per contra*, Ms Gunjal, learned APP for the respondent/ State vehemently opposes the present application. She submits that, on the date of framing of charge, there was no request on behalf of counsel for the accused, as to whether he is intend to file an application for discharge or not. In absence of such expression, the learned Sessions Court committed no mistake by framing the charge against the accused persons. According to her, though the provisions prescribe period of 60 days from the date of committal of order, the fact remains that applicant/accused, neither expressed before the Judicial Magistrate First Class nor before learned Sessions Court as regards his intention to apply for discharge or not. In absence of such expression of interest, the learned Sessions Court cannot be said to have committed any illegality. She, therefore, submits that there is no requirement of interference of this Court in the impugned order, and therefore, prays for dismissal of the instant application.

10. After hearing the learned Advocates for the respective parties and going through the evidence on record, it is clear that the

(7)

applicant came to be charge-sheeted alongwith the other accused persons for the offence punishable under Sections 109 of the BNS. The said offence is triable by the Court of Sessions. Therefore, learned Judicial Magistrate First Class committed the said case to the learned Sessions Court vide order dated 20/12/2025. In the said order, the Judicial Magistrate First Class also directed the accused persons to appear before the learned Sessions Court on 03/01/2026. When accused persons appeared on the very first date before the learned Sessions Court, the charges came to be framed below Exh.7 by the learned Sessions Judge for the offence punishable under Section 109 read with Section 3(5) of the BNS.

11. For deciding this revision application, it is apposite to refer to the provisions of Sections 250 and 251 of the BNSS, which read thus :-

“250. Discharge.

"(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.

(2) 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.”

“251. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

12. A bare perusal of section 250 of the BNSS would reveal that the accused will be provided with an opportunity of filing an application for discharge. If such application is filed, the learned Sessions Court shall consider the case records, documents submitted therein and hear the prosecution as well as accused before determining, as to whether there are sufficient grounds to proceed against the

(9)

accused persons or not. In the event the learned Sessions Court below is of the view that there are no sufficient grounds to proceed against the accused, the accused shall be discharged. However, if after hearing both the accused and prosecution, the learned Court below considers that there is enough material to draw the presumption that the accused might have committed the offence, the trial Court will then proceed to frame charge as per Section 251 of the BNSS. However, sub-section (1) of Section 251 of the BNSS provides that, the Judge will proceed to frame the charge '*after such consideration and hearing as aforesaid*'. Thus, the hearing and consideration referred to in sub-section (1) of Section 251 clearly suggests the preceding Section 250. Thus, Section 250 specifically in sub-section (1) provides a time limit of 60 days from the date of commitment of the case under Section 232 of the BNSS.

13. After conjoint reading of Sections 250 and 251, it is evident that, the application for discharge may be filed by the accused person within a period of 60 days from the date of committal order. No such time limit was fixed under the erstwhile Section 227 of the Cr.P.C. After introduction of the new BNSS, the legislature has provided time of 60 days in cases where the committal procedure is

(10)

contemplated. Ordinarily, in all sessions triable cases under the BNSS, a right has been given to the accused to move an application for discharge within a period of 60 day from the date of commitment of the case.

14. Thus, answer to the question as to from what point should the period of 60 days as provided under section 250(1) of the BNSS be counted, is that the said period starts from the date of commitment of the case to the learned Sessions Court. The provision of Section 250 of the BNSS is to be read and interpreted in a manner that the starting day of limitation for filing an application for discharge within a period of 60 days, shall be counted from the date of first appearance of accused before the learned Trial Court after the cognizance of offence is taken. Similarly, once the accused prefers discharge application, the case shall be posted for hearing on charge immediately. Thereafter, in view of Section 251(1)(b), the learned Sessions Court shall frame charge within 60 days from the date the case is posted for first hearing on charge. This should be a reasonable and fair interpretation of the statutes to avoid any conflict. There is ample time given in the statute to the accused to present his discharge application so as to preserve the

(11)

right of accused to a fair trial, as envisaged under Article 21 of the Constitution of India.

15. In this case, the learned Sessions Judge, without affording an opportunity to the applicant has framed the charge on the very first day of appearance of the accused. However, it is to be seen that the pursuit of the speedy trial must never result in sacrificing the cause of justice. A sound criminal justice system rests upon the foundational principles and what must remain paramount is the administration of justice itself. Even though the process may be expedited, it cannot be allowed to undermine or extinguish essential safeguards that secure justice. Anxiety to bring the trial to its earliest conclusion thus, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that finality of any trial is achieved in the quickest possible time. As such, the learned advocate for the applicant/ accused is right in placing reliance upon the judgments in **Ambadas Kashirao Kharad (supra)** as well as in **Narottam Prusty VS. State of Odisha (supra)**.

16. In view of the above discussion and taking into consideration the fact that the offences involved in the present case

(12)

attract grave punishment, this Court is of the considered view that the right of the accused to a fair trial, as enshrined under Article 21 of the Constitution of India has been violated on account of the very fact that the learned defence counsel for the accused did not get an opportunity to go through the basic documents and to suggest whether to prefer application for discharge or not. Therefore, this Court is of the opinion that the order passed by the learned Sessions Judge, thereby framing the charge on 03/01/2026 requires to be quashed and set aside. Consequently, I pass the following order :-

ORDER

- (I) The Criminal Revision Application is partly allowed.
- (II) It is directed that the matter be considered *de novo* by the learned Sessions Court from the stage of discharge.
- (III) The applicant/accused is directed to approach the learned Sessions Court by filing a discharge application within two weeks from the date of uploading of this judgment.
- (IV) In such eventuality, the learned Sessions Court shall consider such discharge application of the applicant, in accordance with law, within four weeks thereafter, before framing the charge.

(13)

(V) Needless to state, if the accused is not willing to file an application for discharge, then, the accused shall give in writing such intention.

(VI) On filing of such application by the accused giving his right to file an application for discharge, the learned Sessions Court shall proceed further to frame charges against the accused.

(VII) In the event the accused files an application for discharge as per clause (III) above, such application shall be considered under Section 250(2) of the BNSS after providing a reasonable opportunity of hearing to the accused and prosecution. The same shall be disposed of forthwith i.e. not later than 60 days from the first date of hearing on charge.

[SUSHIL M. GHODESWAR, J.]

sjk