



2026:000:105113

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 17695 of 2026

Nagendra Gupta

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Parashuram Barnawal, Yakub Ali
Ansari
Counsel for Opposite Party(s) : G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. appearing for the State.

2. Present application under Section 528 BNSS has been filed for quashing the impugned order dated 29.1.2026 passed by Additional Session Judge / F.T.C.-Ist, Kushinagar at Padrauna, whereby the discharge application of the applicant filed in Case No. 6640 of 2025 (Session Trial No. 1735 of 2025) (State vs. Nagendra Gupta) arising out of Case Crime No. 42 of 2025, under Sections 64, 351(3) BNS, Police Station Nebua Naurangiya, District Kushinagar.

3. It is submitted by the learned counsel for the applicant that a false first information report was lodged against the applicant on 22.1.2025 in respect of alleged incident dated 17.1.2025, under Sections 74, 351(3) BNS. The victim is a married lady and no such incident as alleged by her in the first information report had take place. False statement was given by the victim that she was dragged by the applicant in a sugarcane field, wherein offence of molestation was done by him. There is no independent witness supported prosecution case. The Investigating Officer without conducting fair investigation submitted a wrong charge-sheet against the applicant. The applicant was not present at the place of occurrence when the alleged offence was committed rather he was present in his shop, which is 18 kms away from the place of occurrence. The applicant moved an application along with CCTV footage mentioning therein that he was

present in his shop, therefore, he may be discharged in this case. The application moved by the applicant under Section 227 Cr.P.C. / 250 B.N.S.S. has been wrongly rejected by the learned trial court vide order dated 29.1.2026.

4. Per contra, learned A.G.A. opposed the prayer and submitted that it is the defence of the applicant that he was not present at the place of incident and he will get an opportunity before the learned trial court to prove his plea of alibi at the appropriate stage. The CCTV footage cannot be seen at the stage of framing of charge. Therefore, the application dated 17.11.2025 no. 5-Kha was rightly rejected by the learned trial court vide order dated 29.1.2026 since a prima facie offence is made out from perusal of the first information report as well as statements of the victim recorded during the course of investigation.

5. I have heard rival submissions of learned counsel for the parties and have perused the record.

6. On perusal of statements of the victim recorded during the course of investigation, it is manifest that a prima facie offence is made out against the applicant since the victim alleged that she was dragged by the applicant in a sugarcane field, where she was subjected to rape by the applicant.

7. Now, this Court will examine the contention of the applicant, i.e., whether the evidence, led by the prosecution during course of investigation, is sufficient to proceed against the applicant or they may be discharged at this stage. In order to appreciate rival contentions, the relevant provision of Cr.P.C. and B.N.S.S. may be adverted to.

8. The procedure for trial before a court of session is provided under Chapter XVIII of the Cr.P.C. and Sections 227 and 228 Cr.P.C., which relate to discharge and framing of charges are extracted below:-

"227. Discharge.-- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall

discharge the accused and record his reasons for so doing.

228. 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, as the case may be, 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.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

9. Now, the procedure for trial before a court of sessions is provided under Chapter XIX of the BNSS and Section 250 and 251 of the BNSS are relating to discharge and framing of charge, which are reproduced hereunder:-

"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."

10. The prerequisites for framing of charge were subject matter of consideration in **Soma Chakravarty vs. State through CBI, reported in (2007) 5 SCC 403**, and it was held that the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial, and at the stage of framing of charge the probative value of the material on record cannot be gone into and the said material has to be accepted as true. The paragraph no. 10 of **Soma Chakravarty (supra)** is reproduced hereunder:-

"10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused might have committed offence it

can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

11. The question as to when discharge of an accused would be warranted in exercise of powers under Section 227 Cr.P.C. of the Code in the light of its scope and object was considered in **P. Vijayan vs. State of Kerala and another**, reported in **(2010) 2 SCC 398**, and it was held that at the stage of Section 227 Cr.P.C., the Court has merely to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused.

12. The scope of exercise of powers under Sections 227 and 228 Cr.P.C. with regard to framing of charge/discharge again fell for consideration in **Sajjan Kumar Vs. Central Bureau of Investigation**, reported in **(2010) 9 SCC 368**, and it was held that at the stage of framing of charge under Section 228 or while considering discharge petition filed under Section 227 Cr.P.C., it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof, and it is at the trial that the Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material and veracity of various documents. The following principles were laid down by the Hon'ble Supreme Court in paragraph no. 21:-

"21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima

facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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

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

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

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

13. The relative scope and distinction between Sections 227 and 228 Cr.P.C. with regard to discharge of accused and framing of charge was discussed and explained in detail in **Amit Kapoor vs. Ramesh Chander and another**, reported in **(2012) 9 SCC 460** and it was held that at the stage of Section 228, the Court is not concerned with proof, but with a strong suspicion that the accused has committed an offence and the final test of guilt is not to be applied at the stage of framing of charge. It was stated thus:-

"15.....

It was stated thus :-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

.....

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an

offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

14. In **State of Tamil Nadu vs. N. Suresh Rajan and others**, reported in **(2014) 11 SCC 709**, while considering the scope of exercise of jurisdiction and power by Court at the stage of framing of charges or discharge of accused under Sections 227 and 228 Cr.P.C., it was restated that no mini trial is contemplated at the stage of considering the discharge application and only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused without any requirement of going deep into the matter.

15. The exercise of powers under Section 227 Cr.P.C. of the Code and the matters to be considered and the extent of inquiry permissible on part of Court was again subject matter of consideration in **Asim Shariff vs. National Investigation Agency**, reported in **(2019) 7 SCC 148**, and it was reiterated that the judge while considering the question of framing of charge under Section 227 Cr.P.C. is to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and the Court, at this stage, is not supposed to hold a mini trial by marshalling the evidence on record. It was held as follows:-

"18.

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion

only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

16. The relevant considerations to be made by the Court at the stage of Section 227 Cr.P.C. of the Code were discussed in **M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru**, reported in **(2020) 2 SCC 768** and it was reiterated that the Court at this stage, without making a roving inquiry into the pros and cons, is only required to consider the broad probabilities and the probative value of material on record is not to be gone into.

17. The ambit and scope of exercise of power under Sections 227 and 228 Cr.P.C. of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the trial court comes to a conclusion that there is sufficient ground to proceed, it will frame a charge under Section 228 Cr.P.C. of the Code, if not, it will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.

18. In the case of State of **Madhya Pradesh vs. Rakesh Mishra (2015) 13 SCC 8**, the Hon'ble Supreme Court has held that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out

against the accused. The relevant paragraph no. 7 of **Rakesh Mishra (supra)** is reproduced hereunder:-

"7. The major argument advanced by the State of Madhya Pradesh before us has been that the High Court traversed beyond the permissible limit while deciding the legality of order framing charges, being a pre-trial stage. Various authorities have been cited before us to prove that point. However, it would suffice to say that the law on this point is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground."

19. In the case of **State (By the Inspector of Police, Chennai vs. S. Selvi and another (2018) SCC 455**, the Hon'ble Supreme Court has held that at the stage of consideration of an application for discharge, the court has to proceed with the presumption that materials on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offences. The relevant paragraph of **S. Selvi (supra)** are reproduced hereunder:-

"6. It is well settled by this Court in a catena of judgments including *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, (1990)

4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles:

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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

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

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

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

9. In the matter on hand, the main allegation against the first respondent-Accused 2 as found in the charge-sheet is that while the complainant

along with the relevant documents proceeded to the residence of Accused 1 and 2 at Door No. 28, West Gopalapuram, Chennai-86, to get back his money due to him on 20-9-2011, at about 1730 hours, Accused 1 and 2 threatened the complainant, snatched away the documents from him, denied him permission to enter into their house and threatened him with dire consequences if he entered into their house. It is relevant to note that in the complaint dated 21-9-2011 it is stated that when the complainant went to West Gopalapuram and met the accused for an enquiry about payment, the accused got furious, beat him and with the help of four henchmen pushed him out of their house. On the basis of these discrepancies, the contention of the learned counsel for the accused that the case as made out by the prosecution cannot be believed inasmuch as the material on record is not consistent. It may give rise to some suspicion but not grave suspicion, though appears to be attractive, but is not acceptable in view of entire material on record. On going through the judgment of the High Court, we find that the High Court has virtually appreciated the entire material on record as if the High Court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident. The question as to whether Respondent 1 was present on the place of incident or not during the relevant point of time or she had been in Calcutta as sought to be argued before this Court is a matter of proof. Such fact needs to be gone into by the trial court after recording the evidence."

20. Furthermore, no finding of 'plea of alibi' can be recorded by this Court in application under Section 482 Cr.P.C. / 528 B.N.S.S. The burden to prove the 'plea of alibi' is upon the accused, which he would do by way of adducing evidence in the trial proceedings and not by filing some affidavits or statements purported to have been recorded under Section

161 Cr.P.C. The inconsistency or contradictions in the statement of the witnesses, cannot be examined / appreciated at this stage.

21. The 'plea of alibi' can be proved by leading evidence in the trial court and not by relying on the material collected by the Investigating Officer during the course of the investigation. In such a case, the prosecution would have to be given opportunity to cross-examine the defence witness to demonstrate that his testimony was not correct. This Court also in exercise of its inherent powers under Section 482 Cr.P.C. / 528 B.N.S.S. cannot consider the 'plea of alibi' of an accused at the stage of taking cognizance or framing of charges or summoning the accused. The applicant-accused will have ample opportunity to place their evidence including 'plea of alibi' at the appropriate stage. In this context, the judgment of the Hon'ble Apex Court rendered in the case of **State of Orissa vs. Debendra Nath Padhi** reported in **2004 (8) SCC 568** be referred to, wherein it was held as under:-

".....Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing

more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

22. Therefore, the 'plea of alibi' of the applicant cannot be considered at this stage in view of the settled law. The 'plea of alibi' taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case, said condition is yet to come. The defence is at liberty to raise such plea before the trial court at the appropriate stage.

23. This Court is of the view that the charge can be framed on strong suspicion against the accused persons. There is no material contradiction with regard to the prosecution case mentioned in the first information report as well as in the statements of the witnesses. The statements of witnesses recorded by the Investigating Officer during course of investigation cannot be brushed aside at the stage of considering the discharge application or framing of charge. It is a well settled law that at the stage of considering the discharge application, the defence of the accused cannot be taken into consideration. The ground taken by the applicant in the present application is a disputed question of fact, which cannot be adjudicated at the time of framing of charge. This Court is of the view that the appreciation of evidence is a function of the trial court at the appropriate stage. It is crystallized judicial view that at the stage of discharge the court is to examine the materials only with a view to be satisfied that prima facie case of the commission of offence alleged has been made out against the accused. If there is a ground for presuming that the accused has committed the offence, the court can justifiably say that prima facie case exists against the accused. Marshalling and appreciation of facts is not in the domain of the trial court at the time of considering discharge application. The broad test to be applied is whether the material on record, if unrebutted, makes a conviction reasonably possible. The final test of guilt is not to be applied at that stage.

24. Considering the facts, circumstances and material available on record,

in view of the law laid down by Hon'ble Apex Court, this court does not find any illegality, infirmity or perversity in the impugned order dated 29.1.2026 passed by Additional Session Judge / F.T.C.-Ist, Kushinagar at Padrauna.

25. The concerned trial court while passing the impugned order dated 29.01.2026 has considered all the relevant materials on record and decided the discharge application of the applicant in accordance with law in the light of well settled legal principle laid down by the Hon'ble Apex Court. The applicant has a remedy under the law to raise all such plea in his defence before the trial court at the appropriate stage.

26. In view of the above, the present application lacks merit and is, accordingly, dismissed.

27. No orders as to costs.

28. Registrar (Compliance) is directed to send a copy of this order to the trial court concerned.

(Vivek Kumar Singh,J.)

May 7, 2026
Lalit Shukla