

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 328 of 2017**

- Amit Kumar Sharma S/o Surendra Kumar Sharma Aged About 29 Years Agricultrist, Janpad Sadasya R/o Village- Puran, Police Station City Kotwali Mungeli District Mungeli, Chhattisgarh. --- **Petitioner**

Versus

- State of Chhattisgarh Through Police Station House Mungeli District Mungeli, Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Ashok Verma, Advocate
For the State/R-1	:	Mr. Anupam Dubey, Dy.Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****08.08.2017**

1. This revision is against the order dated 16.02.2017 passed by the learned Court of Additional Sessions Judge, Mungeli in Sessions Case No.H-06/2017 (*State of Chhattisgarh Vs. Manish Singh @ Golu and Amit Kumar Sharma*) whereby the court below has framed charge against the applicant Amit under section 436 read with section 34 IPC.
2. Learned counsel for the petitioner would submit that there is no iota of evidence available against the petitioner as the petitioner has been inculpated only on the memorandum of co-accused Manish Singh from whom an empty water bottle of *Kinley* was recovered. It is further contented that it was alleged that in the bottle, petrol was carried to execute the act by other co-accused, therefore, it do not inculpate the present applicant as no evidence is available against him. It is further submitted that only the evidence which is available

in this case and admissible is the recovery of the empty bottle which cannot be stretched to presume that the crime was committed by the present applicant. It is further submitted that neither any eye-witnesses was present at the place of incident nor any other cogent evidence is available in this case and even if the charge sheet is accepted no case is made out against the applicant.

3. It is further submitted that few of the witnesses have been examined, no one has stated anything against the present applicant, therefore, the petition may be allowed.
4. Per contra, learned State Counsel opposes the bail application.
5. Perused the documents and case diary. As per the prosecution case, on 19.08.2016 i.e., co-accused Manish Singh went along-with another person to a distant place of Mungeli from Bilaspur. Subsequently the other person was left at a place and the co-accused is alleged to have gone to this applicant and thereafter, on the basis of old enmity they poured petrol and set ablaze the beetle shop of Dharmendra Pandey as also the house of Rajesh Yadav and motorcycles of Alok Singh and Shriram. It has been alleged that co-accused Manish Singh on the date of incident had contacted on 19.08.2016 from his mobile in the wee hours of the night at about 23.00 hours 50 minutes & 37 seconds with this applicant and thereafter on 20.08.2016 after execution of crime at about 3.15 a.m., again talked with this applicant. Thereby with the help of present applicant, the offence was committed.
6. Memorandum statement of Manish Singh, who was arrested

on 19.10.2016 is on record which would show that co-accused Manish Singh had travelled from Bilaspur to a distant place i.e., Mungeli in the night as they have to take some revenge for an old enmity and he accompanied the applicant Amit Kumar Sharma and set ablaze the properties of different persons and destroyed various articles, for which different reports were made.

7. Prama facie it shows that Manish Singh who was holding mobile No.9303552409 had a talk with applicant Amit Kumar on mobile no.7879125577 and the allegations are that in the night itself they had conversation. Subsequently after arrest of Manish Singh, at his instance, an empty bottle of Kinley wherein the petrol was carried was seized under a shrub. The call details have also been filed by the prosecution to show the conversation between co-accused Manish Singh and the present applicant before the incident and thereafter at wee hours of the night and the recovery has already been made.
8. The Supreme Court in a case of *Shoraj Singh Ahlawat Vs. State of U.P.* reported in *AIR 2013 SC 52* has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

“240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such

Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

9. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in *Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)*.
10. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not 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. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as *prima facie* the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?
11. The scope of interference and exercise of jurisdiction under

Section 397 of Cr.P.C. was again reiterated by their Lordship in case of *State of Rajasthan v. Fatehkaran Mehdu*, reported in *AIR 2017 SC 796*. It is stated that at the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

12. Applying the aforesaid principles to the present case, after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the applicant cannot be accepted as gospel truth as in this case P.W.2 Avinash Singh has stated at para 2 that he has seen the present applicant Amit Kumar and co-accused Manish Singh in the fateful night at about 12.30 while they were standing near the house of applicant. The authenticity of the same has to be decided by the trial Court after assessing the over all evidence of witnesses.
13. Considering the totality of facts and circumstances of the case, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the revision petition is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**