

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.232 OF 2016**

Mukesh Popatlal Gada  
Aged - 41 years,  
Indian Inhabitant,  
R/at. Flat No.406,  
H-Wing, Dhanraj Society,  
CTS No.1224, Apte Road,  
Shivaji Nagar, Pune - 411 004.

.. Applicant

**Vs.**

State of Maharashtra  
(At the instance of Faraskhana  
Police Station, Pune.

.. Respondent

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Mr.Subhash Jha a/w. Ms.Sanjana Pardeshi & Mr.Harekrishna  
Mishra I/b. M/s.Law Global, Advocate for the Applicant.

Mr.A.R. Patil, APP for the Respondent - State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : AUGUST 16, 2018.**

**JUDGMENT :**

Heard both sides for final disposal. Applicant is aggrieved by the order passed by the Sessions Court rejecting the application for discharge preferred by the applicant.

2           The applicant is arrayed as an accused in CR No.111 of 2013, registered with Faraskhana Police Station, Pune, for the offences punishable under Sections 307, 120-B of IPC read with Section 4(25) of the Arms Act and Section 37(1) and 135 of the Maharashtra Police Act.

3           Prosecution case in nutshell is as follows:

- (a) On 13<sup>th</sup> June, 2013, three unknown persons assaulted complainant Nikhil Avaghade when he was standing with his three friends. The accused were armed with sickle, sattur and sword, had assaulted the complainant. His friends managed to ran away from the place of incident. The complainant sustained injuries.
- (b) During the course of investigation, it was revealed that property viz. Tulsabai Wada, House No.1001, Budhwar Peth, Pune, was purchased by the applicant. There were some tenants in the property. Some of them had vacated their premises to the applicant or the owner of the property. One of the tenant, namely, Mehabooba Mulla did not vacate the premises.

- (c) The ex-corporator of the area, namely, Datta Sagare, was allegedly the friend of the applicant – accused. With the help of Datta Sagare, the applicant came into contact with Baba Bodake, for vacating the premises of Tulsabai Wada. There was a Darga in the said property, which was visited by the complainant frequently for a prayer. He was told by the tenant Mulla that the property owner is trying to vacate the premises by threatening. The complainant is also an anti social element. It is alleged that there was a conspiracy between the accused to assault the complainant who was intervening in the said transaction.
- (d) The investigating officer recorded statements of witnesses. After recording statements and collecting the evidence, charge-sheet was filed before the Court.
- (e) During the course of investigation, police arrested four person viz. Anand @ Anand Siddhu Kadam, Avinash Laxman Rete, Manoj Kailas Jagtap, Manoj @ Manya Gorakh Sonawane on 13<sup>th</sup> June, 2013. The applicant was arrested on the allegation that he had given contract to

one Baba Bodke for vacating Mulla from said property.

- (f) It is alleged that Baba Bodkae requisitioned services of Vinod Kataram and Balli Thakur for the purpose of evicting Mulla from the residential premises. However, the complainant met Mulla on 6<sup>th</sup> June, 2013, and asked him not to entertain Vinod Kataram and Balli Thakur, who were contemplating to evict him from the premises as according to him, if he secures possession of the premises held by Mulla, he would get commission in respect thereof.

- (g) In pursuance to conspiracy the complainant was assaulted by assailants.

4            Applicant preferred an application for discharge before the Sessions Court at Pune. The said application was rejected on 30<sup>th</sup> January, 2016. Hence, the applicant has invoked the inherent powers of this Court under Section 482 of Cr.P.C. to challenge the impugned order and seeking discharge from the said proceedings.

5           Mr.Jha, learned counsel appearing for the applicant made following submissions:

- (i)     There is no evidence against the applicant to proceed against him. The prosecution has not established the involvement of the applicant in the said crime.
- (ii)    The dispute appears to be between the two groups who were trying to hold supremacy in relation to the disputed property and the applicant is not concerned with the incident of assault. The complainant was assaulted by unknown persons. There is no substantial evidence to establish that the assailants were acting at the instance of the applicant.
- (iii)   Admittedly, the prosecution case is that most of the tenants had vacated the premises except one of the tenant Mr.Mulla. there is no material to show that the applicant had any point of time was trying to evict that person by using force.

- (iv) There is no evidence to establish link between accused who had assaulted injured and the applicant having conspired with them to assault the complainant. There is no reason to assault the complainant, as the applicant is the purchaser of the property, he had followed due process of law while entering into the transaction and there was no impediment in redeveloping the said property. There is no resistance from any other person from vacating the premises excepting one person who had continued to occupy the said premises.
- (v) From the statements on record, it is apparent that two gangs were trying to enter into the said property without any connivance with the applicant. There is nothing on record to show that there was any animosity between the applicant and the injured person. The applicant, thus, has no reason to assault the complainant and the injured. The charge of conspiracy cannot be inferred and there has to be substantial evidence to support the charge.
- (vi) To frame the charge against the accused, *prima facie* case is required to be made out, which is lacking in the present

case. The applicant can be held responsible, and liable if any harm would have been caused to Mulla at the hands of Anand @ Anand Siddhu Kadam, Avinash Laxman Rete, Manoj Kailas Jagtap, Manoj @ Manya Gorakh Sonawane, seeking to evict him from the premises. However, admittedly, no harm was caused to Mulla. Applicant having not requisitioned services of Baba Bodake who in turn secured services of Vinod Kataram, Balli Thakur, cannot be held responsible for the incident dated 13<sup>th</sup> June, 2013, in which the complainant was inflicted with injuries.

- (vii) There is no material worth to put the applicant on trial, and, therefore, the Sessions Court has committed an error in rejecting the application for discharge. The applicant did not requisitioned services of the three unknown person who assaulted the complainant, and, there is no evidence that the attack on the injured is engineered by the applicant or launched at his instance, and, therefore, the applicant cannot be held responsible for the act of two warring groups.

- (viii) No charge can be framed on the basis of the material on

record collected during investigation. The trial Court lost sight of the aforesaid fact while rejecting application for discharge. If on the basis of evidence before the Court, no charge could be framed against the applicant-accused, the Court ought not to have rejected the application for discharge.

- (xi) There is no consistency in the prosecution case, there is no motive for the applicant to assault the injured person. There is no legal evidence to substantiate the charge of conspiracy. Learned counsel pointed out various statements of the witnesses and submitted that taking the prosecution case as it is, applicant cannot be prosecuted for the said offences.
- (x) Assuming that the case of the prosecution to be true, there cannot be a charge under Section 307 of IPC in the present case. The nature of injuries sustained by the complainant, do not warrant the charge under Section 307 of IPC. The applicant was admitted in hospital on 14<sup>th</sup> June, 2013, and, was discharged shortly thereafter. The nature of the injuries sustained by the complainant are not sufficient to

hold that there was any intention on the part of the accused to commit murder, and, therefore, the prosecution ought not to have invoked the charge under Section 307 of IPC. It is submitted that in the absence of the charge under Section 307 of IPC, case would be tried by the subordinate Court. To frame charge under Section 307 of IPC, the evidence on record and the injuries sustained by the injured should spell out the intention to commit murder, which is a requisite ingredient to constitute the said charge.

(xi) To prosecute the accused by invoking the charge of conspiracy, there has to be cogent material before the Court. The requisite elements to constitute the charge of conspiracy has to be present in the charge-sheet. There has to be meeting of mind of two or more persons, which is *sine qua non* of conspiracy.

(xii) It is submitted that if two views are equally possible and the Judge is satisfied that evidence produced against the accused raises suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge

the accused. In the present case, the prosecution is proceedings merely on the basis of suspicion which is not enough to frame charge against the applicant for the said offences.

- (xiii) Mr.Jha placed reliance on several decisions and stressed upon principles enunciated in the said decision by the Supreme Court as well as various other Courts to draw support to his submission that the accused can be tried for the offence if *prima facie* case is made out to proceed. The charge of conspiracy requires the evidence of meeting of minds. The charge under Section 307 of IPC can be invoked in the event there is material before the Court to show that the assailants had intended to cause death of the person and there was an attempt to murder the victim.
- (xiv) Mr.Jha, pointed out medical certificate with regards to the injuries sustained by the complainant and submitted that none of the injuries is grave in nature to attract the charge under Section 307 of IPC.
- (xv) Reliance is placed on the following decisions:

- (1) ***Hanif Usmanbhai Kalva & Ors Vs. State of Gujarat***<sup>1</sup>;
- (2) ***State of Punjab Vs. Bant Singh***<sup>2</sup>;
- (3) ***Parsuram Pandey & Ors. Vs. State of Bihar***<sup>3</sup>;
- (4) ***Eknath Govarya Pawar & Ors. Vs. State of Maharashtra***<sup>4</sup>;
- (5) ***State of Karnataka Vs. L. Muniswamy & Ors.***<sup>5</sup>;
- (6) ***Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra***<sup>6</sup> and
- (7) ***State of U.P. Vs. Dr. Sanjay Singh & Anr.***<sup>7</sup>

6 Mr. Patil, learned APP appearing for the State vehemently opposed the reliefs sought by the applicant. It is submitted that there is voluminous evidence against the applicant to prosecute him for the said offences. The incident had occurred on 13<sup>th</sup> June, 2013. The complainant was assaulted by the assailants by using deadly weapons. The statements of witnesses indicate involvement of the applicant. There is *prima facie* evidence to support the charge of conspiracy and the charge under Section 307 of IPC. The applicant is purchaser of the subject property and interested in developing the said property.

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1 MANU/GJ/1012/2015

2 1996 SCC OnLine P & H 167

3 MANU/SC.0895/2004

4 Cri.W.P.No.2814 of 2014, decided on 4.2.2015

5 (1977) 2 SCC 699

6 (2008) 10 SCC 394

7 1994 Supp (2) SCC 707

The evidence on record clearly indicate that there was a conspiracy between the applicant and the co-accused, which has resulted in the assault on the complainant. The applicant had a motive to participate in the crime being the purchaser of the property and considering the fact that one of the tenants had not vacated the premises. It is further submitted that at the time of dealing with an application for discharge, the Court is not expected to conduct a roving inquiry and what is required is *prima facie* evidence to warrant framing of charge. In the present case, there is evidence before the Court which is analysed by the Sessions Court, and, therefore, the application is devoid of merits. It is further submitted that the submissions advanced by the counsel for the applicant are his probable defences, which can be considered only at the time of trial and at this stage, the Court is not required to appreciate the evidence. He pointed out statements of witnesses, which according to him, reflects the complicity of the applicant being conspirator in the said crime, which is sufficient evidence to proceed against him. He pointed out the statement of one Sarjerao Konde, recorded on 14<sup>th</sup> July, 2013, statement of Sachin Balli dated 20<sup>th</sup> July, 2013 and statement of Nitin Tembhe, recorded during the course of investigation on 22<sup>nd</sup> July, 2013. Learned APP also pointed out

statement of one Harshal Jagtap dated 28<sup>th</sup> July, 2013. It is submitted that the statements of all these witnesses clearly establishes the involvement of the applicant in the said crime. He also pointed out the nature of injuries sustained by the complainant. It is submitted that the injured had sustained injuries on his forehead, chest and other parts of his body. It is submitted that what is required to be seen at the stage of framing of charge is that the assailants were armed with dangerous weapons like sickle, sword, Sattur and had assaulted the victim. The manner in which he was assaulted on vital parts of the body in pursuant to conspiracy and the object of assault are sufficient to draw an inference that the only intention of the accused was to liquidate the complainant, which warrants for framing of the charge under Section 307 of IPC. Mr.Patil, relied upon several decisions in support of his arguments about the scope while dealing with the application for discharge and the limitation on the Courts at that stage. He also relied upon the decisions in support of his submissions with regard to charge under Section 307 of IPC and submitted that the nature of the act committed by the accused, the manner of assault and the nature of injuries sustained, are the relevant factors to frame the charge under Section 307 of IPC. He also submitted that the gravity of the

injuries sustained may not be a relevant factor at the stage of framing of charge and what is required to be seen is that the accused had assaulted jointly by inflicting blows with the use of deadly weapons and the blows were inflicted on vital part of body. Learned APP, relied upon the following decisions:

- (1) ***State of MP Vs. S.B. Johari & Ors.*<sup>8</sup>;**
- (2) ***P. Vijayan Vs. State of Kerala & Anr.*<sup>9</sup>;**
- (3) ***State of Maharashtra Vs. Salman Salim Khan & Anr.*<sup>10</sup>;**
- (4) ***Indu Jain Vs. State of Madhya Pradesh & Ors.*<sup>11</sup>;**
- (5) ***Anjani Kumar Chaudhary Vs. State of Bihar & Anr.*<sup>12</sup>;**
- (6) ***Ratan Singh Vs. State of Madhya Pradesh & Anr.*<sup>13</sup> and**
- (7) ***Vineet Mahajan Vs. State of Punjab & Ors.*<sup>14</sup>**

7            Having heard both the sides and also going through the documents on record, it can be seen that the alleged incident had occurred on 13<sup>th</sup> June, 2013, wherein the assailants had assaulted injured Nikhil Avghade by using Sickles, lathis and sword. The injured was accompanied by his friend who managed to run away from the place of incident. The injured was taken to the hospital. The injury certificate indicates that he had sustained

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8 (2000)2 SCC 57

9 (2010) 2 SCC 398

10 (2004) 1 SCC 525

11 (2008) 15 SCC 341

12 (2014) 12 SCC 286

13 (2009) 12 SCC 585

14 (2017) 14 SCC 803

CLW on the left side of forehead, CLW on the right side of chest, CLW on the left hand, CLW on the right upper back, CLW to his little finger. In pursuant to the incident, the statement of the complainant was recorded, which was treated as FIR against unknown person. The investigation commenced and several persons were arrested. During the course of investigation it was revealed the there was a conspiracy to attack the injured person. The case of the prosecution is that the applicant is the purchaser of the subject property. Most of the tenants who were occupants of the premises has settled with the applicant and vacated the premises after accepting compensation. However, one person, namely, Mulla continued to occupy the premises. The applicant being the purchaser of the property had entered into the conspiracy with the co-accused and it was decided to take action against the complainant . The Investigating Officer has recorded statement of several witnesses including statements which are referred hereinabove. The applicant was arrested. On completing investigation, the charge-sheet was filed. Statements of Sarjerao Konde, were recorded on 14th July, 2013 and 20th July, 2013. According to him, on 6<sup>th</sup> July, 2013 at about 7:00 p.m., he had visited the Darga, which is situated within the precinct of the disputed premises. He came across Baba Bodke, Datta Sagare,

Manoj Sonawane, Vinod Kataram having discussions amongst themselves. At that point of time Baba Bokde was in angry mood and he stated that he has given word to Mukesh Gada. He also said how the work of Wada is not done. All of them were discussing that Nikhil Avghade is not allowing them to complete the work of Wada and he should be liquidated. Baba Bodke told Vinod and Manoj that initiate action against Nikhil Avaghade but warned them that there should not be any evidence against them while accomplishing the act. Manoj told them that some boys residing near Dandekar Bridge are in need of money and one of them, namely, Manoj Jagtap is known to him, he can be engaged for the work. Baba told them that they should not worry about money. The deal involved huge money and Mukesh Gada has assured to them money. He also told them to remove Nikhil Avghade who is interfering in the deal. In the subsequent statement of the said witness, he reiterated the said version. Statement of Sachin alias Balli. Sudhakar Balkavade was recorded on 20<sup>th</sup> July, 2013. Statement of Mohammed Shaikh recorded on 14<sup>th</sup> July, 2013 states that Tulsabai Wada was purchased by Mukesh Gada. He always accompanies ex-corporator Datta Sagare. On 6<sup>th</sup> June, 2013, Nikhil Avghade met him at Darga. He told him about work of vacating the Wada. He

told him to inform Balli Thakur and Vinod Kataram who had undertaken the said work that he would look into said aspect and could get commission. The said person be warned not to interfere therein. His supplementary statement was recorded on 20th July, 2018, which also reiterates the same version. The statement of Nitin Tembhe also reiterates the version of the aforesaid witness Sachin @ Balli Balkavade had stated that, he visits Darga on every Thursday. Tulsabai Wada situated near Darga is purchased by Mukesh Gada for development/construction. One of the tenant, namely, Mulla was not vacating premises. There was dispute between Gada and Mulla. Baba Bodke, Vinod Kataram are his friends. He knows Datta Sagare. Mukesh Gada had assigned the work of Mediation to Baba Bodke. He alongwith Vinod had approached Mulla at the request of Baba Bodke to find out his expectations. On 6<sup>th</sup> June, 2012, the witnesses and his friends Baba Bodke, Vinod Kataram and Manoj Sonawane went to Darga. At that time Baban Shaikh informed him that Nikhil Avaghade had told to pass on message that they should not interfere in the subject of vacating premises. Baba Bodke was angry. The witness than referred to conversation between Baba Bodke and others referred to by earlier witness. The tenor of the statements indicate the involvement of the applicant being the

purchaser of the property and giving assurances to Baba Bodke and also instructing them to take action against Nikhil Avghade and involvement of several persons as conspirators in crime. Manoj Jagtap is one of the assailant who had assaulted the complainant. Thus, there is sufficient evidence to proceed against applicant veracity of the said statements would be matter of trial.

8           It is a settled law that *prima facie* evidence is required for proceeding against the accused. In the case of ***Hanif Ustanabhai Kalva (Supra)***, which is relied upon by the advocate for the applicant, the Gujarat High Court has analysed the scope of Section 307 of IPC. It is observed that for determining the nature of the offence, more particularly, the offences under Section 307 of IPC, the guiding factors would be whether there was an attempt to commit murder. The Court analysed the provisions of Section 323, 326 and 324 etc. and analysed requirement of Section 307 and its essential. It was observed that the most important ingredients to constitute/commit said offence is the intention and knowledge, which is necessitate the prosecution to establish that the intention of the accused was one of the three kinds mentioned in Section 300 of IPC. In paragraph 26 of the said decision it is observed that intention which is a state of mind, can never be

precisely proved by direct evidence as a fact, it can only be deduced or inferred from other facts which are proved. The intention may be proved by *res gestae*, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of the case. There are various relevant circumstances from which the intention can be gathered (1) the nature of the weapon used; (2) the place where the injuries were inflicted; (3) the nature of injuries caused; (4) the opportunity available which the accused gets. Analyzing the said principles in the present case, it can be seen that the accused were armed with deadly weapons like sickle, sattur and sword and the injured was assaulted on the vital parts of his body. In the case of ***State of Punjab Vs. Bant Singh (Supra)***, Punjab and Haryana High Court has dealt with similar issues and reiterated the said principles and elaborated the requirements of Section 307 of IPC. It was observed that to charge a person under Section 307 IPC it shall have to be shown as to what was the actual intention of assault as also what is the nature of injury. The said decision was rendered in appeal against acquittal preferred by State and against conviction by accused. In case of ***Eknath Govarya Pawar & Ors. Vs. State of***

***Maharashtra (Supra)***, this Court has also considered the applicability of Section 307 and in the facts and circumstances of the said case, the accused were discharged. In the said decision, it was observed that the requirement under Section 307 of IPC are not available in the FIR. It was not the duty of the complainant to hold the handle of the car to stop the same. The proper course open to him was to chase the vehicle or give wireless message to the traffic officer on the next signal or give intimation to the control room. It is possible that applicant no.1 may not be knowing that the complainant was holding handle of the car. At the most, it can be said that applicant no.1 and other applicants tried to run away from the spot, by driving the car in a rash and negligent manner to avoid police action. Thus, there was no intention to commit murder, as envisaged under Section 307 of IPC.

9           In the case of ***Parsuram Pandey & Ors. Vs. State of Bihar (Supra)***, the Apex Court while dealing with the requirements of Section 307 of IPC observed that Section 307 contemplates an act which is done with intention of causing death, but, which fails to bring about the intended consequences on account of intervening circumstances. To constitute an offence

under Section 307 two ingredients of the offence must be present (a) an intention of or knowledge regarding to commission of murder; (b) the doing of an act towards it. In the case of ***State of Karnataka Vs. L. Muniswamy & Ors. (Supra)***, the Supreme Court has observed that inherent powers are designed to achieve a Salutory public purpose that a Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. Mr.Jha, relied upon the observations made by the Court in paragraph 8 of the decision. It is observed that, the prosecution could not point out any material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant. It was further observed that it is wrong to say that at the stage of framing charge, the Court cannot apply its judicial mind to the consideration whether or nor there is ground for presuming the commission of the offence by the accused. The order framing charge affects persons liberty substantially and, therefore, it is the duty of the Court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face trial. In the case of ***Yogesh Joshi Vs. State of Maharashtra (Supra)***, the Supreme Court

has enumerated the requirements of the charge of conspiracy. It is observed that the basic ingredients of the offence of criminal conspiracy are (1) an agreement between two or more persons; (2) the agreement must related to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. Meeting of minds of two or more persons for doing or causing to be done an illegal act or ant by illegal means is sine qua non of criminal conspiracy. The Supreme Court also observed that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators and the meeting of minds of the conspiracy can be inferred from the circumstances proved by the prosecution, if such inference is possible. The Court also dealt with scope of Section 227 of Criminal Procedure Code and held that, if two views are equally possible and the judge is satisfied that evidence produced gives rise to suspicion only as distinguished from grave suspicion, he would be fully within his rights to discharge accused. In the case of ***State of Uttarpradesh Vs. Dr.Sanjay Singh (Supra)***, the Supreme Court has observed that mere suspicion of motive is not a sufficient ground for framing charges, in the absence of any material, *prima facie*, showing that particular motive passed into

action and that the accused is connected with that action. In the factual aspects involved in the said matter, it was concluded that on scrutinizing the entire material placed on record, even if unrebutted or totally accepted, the Court is of the view that it does not make out a case for conviction and mere suspicion of motive cannot serve as a sufficient ground for framing the charges.

10           Analyzing the ratio laid down in the aforesaid decisions, to the facts of the present case, it can be seen that the statements of the witnesses and the circumstances existing herein, there is sufficient evidence to proceed against applicant. In the case of ***State of Madhya Pradesh Vs. S.B. Johari & Ors. (Supra)***, the Court has taken into consideration the factors to be considered while framing charge. It is observed that proof of conspiracy in most of the cases is based on circumstantial evidence. It is further observed that , the exercise of appreciating material produced by prosecution at the stage of framing of charge is wholly unjustified. The High Court in the said case had quashed the charge framed against accused in exercise of revisional jurisdiction. It was held that the entire approach of High Court is illegal and erroneous. Instead of considering the

*prima facie* case, the High Court has appreciated and weighed the material on record for coming to the conclusion that charge against accused could not have been framed. In the case of ***P. Vijayan Vs. State of Kerala & Anr. (Supra)***, the Supreme Court has observed that at the stage of Section 227, the judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him. If the judge comes to the conclusion that there is sufficient ground to proceed, he will frame charge under Section 228 of Cr.P.C., if not, he will discharge the accused. In the case of ***State of Maharashtra Vs. Salman Khan (Supra)***, the Supreme Court held that although it was open to the High Court to entertain a petition under Section 482 of Cr.P.C., to quash charges framed against the accused, the same cannot be done by weighing correctness or sufficiency of evidence. The principle to be adopted by the High Court in such cases should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or

not. The truthfulness, the sufficiency and acceptability of the evidence can be adjudged at the stage of trial. In the case of ***Indu Jain Vs. State of MP & Ors. (Supra)***, the Court has prescribed limitations on the Courts at the stage of framing charge. It is observed that at the time of framing of charge, the Court is not required to go into details of investigation but only to arrive at the *prima facie* finding on the materials made available as to whether a charge can be sustained as recommended in the charge sheet. Holding of a mini trial at the time of framing of charge is deprecated. Various circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing of charge where on the strength of the charge sheet only a *prima facie* satisfaction about the commission of an offence has to be arrived at by trial Court. In another decision relied upon by the learned APP in the case of ***Anjani Kumar Choudhari Vs. State of Bihar & Anr. (Supra)*** the Apex Court has laid down the principles to determine the applicability of Section 307 of IPC. It is observed that in order to attract Section 307 of IPC, injury need not be on vital part of the body. When several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. The question

as to whether there is intention to kill or knowledge that death will be caused is a question of fact and would depend on facts of the given case which has to be attributed on evidence by trial Court. In the case of ***Ratan Singh vs. State of Madhya Pradesh & Anr. (Supra)***, it was observed by the Apex Court that the accused cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. The determining question is intention or knowledge, as the case may be and not the nature of injuries. In the case of ***Vineet Mahajan Vs. State of Punjab & Ors. (Supra)***, the Supreme Court has reiterated similar principles. In the said case, the High Court has deleted the charge framed under Section 307 of IPC as unsustainable in revision filed by the accused. It was held that a question as to whether there was intention to kill or knowledge that death will be caused, is a question of fact of a given case which has to be attributed on evidence by the trial Court.

11           Analyzing all the above principles enunciated hitherto and applying the same to the factual aspects of the present case, there is definite conclusion that *prima facie* case is made out against the applicant to proceed against him. The statements of the witnesses indicate the involvement of the applicant whether

there was an intention or knowledge can be inferred from the nature of injuries, nature of weapons used and the manner in which the injured was attacked. All these factors can be appreciated at the time of trial. The statements of witnesses, *prima facie*, show complicity of the applicant in the said crime. The submission of learned advocate for the applicant cannot be appreciated at this stage. In the circumstances, I find no merits in this application. The Sessions Court has rightly rejected the application for discharge and, there is no reason to reverse the said decision.

12            Hence, I pass the following order:

**:: ORDER ::**

- (i) Criminal Application stands dismissed;
- (ii) It is clarified that the observations made in this order are only considering the relief sought in this application and the trial Court shall not be inflicted by the same at the time of trial;
- (iii) At this stage, learned counsel for the applicant submits that there was interim order is

continuing in favour of the applicant since 2016, and, the applicant intends to challenge this order before the Apex Court and hence interim stay may be extended for a period of six weeks. Considering the fact that the proceedings, as against the applicant were stayed and the interim relief was in operation since 2016, the same shall continue for a further period of six weeks from today.

**(PRAKASH D. NAIK, J.)**