

Vidya Amin.

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

CRIMINAL WRIT PETITION No. 4959 OF 2018

Mrs. Kiran Prabhakar Gajdhane & Ors. ... Petitioners
VS.
State of Maharashtra ... Respondent

Mr. Oves A. Siddique, Advocate for the petitioners.
Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 30th November, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and disposed of at the stage of admission.

2. This Petition is filed by the petitioners challenging the order dated 14th August, 2018 passed by the Ad-hoc District Judge-I and Assistant Sessions Judge, Kalyan of framing of charge praying that the said order be quashed and set aside and pending hearing of the Petition, Sessions Case NO. 207 of 2008 be stayed.

3. At the outset, it is to be noted that the order of framing of the charge is not challenged on merit but as per the submissions of learned counsel for the petitioners, the order of framing of charge under section 228 of Cr. P.C. is challenged mainly on the ground

that the procedure under section 226 of Cr. P.C., opening of case by the prosecution, is not followed. Thus, as the order of framing of charge is not argued and not challenged on merits, this Court is going to consider only the procedure followed by the trial Court while framing of the charge.

4. The petitioners are facing prosecution under sections 306, 420 r/w. 34 of Indian Penal Code in Sessions Case No. 207 of 2018. In this case, the charge was framed on 14th August, 2018 by the learned Ad-hoc District Judge-1 and Assistant Sessions Judge, Kalyan .

5. The learned counsel for the petitioners has submitted that before framing of charge under section 228 of Cr. P.C., it is binding on the part of the Court to follow the proper procedure laid down in Cr. P.C. He emphasized that the procedure under section 226 of Cr. P.C. was not followed by the learned trial Judge. The learned counsel has submitted that the prosecution was required to open the case and thereafter on the basis of material which is placed by the prosecutor before the Court, the Court is supposed to frame charge under section 228 of Cr. P.C. He submitted that framing of charge is very important stage, however, adequate material was

not placed and was not available to the learned trial Judge for framing charge under section 228 of Cr. P.C. In support of his submissions, he relied on the judgment of Division Bench of Bombay High Court, Bench at Aurangabad in the case of **Baban Bandu Patil & Ors. vs. State of Maharashtra**, reported in 2007(1) Bom. C.R. (Cri) 899.

6. Learned APP, while opposing this Petition and supporting the order passed by the learned Judge of framing of charge, has submitted that the learned Judge has followed the proper procedure. He relied on the copy of roznama dated 14th August, 2018. He also relied on the affidavit dated 28th November, 2011 filed by Mr. Balkrishna Kashinath Dohale, Senior Clerk of District Court, Kalyan. He submitted that in the affidavit, the senior clerk has mentioned the procedural steps taken by the Court placed before the Court. On the same day, the bail application of the accused persons was rejected and the advocate of the accused was present. He submitted that the submissions of learned counsel that the learned Sessions Court has not followed the procedure under sections 226 and 227 of Cr. P.C. before framing charge is incorrect and it is frivolous Petition filed by the

petitioners, which is to be dismissed with exemplary costs.

7. Under section 226 of Cr. P.C., the prosecution is required to open the case and the Court has to take into account what is the material placed before it for framing of the charge. For discharge under section 227 of Cr. P.C. the learned Judge is required to hear the submissions of the accused and the prosecution and if no sufficient ground is found to frame charges, then the accused can be discharged. The roznama of the Court reflects whatever happens in the Court rather it is a mirror image. On the first day of the hearing of this Petition and after considering the grievance put up by the learned counsel Mr. Siddiqui for the petitioners, I therefore called a copy of the roznama through Registrar (Judicial). The said copy of roznama is taken on record and marked as Exhibit 1.

8. Thereafter on the other day, the allegations were made by the learned counsel for the petitioners that the Court has not followed the proper procedure and the advocate of the accused were not present at the time of framing of charge and therefore, accused has expressed that they did not want to plead guilty and their signatures were obtained on the papers and the contents of

which the accused were not aware. In view of these submissions, through Registrar (Judicial) the affidavit of the concerned clerk is called. The affidavit dated 28th November, 2018 filed by Balkrishna, Senior Clerk is taken on record and marked as Exhibit 2.

9. I considered these two documents. The roznama dated 14th August, 2018 shows that the accused were produced from jail. The advocate was present. The order passed below Exhibit 2. The Bail Application was rejected. The charge was framed and then statements of accused nos. 1, 2 and 3. This roznama recorded was written by the clerk. The clerk has filed affidavit stating that Sessions Case No. 207 of 2018 was on board on 14th August, 2018 and on that day, the Judge rejected the Application for bail of the accused at Exhibit 2. Thereafter the Judge heard the prosecutor on charge and then the Judge prepared the charge in the presence of the accused. It was explained to the accused and the accused pleaded not guilty. Thereafter the Court recorded the plea in English as well as in vernacular language. The names, addresses are mentioned in the plea. Signature of the accused were obtained on the plea. The Judge signed it and at that time,

the advocate of the accused was present. As per the procedure followed by the Court and the rules of business, the roznama recorded in the Court is to be taken as true, unless a convincing material is placed before the Court to rebut it. In this case, there is no such material brought on record to disbelieve the roznama. On that day, in fact the bail Application was rejected. The charge was framed. The plea was recorded. There is no reason to disbelieve the contents in the affidavit of Balkrishna Dohale, Sr. Clerk, who has stated that on that day, the advocate of the accused persons was present and the case was opened by the prosecutor.

10. In the case of **Baban Bandu Patil** (*supra*), the Division Bench was dealing with the charge framed by the Sessions Court under section 302 r/w. 34 of Indian Penal Code and Section 3 of the Evidence Act. It also deal with Section 211 of Cr. P.C. and framing of charge. It held that while framing of charge, it is the duty of the Court to evaluate and assess the material available on record and it is very important stage in the criminal trial. The learned counsel submitted that the important right of the accused is lost as the steps under sections 226 and 227 of Cr.P.C. were not followed by the trial Court.

11. It is to be noted that on 14th August, 2018 and immediately thereafter, no application was placed by the accused making their grievance that they were not made aware about the charge and they never wanted to answer the plea. No Application, either oral or written, for discharge under section 227 of Cr. P.C. was made before the Sessions Court. No grievance was made by the petitioners/accused on that day or within 3 to 4 days that our valuable right of audience under section 227 of Cr.P.C. was lost or no proper material is brought before the Court for framing of charge.

12. What submissions are to be made by the learned APP and how long the submissions are to be made by the prosecutor at the time of opening of case under section 226 of Cr. P.C. there are no specific rules. The prosecutor can open the case and point out in two or three sentences what is the case and what is the material. The prosecutor can point out the Court to read the FIR which discloses all the material. It is the duty of the Court to frame charge and explain it to the accused. If the accused have no grievance that they were not heard at the stage under section 227 of Cr. P.C., it is necessary for the accused to make out that specific

case and bring that material before the Court. In the absence of such material, mere allegations made on either the Judge or the prosecutor cannot be accepted.

13. In the present case, nothing is brought on record by the petitioners to show that the advocate of the petitioners was absent on 14th August, 2018. The vague allegations that the valuable right of the accused was lost because the case was not opened under section 226 of Cr.P.C. by the prosecutor carries no substance but this is a frivolous Petition with false allegations. I specifically note that such Petition ought not to have filed before this Court with these allegations. Making such baseless and vague allegations before the High Court and writing letter for that to the Hon'ble Chief Justice against a trial Judge amount to intentional act to demoralise and pressurize the trial Court Judge, cannot be tolerated and to be deprecated. I dismiss this Petition with costs of Rs.15,000/- which is to be deposited within two weeks.

(MRIDULA BHATKAR, J.)