

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

CRIMINAL APPLICATION No. 1302 OF 2018

Mr.Rajesh Appaso Mali

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Tejas Hilage for the Applicant.

Mr.Vinod Chate, APP for the Respondent-State.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 15 MARCH 2019

P.C.:

1. Upon urgent mentioning, taken on production board.
2. This criminal application is filed under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.").
3. By this criminal application, the applicant prays that the order dated 08.10.2018 passed by the learned Additional Sessions Judge, Ichalkaranji in Special ACB Case No. 3 of 2018 thereby framing charge against the applicant/accused be quashed and set aside and also

prays that the said matter be remanded back to the Court of the learned Additional Sessions Judge, Ichalkaranji.

4. The learned counsel for the applicant/accused produces roznama dated 23.07.2018, 25.07.2018 and 08.10.2018 in Special ACB Case No. 3 of 2018. He submits that the chargesheet was filed on 25.07.2018 and the charge was framed on 08.10.2018 under section 228 of the Cr.P.C. giving go-bye to the procedure, which is to be followed under section 226 of the Cr.P.C. He further submits that as the stage of section 226 of the Cr.P.C. is eliminated, an opportunity of the accused to move an application for discharge under section 227 of the Cr.P.C. is taken away and thus, the accused is deprived of his right to move an application for discharge under section 227 of the Cr.P.C. In support of his submission, he relies on the judgment of this Court in the case of ***Rajukumar Girdharilal Yadav Vs. State of Maharashtra*** reported in ***2013 ALL MR (Cri.) 2053***.

5. The learned prosecutor while opposing this application, relies on roznama dated 08.10.2018, which was noted down by the learned Special Judge. He submits that in roznama dated 08.10.2018, there is

no mention that the advocate of the accused and the prosecutor were absent, and as there is no specific mention of their absence, he cannot make statement about the presence of the advocate of the accused and the prosecutor. He further submits that the name of the advocate of the accused is shown on website.

6. In the case of ***Rajukumar Girdharilal Yadav*** (*supra*), this Court has observed that the procedure laid down under sections 226 to 227 of the Cr.P.C. is to be scrupulously followed. Section 226 of the Cr.P.C. enjoins upon the Sessions Court to ask prosecutor to open case for prosecution and the stage to frame a charge comes after the Court comes to a conclusion that there was no case for discharge.

7. As per section 226 of the Cr.P.C., the prosecutor to open case by describing the charge against the accused and also state the evidence against the accused. A Judge need not mention in roznama specifically the section and the procedure followed under section 226 or 228 of the Cr.P.C., but roznama should reflect that in the presence of the defence counsel, the steps are taken. Thus, at the stage of section 226 of the Cr.P.C. the learned Judge not to hear the accused, but thereafter if the application for discharge is not moved by the accused,

then the learned Judge to proceed and frame the charge.

8. It is the duty of the learned Judge of the Sessions Court to assure a fair trial to prosecution as well as to the accused and, therefore, at the time of framing of charge, it is the duty of the learned Judge of the Sessions Court to ensure the presence of the advocate of the accused. If the accused is not represented by the advocate, then the accused is to be informed that he should engage an advocate and on the next date or on the same day, if appearance is filed by the advocate, then in the presence of the advocate, the charge is to be framed. If the charge is framed in presence of the advocate of the accused, then before framing of charge, it is always open for the advocate of the accused to mention about the application for discharge, which he intends to file or to argue.

9. Roznama of the Sessions Court is a mirror image of what happened in the Sessions Court. What is mentioned in the roznama cannot be disputed, as it is noting of the learned Judge of the Sessions Court. The submissions of the learned prosecutor that if the absence is not mentioned in the roznama, then the presence cannot be

presumed are absurd. Either the presence or absence of the advocates of the parties to be mentioned in the roznama, however, if the presence is not mentioned, then it is presumed that the advocate is absent. Roznama dated 23.07.2018 discloses that advocate Mr.M.I.Bandar filed Vakalatnama and the application for bail under section 439 of the Cr.P.C.was moved and it was allowed. Thus, it shows that on the previous date, the applicant/accused was represented by the advocate and, therefore, it was binding on the Court to see whether the advocate of the accused was present at the time of framing of charge.

10. In view of above, I pass the following order :

ORDER

(i) Criminal Application is allowed;

(ii) The order dated 08.10.2018 passed by the learned Additional Sessions Judge, Ichalkaranji in Special ACB Case No. 3 of 2018 is hereby quashed and set aside and the matter is remanded back to the Court of the learned Additional Sessions Judge, Ichalkaranji;

(iii) The learned Sessions Judge to follow proper procedure.

The charge is to be framed in the presence of the advocate of the accused as discussed above.

11. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)