

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 376/2022

Trambak S/o Sonrao Badhe,
aged about 75 years, Occ. Nil,
R/o. Umbar Muli, Post. Loni,
Tah. Shirur Kasar, Dist. Beed.

... **PETITIONER**

VERSUS

1. The State of Maharashtra, through
Police Station Officer, Police Station,
Malegaon, Dist. Washim.
2. Dhondiram Bhikaji Chavan,
Aged Major, Occ. Agriculturist,
R/o. Pangrabhandhi, Tq. Malegaon,
Dist. Washimn.
3. Dhanyakumar Dnyandeo Hange,
aged about 44 years, Occ. Advocate,
R/o. Bhodani, Tah. Indapur, Dist.
Pune.
4. Nilesh @ Dhananjay S/o Umakant
Ghuge, aged about 35 years,
Occ. Agriculturist, R/o. Pangarbndi,
Tah. Malegaon, Dist. Washim.

... **RESPONDENTS**

Mr. S. D. Chande, Advocate for petitioner.
Mr. S. M. Ukey, Additional Public Prosecutor for respondent
No.1/State.
Mr. Shyam D. Dewani, Advocate for respondent Nos. 2 to 4.

CORAM : **VINAY JOSHI, J.**

CLOSED FOR JUDGMENT : **19.09.2022.**

DATE OF JUDGMENT : **22.09.2022.**

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner who is an informant of Crime No. 2/2012 (Sessions Trial No. 86/2012) has challenged three similar orders dated 14.12.2021 (Exhibits 104, 114 and 130) by which the Trial Court has discharged accused No. 6 Dhondiram Chavan, accused No. 7 Dhanyakumar Hange and accused No. 4 Nilesh Ghuge for the offence punishable under Sections 302, 201, 435 read with Section 34 and Section 120-B of the Indian Penal Code and Section 5 read with Section 25 of the Arms Act.

4. The challenge is on the ground that the Trial Court has discharged the accused despite availability of sufficient material. It is argued that the material collected during the course of investigation is

at least sufficient to make out *prima facie* case to proceed further. The Trial Court has committed serious error in discharging the accused only because case is based on the circumstantial evidence. According to the learned counsel appearing for the petitioner, at the time of framing charge, the truth and effect of the evidence which the prosecution proposes to adduce is not meticulously judged. It is not permissible to weigh the evidence at this stage. The offence is of serious nature and thus, the Trial Court without considering the relevant material, has discharged the accused Nos. 4, 6 and 7. The learned APP by reiterating the submission, equally prayed for setting aside the impugned orders of discharge.

5. *Per contra*, the learned counsel appearing for the discharged accused Nos. 4, 6 and 7 has strongly supported the orders of discharge passed by the Trial Court. It is submitted that the material placed before the Court does not disclose the evidence even of grave suspicion regarding commission of offence. The prosecution is unable to collect the material from which the participation of accused can even be held on *prima facie* basis. The Police report was filed on mere suspicion therefore, the exercise of trial is futile. The Trial Court has rightly considered the entire material while discharging the accused Nos. 4, 6 and 7 and thus, the order calls for no interference.

6. The facts are such that at the instance of report dated 02.01.2012 lodged by the father of deceased, crime was registered. Admittedly, the informant was not the eye-witness to the occurrence but on the basis of hearsay information, he lodged report after ten days from the occurrence. It is the prosecution case that deceased was earlier associated with accused and assisting them in their business activities. On 18.12.2011, deceased was summoned by co-accused at Pangrabandi, in response, deceased went to the house of the accused along with his friend Vishal. When they reached to the house of accused, they were asked to go to Chopandara Shooting Range where accused Nos. 1 and 2 met them. At that time, accused Nos. 1 and 2 asked everyone excluding the deceased to go away, on which rest returned. Companion of deceased i.e. Viashal waited for deceased till late evening but returned latter on. It was learnt that on the same night, deceased met with an accidental death. Initially, the report of accident was registered, however, after inquiry, the report for homicidal death has been lodged. Deceased died due to extensive burn injury. He was found in burn condition in Gypsy vehicle fallen in a Ghat of Pangrabandi area.

7. The learned counsel appearing for the discharged accused would submit that on mere suspicion, the report has been lodged. At

the most, the incriminating material is against accused Nos. 1 and 2. However, there is no material against accused Nos. 4, 6 and 7 to show their complicity. This Court has discharged co-accused Nos. 5 and 10 under similar allegation. At the time of releasing accused on bail, this Court has observed that there is no material against them.

8. The case is totally based on circumstantial evidence. No doubt, merely because the case is based on circumstantial evidence that cannot be a criteria for discharge. The law is fairly well settled as regards to the parameters to be applied at the time of discharge. In this regard, I may refer the decision of the Supreme Court in case of ***State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018***, with particular emphasis to para 4 which reads as below:-

“Reading Ss. 227 and 228 together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial, the truth and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code. At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is

ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

9. In reported case of ***Union of India Vs. Prafulla Kumar Samal and another, 1979 CRI. L.J. 154***, the Supreme Court has considered the test to be applied and duty of the Court while dealing discharge application. The relevant observations made in para 10 runs as below:-

“The Judge while considering the question of framing the charges under section 227 of the Code 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 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.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 right to discharge the accused.”

10. In view of above settled principles, the material is to be assessed to see whether the prosecution is able to collect sufficient material to put accused on trial.

11. Mr. Chande, learned counsel appearing for petitioner took me through the copy of First Information Report ('FIR') lodged by father of deceased. He stated that since the deceased had disassociated himself from the family of accused, he was called at their residence on 18.12.2011 and accordingly, deceased went to village Chopandara along with his friend Vishal. They were asked to go to Shooting Range where co-accused Nos. 1 and 2 were present. At that time, co-accused Nos. 1 and 2 asked everyone excluding the deceased to go away on which rest returned. Friend of deceased i.e. Viashal waited for deceased till late evening but returned late. Later on, it was learnt that deceased was found dead in suspicion condition and thus, by suspecting, foul play report has been lodged.

12. The entire report nowhere discloses the role of the accused Nos. 4, 6 and 7 even to assume that they have conspired with the main culprit. True, there cannot be direct evidence about conspiracy, but the prosecution has to establish the circumstantial material to reasonably infer the case of conspiracy. Admittedly, informant has no personal knowledge about incident. He has only expressed suspicion on the ground that accused Nos. 4, 6 and 7 belongs to the family of main accused.

13. The learned counsel appearing for the petitioner took me through the evidence of Vishal who had accompanied the deceased at village Pangarabandi. It is his statement that they went to the residential Wada of co-accused where they were directed to go to Chopandara Shooting Range, to meet co-accused Nos. 1 and 2. They went to Chopandara Shooting Range where other persons including accused No. 7 were present. Main accused asked everyone excluding deceased to go away. Vishal returned to Pangarabandi. On the following day, he learnt that deceased met with an accident by Gypsy vehicle in which he died due to severe burn injury. He stated that on inspection, he found that there was no damage to Gypsy as well as the petrol tank was intact and thus, it was case of suspicious death. Accepting his statement as it is also nowhere helps the prosecution to draw any inference against accused Nos. 4, 6 and 7 about hatching conspiracy.

14. The learned counsel appearing for petitioner took me through the statement of Gangaram Ghule, Sachin Galat and Sanjay Sangale which also fails to make a triable case against the accused. They did not state the role of accused Nos. 4, 6 and 7 even to anything infer their participation. The learned counsel appearing for the petitioner as well as the learned APP are unable to point out any

material to connect the accused Nos. 4, 6 and 7 with crime. Neither there is last seen evidence nor incriminating material has been seized at the instance of the accused Nos. 4, 6 and 7.

15. In case of Prafulla Kumar Samal (*supra*), the Supreme Court has held that while considering the question of framing of charge under Section 227 of the Code of Criminal Procedure, the Court must consider whether or not a *prima facie* case against the accused has been made out and if two views are possible and the Judge is satisfied that the evidence adduced does not create suspicion then he will be fully within his duty to discharge the accused. At this stage, the Trial Court can sift the material to the limited extend of finding out a *prima facie* case.

16. Perusal of entire charge-sheet, nowhere discloses the material on the basis of which it can be said that the complicity of accused is possible and they are required to face trial. Since there was no material against the accused Nos. 4, 6 and 7, it was duty of the learned counsel for the petitioner as well as learned APP to point out the incriminating circumstances to which they utterly failed except pointing statements as referred above. It appears that on the basis of remote suspicion against the accused Nos. 4, 6 and 7 the report has

been lodged. There are other missing links in the chain of evidence which are of important nature. The important links are in the nature of absence of last seen evidence, absence of circumstances pointing role of accused Nos. 4, 6 and 7 and so on. In the circumstances, the irresistible conclusion would be that there are no sufficient grounds for proceeding against the accused Nos. 4, 6 and 7. The learned Trial Judge has rightly considered all these aspects, therefore, the orders of discharge are well within his competency and sustainable in the eyes of law.

17. In view of above, petition carries no merits, hence stands dismissed.

Later on

18. At this juncture, the learned counsel appearing for the petitioner requested to stay the proceeding of the Trial Court as warrant has been issued against the informant for recording his evidence. The stay is sought on the ground that the petitioner desirous to challenge this order before the Supreme Court. Discharge applications were allowed by the Trial Court vide order dated 14.12.2021 against which this writ petition has been filed. On merits, the petition is come to be dismissed. Admittedly, there was no stay to

the proceeding of the Trial Court during pendency of this petition. In that view, the request for stay is rejected.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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