

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO.230 OF 2023**

Ramesh @ Rajubhau Navnath Kokate
Age 34 years, Occu. Agriculture,
R/o. Nipani, Tq. Bhoom, Dist. Osmanabad. ..Applicant

Versus

The State of Maharashtra
Though, In Charge Officer
Police Station Washi,
Dist. Osmanabad. ..Respondent

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Mr. S. J. Salunke, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondent-State.

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 20th SEPTEMBER, 2023.

ORDER:-

1. The applicant/accused no.1 approached this Court under Section 397 of the Criminal Procedure Code, thereby challenging the order dated 26.05.2023 passed by the learned Additional Sessions Judge, Bhoom, Dist. Osmanabad on application below Exhibit-49 in Sessions Case No.56/2015.

2. By the impugned order, the prayer of the applicant seeking his discharge in sessions case in exercise of powers conferred under Section 227 of the Criminal Procedure Code has been negated by court of sessions. Initially on the information of the Sadashiv Anbhule the investigation was set in motion. It is alleged that on 26.08.2015 at about 03.30 pm accused nos.1 to 3 and a child in conflict with law, assaulted the informant with 'Katavani' (the instrument used for removal of nails) and iron rod. It is alleged that accused nos.1 and 3 had caught hold informant while accused no.2 hit the blows on his forehead. On account of attack, the informant suffered serious injuries and became unconscious. His statement has been

recorded at Chhatrapati Shivaji Hospital at Solapur on 28.08.2015 after regaining consciousness.

3. Initially, Crime No.147/2015 was registered for the offences punishable under Sections 307, 323, 504, 506 r/w. 34 of the Indian Penal Code. On 29.08.2015, the informant succumbed to the injuries during medical treatment. The charge under Section 302 of the Indian Penal Code has been subsequently added. The investigation was progressed. The statements of the eye witnesses were recorded under Sections 161 as well as 164 of the Criminal Procedure Code. The accused persons were arrested. During the police custody, the weapon of the offence is discovered at the instance of the accused persons. Finally charge-sheet has been filed against accused persons for the offences punishable under Sections 302 r/w. 34 of the Indian Penal Code.

4. The applicant herein was pursuing the investigating authorities that he has been falsely implicated on account of political revelry. He claimed that on the day of alleged incident i.e 26.07.2022; he had been to the Aurangabad for filing caveat in High Court. Up till 01.00 pm on he was in Aurangabad. Thereafter, during return journey he halted at Beed at around 03.30 pm and withdrawn some cash from ATM located at Petrol Pump near Sahyadri Hospital on Beed-Jalna Road. The alleged incident took place on 26.07.2022 at 03.30 pm. The CCTV footage would depict that the applicant was present at the aforesaid places at the time of incident. Pertinently, the Investigating Officer obtained CCTV footage from Registry of this Court as well as ATM of the concerned Bank, which is made part of the charge-sheet.

5. The applicant had moved an application for grant of bail, which was rejected by the Sessions Court. However, this Court released applicant on bail observing that the presence of the applicant at the spot of the incident is improbable in view of the CCTV footage. The applicant thereafter moved an application below Exhibit-49 before the Sessions Court seeking discharge under Section 227 of the Criminal Procedure Code on the basis of the CCTV footage. However, the learned Sessions Judge, Bhoom vide its order dated 01.10.2019 rejected the prayer of the applicant holding that the CCTV footage is not supported with the certificate under Section 65-B of the Evidence Act, which is essential. In absence of such certificate, the application for discharge cannot be entertained. It is further observed that the plea of the 'Alibi' will have to be established during the course of trial.

6. The applicant aggrieved by the order dated 01.10.2019 approached this Court vide Criminal Revision Application No.335/2019. It was urged that the Investigating Officer has obtained requisite certificate under Section 65-B of the Evidence Act and made it part of the charge-sheet invoking Section 173(8) of Criminal Procedure Code. Considering the aforesaid submissions, this Court was pleased to set aside the order dated 01.10.2029 passed below Exhibit-49 and restored the application for discharge to the file of the Sessions Court and directed disposal afresh after granting opportunity of hearing to the concerned parties.

7. After remand of the matter by this Court's order, the learned Sessions Court heard the parties on application below Exhibit-49 however rejected the same vide order dated 26.05.2023. The applicant impugns the said order in the present Criminal Revisions Application.

8. The learned Advocate appearing for the applicant would submit that although FIR alleges the role against the applicant in the incident that took place on 26.05.2023 at 03.30 pm at village Ieet, Tal. Bhoom, he was present at this Court's premises up to 01.00 pm and thereafter, at the ATM center, Beed at 03.35 pm which can be ascertained on the basis of the CCTV footage which are supported by the certificates under Section 65-B of the Evidence Act. He would further submit that this Court while deciding the plea for grant of bail on behalf of the applicant clearly observed that the presence of the applicant is improbable on spot of alleged incident in light of the CCTV footage, which is made part of the charge-sheet. He would, therefore, submit that material on record is sufficient to establish innocence of the applicant. The applicant need not be dragged through trial, when on the face of material in charge-sheet, it is improbable to establish guilt against the applicant.

9. The learned Advocate appearing for the applicant would further submit that this Court is not powerless to sift and weigh the evidence to find out whether there is *prima facie* case against the accused/applicant. He would submit that there is conflicting evidence on record and sufficient doubt is created as regards to the involvement of the applicant in commission of the offence. The grave suspicion about genesis of prosecution theory which must tilt result in favour of the applicant. Consequently, he seeks discharge of applicant. He would rely upon the judgment of this Court in case of ***Govind Sakharam Ubhe Vs. State of Maharashtra***¹.

10. Per contra, the learned APP would urge that there is sufficient evidence on record that would establish the involvement of the applicant in the commission of the offence. By inviting attention of

1 2009 (3) Mh.L.J. (Cri.) 131.

this Court to the discovery panchanama recorded under Section 27 of the Evidence Act, the learned APP would submit that there is recovery of incriminating articles/weapons at the instance of the applicant. He would further invite attention of this Court to the statements of the witnesses recorded under Section 164 of the Criminal Procedure Code, particularly statements of Mohan Uttam Anbhule and Navnath Kondiba Anbhule, wherein specific role is attributed against the applicant in commission of the offence. He would further submit that FIR itself would show that on account of political revelry, the accused persons including the applicant have brutally assaulted the deceased, who succumbed to the injuries caused in that incident.

11. Having considered the submissions advanced, apparently two sets of evidence are made part of the charge-sheet. The prosecution relies upon the evidence of the eye witnesses as well as discovery under Section 27 of the Evidence Act, so also the statement of the informant/deceased recorded while he was under treatment. All these documents pinpoint the presence of the applicant at the spot of the incident and also attributes specific role against him in assault against the deceased. The second set of evidence is CCTV footage obtained from the Registry of this Court as well as ATM Centre of the Bank.

12. Pertinently, powers conferred under Section 227 of the Criminal Procedure Code and parameters of the jurisdiction are laid down by the Supreme Court of India in case of ***Union of India Vs. Prafulla Kumar Samal and Another***², which are as under:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That 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.

(2) 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.

(3) 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.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

13. Applying the aforesaid principles of law in the facts of the present case, it is apparent that charge-sheet contains the statements of two eye witnesses depicting participation of applicant in actual assault supported by the discovery of the incriminating. The prosecution will have to establish its case based on aforesaid evidence during the trial. The applicant seeks to establish the plea of ‘Alibi’ on the basis of the CCTV footage showing his presence at two different places i.e. High Court premises at Aurangabad till 1 pm and then at SBI ATM at Beed about 3.30pm. It is trite that, the burden to prove ‘Alibi’ rest upon the shoulder of the accused persons. The evidence of CCTV footage relied by the accused has to pass the test of admissibility, reliability and acceptability during the course of trial. The Court exercis-

ing jurisdiction under Section 227 of the Criminal Procedure Code is empowered to sift the material in charge-sheet for limited purpose to find out as to whether the triable case is made out. At that juncture, the Court is not required to enter into the deeper enquiry and seek prosecution to establish the case beyond the doubt.

14. In case, any impeccable material is placed on record on behalf of the accused, that can be looked into to find out veracity in the case of prosecution. However, it would be difficult to hold that the evidence in the nature of the CCTV footage, although supported by the certificate under Section 65-B of the Evidence Act cannot be given status of impeccable evidence. The certificate under Section 65-B raises the certain presumption of correctness of data, however, it is would be rebuttable. The prosecution can establish that the electronic evidence is not genuine or reliable. Although learned Advocate appearing for the applicant this courts observation regarding CCTV footage in order, it is trite that such observation are on *prima facie* consideration of the material. It cannot be treated as findings of the Court. Therefore, although this Court relied on the CCTV footage to certain extent while enlarging applicant on bail, that itself cannot be treated as ground for discharge.

15. The learned Sessions Judge recorded adequate reasons in the impugned order to refuse the prayers in the application at Exhibit-49. Hence, no case is made out to interfere in the impugned order. The Criminal Revision Application sans merit and is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE