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

CRIMINAL APPEAL NO. 1147 OF 2023

Sunil Dada Gaji ... Appellant

vs.

The State of Maharashtra and Ors ... Respondents

Mr. Sandesh Patil a/w. Mr. Prithviraj S. Gole i/b. Mr. Rushikesh R. Chavan, for the Appellant

Mr. J.P. Yagnik, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 30th NOVEMBER 2023

P.C. :-

1. Heard learned counsel for the parties.
2. By this appeal, the appellant has impugned the Order dated 18th March 2023, passed by the learned Additional Sessions Judge, Pune below Exhibit -210 in MPID Case No. 14 of 2017, by which the learned Judge was pleased to reject the appellant's application, seeking his discharge from the said case under section 227 of the Code of Criminal Procedure, 1973.
3. Learned counsel for the appellant submitted that the

learned judge had not taken into consideration the evidence/arguments advanced by the appellant, and had passed a cryptic order, without discussing the prima facie evidence or material as against the appellant. He submits that the parameters for consideration in a discharge application under section 227 of the Cr. PC have been given a complete go-by, and that there is no consideration of the material on record. In these circumstances, learned counsel for the appellant states that the impugned order be quashed and set aside and the matter be remitted back to the Trial Court for fresh consideration.

4. Learned APP fairly states that there are no reasons set out in the order and as such he has no objection if the impugned order is quashed and set aside and the matter is remitted back to the trial court.

5. It is well settled, that when a discharge application filed under section 227 of Cr. PC, is being considered by the trial court, it is obligatory on the part of the trial court to sift through the evidence, in order to find out, whether there are sufficient grounds to try the suspect, and as such the court has to consider

the broad probabilities, the total effect of evidence and documents produced. Law in this regard is well settled by the Apex Court in the case of *Union of India V/s Prafulla Kumar Sama¹*.

6. We have perused the impugned order dated 18th March 2023, and in particular para 6. We agree with the learned counsel for the appellant that the impugned order passed by the trial court is cryptic and does not prima facie record the material qua the appellant. In the circumstances without going into the merits of the appeal, we deem it fit to quash and set aside the impugned order and remit the matter back to the trial court for fresh consideration. Accordingly, we pass the following order:

I) Impugned order dated 18th March 2023, passed by the learned Additional Sessions Judge, Pune below Exhibit - 210 in Special MPID Case No. 14 of 2017 is quashed and set aside. Discharge application filed by the appellant is restored back to its original file.

II) Learned Judge to consider the said discharge

1 AIR 1979 SC 366

application of the appellant on its own merits, after hearing the learned counsel for the appellant as well as learned Public Prosecutor uninfluenced by its earlier order dated 18th March 2023.

7. We make it clear that we have not gone into the merits of the case and as such all contentions of all parties are kept open.
8. The said application be decided as expeditiously as possible, in any event, within six weeks from the date, when the order is brought to the notice of the trial court.
9. The appeal stands disposed of on the above terms.
10. All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)