

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.114 OF 2024

Sujit Radhyeshyam Vishwakarma

Age : 34 yrs. Occ.: Driver,

Residing at Room No.13, Shivram Chawl,

Takpada, Marol, Andheri (E),

Mumbai – 400 093.

...Applicant

vs.

State of Maharashtra

(Through MIDC Police Station)

...Respondent

Mr. Rutvij Solanki a/w Ms. Megha Kaluskar :	Advocate for Applicant.
Mr. V.N. Sagare:	APP for State.

CORAM : S. M. MODAK, J.

DATE : 30th APRIL 2024

P.C. :-

1. Heard learned Advocate for the Applicant – Accused and learned APP.

2. Considering the narrow issue involved, it is taken up for final hearing at admission stage itself. The issue is about compliance of the provisions of Section 226 of the Code of Criminal Procedure, 1973 and right of the accused to pray for discharge under Section 227 of the

Code. The grievance is both these provisions are not followed and the trial Court has framed charge on 27th October 2023. The relevant copy of the Roznama is on page 32 and the copy of the charge is on page 33. The charges are for the offences under Sections 307, 326 of IPC and Section 3 r/w 25 and 27 of the Arms Act (wrongly typed as M.P. Act).

3. Learned Advocate for the Applicant invited my attention to list of dates and certain documents annexed to the Interim Application. They are as follows:-

Sr. No.	Dates	Events
1.	20/06/2017	Charge-sheet was filed u/s. 326, 307 of IPC and u/s.3 r/w Section 25 and 27 of the Arms Act.
2.	21/08/2017	Bail was granted.
3.	13/02/2023	New Advocate filed vakalatnama for Applicant.
4.	28/07/2023	Exemption application was rejected and the trial Court issued non-bailable warrant against the Applicant.
5.	07/08/2023	Matter was taken on board. Application for cancellation of warrant was moved. It is on page 36. Learned Advocate expressed his wish to file discharge application and it is mentioned in paragraph 4.
6.	24/08/2023	Application for certified copy was filed.
7.	31/08/2023	Court was on leave.

8. 29/09/2023 Certified copies were received.
9. 27/10/2023 Learned Advocate was busy before some other Court prior to his appearance in the Court trial Court framed the charges.

4. That is why grievance was made that trial Court was in haste in framing charges by overlooking the mandatory provisions of 226 and 227 of the Cr.P.C. Reliance is placed on the following judgment:-

(a) *Akshay Manoj Jaisinghani vs. State of Maharashtra.*¹

I have read it. Two issues are canvassed on behalf of the Applicant. They are as follows:-

- (i) non-compliance of the provisions of Section 226 and 227 of the Cr.P.C.
- (ii) framing of charge under Section 3 r/w 25 of the Arms Act without verifying whether previous sanction of the Competent Authority was agreed as required by Section 39 of the Arms Act. This requirement is mandate of the law for offence punishable under Section 25 of the Arms Act. There is no requirement of sanction under Section 39 of the Arms Act for the

¹ 2017 SCC OnLine Bom. 9808

offence punishable under section 27 of the Arms Act.

5. When Roznama on page 32 is perused, it nowhere reflects that the learned Advocate for the Applicant was heard. It nowhere reflects that learned APP has opened up prosecution case. This Court can only rely upon what is noted down in the Roznama. So the Revision needs to be allowed and the matter needs to be remanded to the trial Court.

6. At the same time, it is true that till 2023, the Applicant has remained docile. Why he waited till the time the trial Court has framed the charge. He could have made grievance that case for discharge is there. So for all this lackadaisical approach on the part of the Applicant, I am directing him to pay cost to the Maharashtra State Legal Services Authority. Hence, the order:-

ORDER

- (i) Revision is allowed.
- (ii) Order of framing charge by the Court of Additional Sessions Judge, Dindoshi at Borivali is set aside.
- (iii) Let the Court of Additional Sessions Judge to hear the learned APP as contemplated under Section 226 of the

Code of Criminal Procedure on the point of opening of criminal case.

- (iv) If the Applicant – Accused wants to file discharge application he can do so within the period of 4 weeks from today.
- (v) Trial Court is at liberty to take appropriate decision on the issue of framing of charge/discharge.
- (vi) Applicant is at liberty to point out that there is no sanction for the offence under Section 3 r/w 25 of the Arms Act, 1959.
- (vii) Let the Applicant to pay cost of Rs.5,000/- to Maharashtra State Legal Services Authority within a period of two weeks from today and to produce receipt before the trial Court.
- (viii) Application is disposed of.
- (ix) Parties to act upon authenticated copy of this order.

[S. M. MODAK, J.]