

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

**CRIMINAL APPLICATION NO.153 OF 2024
WITH
CRIMINAL REVISION APPLICATION NO.306 OF 2024**

Wasim Mehmood Abrehani Applicant
versus
Union of India & Anr. Respondents

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- Mr. Ayaz Khan a/w Dilip Mishra a/w Zehra Charania a/w Mallika Sharma, Advocate for Applicant in both matters.
- Mr. Advait M. Sethna, Spl. P.P. a/w Ruju Thakker, for Respondent/DRI in APL/153/2024.
- Ruju Thakker, for Respondent/DRI in REVN./306/2024.
- Mr. V. M. Jayaprakash, Senior Intelligence Officer, DRI, MZV, present in Court.
- Mr. Vinit A. Kulkarni, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 25th SEPTEMBER, 2024**

P.C. :

1. Both these, the Criminal Application No.153 of 2024 and Criminal Revision Application No.306 of 2024 are decided by this common order today.

2. This is the second round of litigation in the same matter. On the earlier occasion, the Applicant had preferred

Criminal Application No.563 of 2023 challenging the charge framed on 05/04/2023 in Special Case (NDPS) No.352 of 2020 before the Special Judge (NDPS) at Thane. The Applicant was the original accused No.4 in that case. On that occasion, the grievance of the Applicant was that the procedure under sections 226, 227 and 228 of the Cr.P.C. was not followed. After hearing both the sides, this Court had set aside, the charge framed against the Applicant on 05/04/2023. The learned Special Judge, Thane, who was conducting the trial was directed to follow the provisions under sections 226, 227 and 228 of the Cr.P.C. All the contentions and rights of both the parties were specifically left open. This order was passed by this Court on 28/07/2023. After that, there was further progress in the trial. The Roznama dated 09/01/2024 mentions thus:

“Before court Spl APP pathak absent Accused 1,3 Produced from jail Accused no 2 produced through V.C Accused no 4 present Adv for accused present Spl app pathak send draft charge through Spl app shinde O-Exh 39 – Discharge application – Accused No.4 wasim – Reject Exh 50 Application for permission to speak with senior adocate Ayaz Khan O- Jail authority to allowed according to prison rule As per the Hon,ble High Court order Exh 51 Charge Exh 52 Statement of

accused No 1 Exh 53 Statement of accused No 2 Exh 54 statement of accused No 3 Exh 55 Statement of accused No 4 Adjourned for filing list of witnesses/Heg”

(Reproduced in the exact words as mentioned by the Trial Court)

Thus, from the record it appears that charge was framed on 09/01/2024 against the four accused. There were four different heads of the charge.

3. The Applicant has made the main prayer in Criminal Application No.153 of 2024 for quashing and setting aside the charge framed against the Applicant in Special Case No.352 of 2020 (NDPS) pending before the learned NDPS Court, at Thane, on 09/01/2024. In the companion Revision Application preferred by the same Applicant i.e. in Criminal Revision Application No.306 of 2024, the prayer is made for quashing and setting aside the order dated 09/01/2024, whereby the Applicant's application for discharge was rejected by the learned Judge and the next consequential prayer was for discharging the Applicant from the said case. In effect, the Applicant is seeking discharge from that case.

4. From the record, it appears that the Applicant had preferred an application for discharge at Ex.39, which was rejected.
5. Learned counsel Mr. Ayaz Khan, made certain arguments on technical issues as well as on the merits of the matter pointing out as to how the charge, which was framed, was not correct.
6. Learned Special PP, appearing in both these applications, for the investigating/prosecuting agency, on instructions, submitted that there are certain errors in the charge as it stands today. He submitted that those errors are required to be rectified and the only possible way out would be to seek remand of the matter back to the Trial Court for reconsideration of these issues.
7. Both the learned counsel for both the parties, inform the Court that as of today, the trial has proceeded. Three

witnesses are examined. Learned SPP submitted that, proper and correct charges can be framed by following the due procedure under sections 226, 227 and 228 of the Cr.P.C. The record shows that on the past occasion, learned SPP, representing the prosecuting agency in the trial Court was not present when the discharge application was argued and the order was passed and also at the time of framing of the charges.

8. Learned SPP on instruction assures the Court that on this occasion if the matter is remanded back, the prosecuting agency shall be represented by the learned Prosecutor at every stage before the Trial Court. Learned counsel for the Applicant, Mr. Ayaz Khan submitted that in view of this submission, if the matter is remanded back, the Applicant be heard on all these aspects and consequently his discharge application be directed to be heard again.

9. Considering the submissions made by the learned counsel from both the sides, I am inclined to accept these submissions, in the interest of justice.

10. In the peculiar facts of this case and on the basis of submissions made by the prosecuting agency in particular, the following order is passed :

ORDER

- (i) The charge framed against the accused No.4 on 09/01/2024, in Special (NDPS) Case No.352 of 2020 before the learned Special Judge (NDPS), Thane, is set aside.
- (ii) The order dated 09/01/2024 passed below Ex.39 rejecting the Applicant's application for discharge in Special (NDPS) Case No.352 of 2020 before the learned Special Judge (NDPS), Thane, is set aside.
- (iii) The learned Special Judge under NDPS, Thane, shall hear the learned counsel for the Applicant and learned Special PP. again, by following the procedure under sections 226, 227 and 228 of the Cr.P.C. and shall also hear the arguments on the Discharge Application preferred by the Applicant below Ex.39 afresh. The learned Judge

shall pass a fresh order below Ex.39 after hearing both the sides and after considering merits of the matter in accordance with law, without being influenced by his earlier order.

- (iv) It is made clear that all the contentions of both the sides on merits of the matter, are specifically left open.
- (v) If the charges are framed against the Applicant, he shall be at liberty to further cross-examine the witnesses who are already examined by the prosecution.
- (vi) This order was passed in the presence of learned counsel of both the parties and both the learned counsel of both the parties are agreeable to this operative part of the order.
- (vii) With these directions, both these applications are disposed of.

(SARANG V. KOTWAL, J.)