



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH : NAGPUR**

**CRIMINAL REVISION APPLICATION NO.17 OF 2024**

- 1) Pritlal @ Munna s/o Dharmaji Patehe,  
Aged – 47 years, Occ. -Labour,  
R/o. Nagra, Tah. & Dist. Gondia.

.... Applicant(s)

**// VERSUS //**

- 1) State of Maharashtra,  
Through Police Station P.S. Gondia  
Rural, District : Gondia.

.... Non-applicant(s)

.....  
Mr. N.R. Tekade, Advocate for the applicants/s  
Ms S.C. Joshi, APP for the non-applicant/State  
.....

**CORAM : SANDIPKUMAR C. MORE, J.**

**DATE OF RESERVING THE JUDGMENT : 04.12.2024**

**DATE OF PRONOUNCEMENT OF THE JUDGMENT : 06.12.2024**

**JUDGMENT :**

1. The applicant, who is the original accused No.2 in Sessions Trial No.43 of 2017, has challenged the order below Exh.6 dated 16.01.2024 passed by the learned Sessions Judge, Gondia (herein after referred to as “the learned trial Court”), whereby his

application for discharging him from the offence under Section 450 of the Indian Penal Code (IPC) has been rejected.

2. Heard finally at admission stage by consent of the parties. I have heard the parties and also perused the documents on record along with the impugned order.

3. The learned counsel for the applicant-accused has submitted that the offence under Section 450 of the IPC is not apparent from the allegations levelled against the applicant and the material placed on record. He by referring Section 450 of the IPC submitted that for attracting the charge under said Section, the other offences registered against the accused, must be provided punishment with imprisonment for life. For that purpose, he relied on the judgment of the Co-ordinate Bench of this Court dated 29.09.5018 in Criminal Appeal No.504/2017 (Hanumant s/o Buwasaheb Deshmukh Vs. State of Maharashtra). He also relied on the judgment of the Principal Seat at Bombay dated 13.12.2023 in Criminal Revision Application No.562 of 2015 (Dhananjay Ranjitsingh Shitole and others Vs. The State of Maharashtra).

4. On the contrary, the learned APP strongly opposes the application by supporting the order of the learned trial Court. He pointed out that the charge is to be framed on the basis of the material on record and its applicability cannot be considered at this stage and for that purpose, a full-fledged trial is needed.

5. Admittedly, on perusal of the charge-sheet, it is evident that the present applicant-accused along with other accused is charged with the offence under under Sections 450, 452, 427, 34 of the IPC, under Section 4/25 of the Indian Arms Act and under Section 135 of the Bombay Police Act. The main grievance of the applicant is that when the other Sections levelled against the applicant do not provide life imprisonment, then the charge under Section 450 is not attracted. Therefore, the scheme of Section 450 is to be seen first. The Section 450 of the IPC reads as under:

*“450. House-trespass in order to commit offence punishable with imprisonment for life.— Whoever commits house-trespass in order to the committing of any offence punishable with [imprisonment for life], shall be punished with imprisonment of either description for a*

*term not exceeding ten years, and shall also be liable to fine.”*

6. On going through the language of this section, it appears that it is not made necessary under this section that the offender should do any further act than the house trespass toward the commission of the offence punishable with imprisonment for life. But to justify the offence under the same, there should be a clear proof of design to commit the offence punishable with life imprisonment.

7. In the present case the FIR indicates that the present applicant, along with the other accused, committed house trespass by possessing a dangerous weapon. It shows that there was an intention to commit certain offence. Admittedly, the other offences against the applicant are not covered under the offences providing life imprisonment, but as per the scheme of Section 450 of the IPC, the commission of actual offence providing life imprisonment need not to be occurred.

8. Further, the learned trial Court had definitely observed by relying on the observation of the Hon'ble Apex Court in the case of *State of Bihar Vs. Ramesh Singh* reported in (1977) 4 SCC 39, wherein, it is held that the standard of test and judgment which is to be applied at the end of the case is not to be exactly applied at the stage under Section 227 or 228 of the Code of Criminal Procedure. The learned counsel for the applicant raises grievance about the observation of the learned trial Court, where it has been observed as follows:

“*Prima facie*, the material placed on record suggests that the offence punishable under Section 450 of the IPC made out against the accused”.

However, though such observation is made by the learned trial Court on the basis of the material placed on record and not on the basis of any evidence, since the trial has not begun. Therefore, by said observation, it cannot be held that the learned trial Court has made up his mind that the charge under Section 450 of the IPC is established against the applicant.

9. It is noticed that along with the copy of the impugned order, a draft copy of the charge furnished by the learned Additional Government Pleader, Gondia is also attached and on perusal of the same, it appears that the prosecution also does not intend to frame a charge under Section 450 of the IPC against the accused. On the contrary, it appears that the prosecution intends to charge the applicant and other accused with Sections 452, 294, 427 read with Section 34 of the IPC and Section 4/25 of the Indian Arms Act and Section 135 of the Bombay Police Act. The learned counsel for the applicant heavily relied on the judgment in *Hanumant s/o Buwasahed Deshmukh Vs. State of Maharashtra* (supra), wherein, the accused therein was acquitted from the charge under Section 450 of the IPC, since the prosecution could not establish the charge against him under the section for which the imprisonment of life was provided. However, this observation has come after the trial is held and on the basis of the evidence.

10. In the instance case, the evidence is yet to be adduced and therefore, at such primary stage, the order of rejection of discharge application by the learned trial Court, needs no interference.

**11.** Accordingly, the revision application stands **dismissed** and the interim order dated 30.01.2024, staying the trial Court's proceedings, stands vacated.

**SANDIPKUMAR C. MORE, J**

The learned counsel for the applicant, after pronouncement of judgment, requested to continue the interim relief further period of four weeks.

However, the matter is decided on merit and therefore, such request cannot be accepted.

**SANDIPKUMAR C. MORE, J**