



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 394 OF 2024

Manish Suresh Raykundliya,
Aged about 38 years, Occ.: Material
Suppliers, R/o Arvind Nagar,
Chandrapur, Tq. and Dist. Chandrapur.

...PETITIONER

// VERSUS //

State of Maharashtra
Through Police Station Officer,
Police Station, Ram Nagar,
Chandrapur, Tq. & Dist. Chandrapur

... RESPONDENT

Mr. Akshay Naik, Advocate for the petitioner
Mrs S. V. Kolhe, APP for respondent

CORAM : G. A. SANAP, J.
DATE : 01/07/2024

ORAL JUDGMENT :

1 Heard.

2 **RULE.** Rule made returnable forthwith. Taken up for
final disposal with the consent of learned Advocates for the parties.

3 In this writ petition, the prayer is made to quash and
set aside the charge dated 22.02.2024 framed by the learned

Additional Sessions Judge, Chandrapur, below Exh. 76 in Sessions Case No. 50 of 2017.

4 The principal ground for setting aside the charge is that the opportunity of hearing, as contemplated under Sections 226 and 227 of the Code of Criminal Procedure, 1973 (for short ‘ the Cr.P.C.’) was not granted to the accused before framing the charge. It is contended that the opening of the case for the prosecution did not happen as provided under Sections 226 and 227 of the Cr.P.C. Similarly, the accused and the prosecution were not heard before framing the charge.

5 Learned Advocate for the petitioner/accused No.2 submit that the record and proceedings, particularly the roznama of the relevant date i.e. 22.02.2024 is silent as far as the opportunity of hearing to the accused and to the prosecution is concerned. Learned Advocate would submit that, on account of this lapse, the valuable right of hearing before framing the charge has been denied to the accused and it has caused dent to the principle of a fair trial.

6 A copy of the roznama is on record. Similarly, a copy of the charge is on record. It is undisputed that after framing the charge the pleas of the accused were recorded. There was no separate order passed below Exh.1 with regard to the compliance of Section 227 of the Cr.P.C. Similarly, the roznama dated 22.02.2024, on which the charge was framed, is silent about the hearing or the opportunity of hearing to the accused persons. Perusal of the roznama shows that the opportunity of hearing before framing the charge, as contemplated under Section 227 of the Cr.P.C., was not granted to the accused. In my view, this is a very vital procedural safeguard to ensure a fair trial. In view of this, the writ petition deserves to be allowed. Accordingly, the writ petition is **allowed**.

7 The charge dated 22.02.2024 framed against the petitioner/accused No. 2 and the remaining accused is quashed and set aside.

8 Learned Additional Sessions Judge, Chandrapur shall

frame the charge by complying the provision of Section 227 of the Cr.P.C.

9 All the accused shall remain present before the learned Additional Sessions Judge, Chandrapur on 10.07.2024. All accused shall extend cooperation to the Court. If there is no cooperation learned Sessions Judge can proceed against them in accordance with law.

10 Rule is made absolute in the above terms. The criminal writ petition stands **disposed of**, accordingly.

(G. A. SANAP, J.)

Namrata