



2024:DHC:9677



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10<sup>th</sup> DECEMBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 990/2023 & CRL.M.A. 25266/2023**

NRUPALBHAI NARENDRABHAI SHAH

.....Petitioner

Through: Mr. Purvish Jitendra Malkan, Sr.  
Advocate with Ms. Yashasvi  
Virendra, Ms. Nandini Chhabra, Ms.  
Neha Ambasta, Mr. Anany Virendra  
Mishra and Ms. Gitika Dixit,  
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for  
the State.  
Mr. Pankaj Kumar Sharma, Advocate  
for Respondent No.2.  
SI Kiran Dayal, D-2009, PS Moti  
Nagar

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. Petitioner has approached this Court challenging the Order dated 06.06.2023, passed by the learned Additional Sessions Judge, Tis Hazari Courts, dismissing the Petition filed by the Petitioner herein under Section 227 of the Cr.P.C seeking discharge from the charge-sheet in FIR No.716/2021, dated 20.11.2021, registered at Police Station Moti Nagar for offences under Sections 376/506/509 IPC, and framing charges against the Petitioner for offences under Sections 376(2)(n) IPC and 506 IPC.
2. The facts, in brief, leading to the present Petition, are that the present



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FIR was registered on the complaint of the Respondent No.2 herein who stated that she used to work as a guard in Santoshi Mata Mandir at Jail Road. It is stated that she became friends with one Savita in 2017, who told the Prosecutrix about the Petitioner herein. It is stated that when the Petitioner visited Delhi, Savita introduced him to the Prosecutrix. It is stated that the Petitioner asked the Prosecutrix to invite him to her house. It is further stated that one day when the Prosecutrix was outside the temple, the Petitioner herein asked her that he wants to come to her house for having tea. It is stated that the Petitioner came to the house of the Prosecutrix and finding the Prosecutrix alone, the Petitioner herein committed rape on the Prosecutrix. It is stated that the Petitioner herein promised marriage to the Prosecutrix and asked her not to tell anyone about the incident. It is stated that after the incident, the Petitioner came to Delhi twice and on both the occasions, he made physical relations with the Prosecutrix on the pretext of marriage. It is stated that the last such act was committed by the Petitioner on 13.11.2020, when the Petitioner came to the house of the Prosecutrix and made physical relations with her. It is further stated that during lockdown, the Petitioner herein stopped talking with the Prosecutrix and coming to Delhi. It is stated that on 31.10.2021, the Prosecutrix reached Ahmedabad to meet the Petitioner at his office. It is stated that the Petitioner stopped her outside his office and threatened her with dire consequences. It is stated that on coming back to Delhi, the Prosecutrix lodged the complaint against the Petitioner herein and the present FIR was registered.

3. It is stated that during the course of investigation, medical examination of the Prosecutrix was done vide MLC No.7476/2021, however, the Prosecutrix refused to undergo internal examination. It is



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stated that on 22.01.2022 the statement of the Prosecutrix under Section 164 Cr.P.C was recorded.

4. It is stated that the Petitioner filed an application before the Trial Court seeking anticipatory bail. The Trial Court vide Order dated 05.01.2022 granted anticipatory bail to the Petitioner herein. It is stated that the Petitioner joined investigation on 07.01.2022 and his medical examination was conducted.

5. It is stated that during further investigation, Notice under Section 92 Cr.P.C. was served to get the CDR, CAF and location of the Petitioner and the Prosecutrix. Material on record discloses that on analysis of the CDR, CAF and location of the Petitioner and the Prosecutrix, no contact between the Petitioner and the Prosecutrix was found. It is stated that investigation was carried out to get the details of Savita from the Santoshi Mata Mandir, Jail Road, but no details could be found as the register was destroyed. It is further stated that during investigation the details from airlines has also been verified and it was found that on 13.11.2020, the Petitioner herein along with one Raj Guru Radhe Bapu and one Bharvad Ranubhai Bhaikabhai came to Delhi by flight from Surat. It is stated that the statements of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai were recorded under Section 161 Cr.P.C wherein they stated that after coming to Delhi the Petitioner was not with them and he went somewhere. In their statements both Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai have stated that they along with the Petitioner herein reached Delhi on 13.11.2020 at about 11 AM and they had a flight to Patna at about 3:55 PM on the very same day. It is stated that while Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai stayed back at the Delhi Airport, the Petitioner herein



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went somewhere stating that he has to meet someone. It is stated that the Petitioner returned after some time and then all the three boarded the flight for Patna at 03:55 PM. It is stated that in his statement under Section 161 Cr.P.C, the son of the Prosecutrix has stated that the Petitioner knew the Prosecutrix.

6. It is stated that after completion of investigation, chargesheet under Sections 376/506/509 IPC has been filed.

7. Petitioner filed an application under Section 227 of the Cr.P.C before the learned Additional Sessions Judge, Tis Hazari Courts, seeking discharge from the charge-sheet. The learned Additional Sessions Judge *vide* Order dated 06.06.2023 dismissed the application of the Petitioner herein by holding that a *prima facie* case under Sections 376(2)(n) IPC and 506 IPC is made out against the Petitioner. However, the learned Additional Sessions Judge discharged the Petitioner of offences under Section 509 IPC.

8. It is this Order which has been challenged in the present Petition.

9. Learned Counsel appearing for the Petitioner contends that the only person who could depose the fact that the Petitioner knew the Prosecutrix was the friend of the Prosecutrix – Savita, who allegedly had introduced the Prosecutrix to the Petitioner herein. He states that Savita has not been included as a witness in the charge-sheet, rather, there is no information regarding that lady as all the registers of Santoshi Mata Mandir have been destroyed. He, therefore, states that there is nothing to show that the Petitioner knew the Prosecutrix. He states that the statement of the son of the Prosecutrix under Section 161 Cr.P.C cannot be believed as he is related to the Prosecutrix. He further states that the FIR is vague regarding date and time on which the Petitioner has made forceful physical relationship with the



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Prosecutrix. He states that the only date that is relevant to the present case is 13.11.2020. He states that on 13.11.2020, the Petitioner was travelling from Surat to Patna via Delhi. He states that the Petitioner landed in Delhi at 11:00 AM and boarded the flight for Patna from Delhi Airport at 03:55 PM and there is nothing on record to show that the Petitioner left the airport between 11:00 AM – 03:55 PM. He has taken this Court through the transactional history of the Petitioner on 13.11.2020 to state that while the Petitioner was in the airport he bought some refreshments and, therefore, it cannot be said that the Petitioner has left the airport after completing the formalities and he came back to the airport at least one hour before boarding the flight to Patna. He, therefore, states that the Petitioner be discharged. The learned Counsel for the Petitioner has confined his arguments only to the incident occurred on 13.11.2020 and as to how the story of the prosecution regarding the event that transpired on 13.11.2020 was improbable. No arguments have been advanced on the question of promise to marry.

10. *Per contra*, learned APP for the State and the learned Counsel for the Prosecutrix state that while exercising its jurisdiction under Section 482 Cr.P.C and while considering an Order rejecting to discharge an accused, the Court must be cautious. They state that the statement of the Prosecutrix under Section 164 Cr.P.C. coupled with the statement under Section 161 Cr.P.C of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai, who accompanied the Petitioner to Patna, shows that the Petitioner was not with them between 11:00 AM -03:55 PM and he had told them that he has to meet someone makes out a prima facie case against the Petitioner and, therefore, there is no infirmity in the Order passed by the learned Additional



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Sessions Judge rejecting to discharge the Petitioner.

11. Heard the Counsels for the parties and perused the material on record.
12. The test for discharge of an accused has been succinctly laid down by the Apex Court a number of Judgments. In State of Bihar v. Ramesh Singh, (1977) 4 SCC 39, the Apex Court has held as under:

*“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If “the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”, as enjoined by Section 227. If, on the other hand, “the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused”, as provided in Section 228. **Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding***



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*the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be*



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*one under Section 228 and not under Section 227.”*  
(emphasis supplied)

13. In Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76, the Apex Court has held as under:

*“6. The next question is what is the scope and ambit of the ‘consideration’ by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh [(1977) 4 SCC 39: 1977 SCC (Cri) 533: (1978) 1 SCR 257] this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will*



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*be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609: (1979) 2 SCR 229] this Court after considering the scope of Section 227 observed that the words ‘no sufficient ground for proceeding against the accused’ clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. **In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under: (SCC p. 9, para 10)***

*“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

*(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced*



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*before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

*(emphasis supplied)*

14. In Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4, wherein the Apex has held as under:

*“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*

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*evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

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15. In Soma Chakravarty v. State, (2007) 5 SCC 403, the Apex Court has held as under:

***“10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.***



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*19. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith. The learned trial Judge, it appears, did not properly apply its mind in regard to the different categories of the accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefore or held to be sufficient for framing charge.”*

16. In Sajjan Kumar v. CBI, (2010) 9 SCC 368, the Apex Court has observed as under:

*“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

*(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

*(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

*(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the*



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*evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

***(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***

*(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

*(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

*(emphasis supplied)*



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17. In P. Vijayan v. State of Kerala, (2010) 2 SCC 398, the Apex Court after relying on the abovementioned Judgments, has observed as under:

*“9. The questions that arose for consideration in this appeal are: (i) whether the appellant established sufficient ground for discharge under Section 227 CrPC? and (ii) whether the trial Judge as well as the High Court committed any error in rejecting the claim of the appellant?”*

*10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:*

*“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”*

*If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities*



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which is really the function of the court, after the trial starts.

***11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.” (emphasis supplied)***

18. Similarly, the Apex Court in State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515, has held as under:

*“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , advertent to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)*

*“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that*



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*the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.””*

19. Applying the law laid down by the Apex Court to the facts of the present case, this Court does not find any infirmity in the Order dated 06.06.2023, passed by the learned Additional Sessions Judge wherein the learned Additional Sessions Judge has held that there are two witnesses who have deposed that the Petitioner had left the airport in Delhi and the fact that payments were made by the Petitioner at the Airport do not suggest his presence at the airport. In any event, this Court can take judicial notice of the fact that between 11:00 AM to 02:00 PM, the Petitioner could have left the airport and could have come back from the house of the Prosecutrix and it cannot be said that it is improbable or impossible. The statement of the Prosecutrix under Section 164 Cr.P.C. coupled with the statement under Section 161 Cr.P.C of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai, who accompanied the Petitioner to Patna, and the statement of the son of the Prosecutrix under Section 161 Cr.P.C wherein he has stated that the Petitioner and Prosecutrix knew each other, makes out a case of grave suspicion against the Petitioner that the Petitioner could have committed the offence. The case of alibi as argued will have to stand in the



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trial. No other argument other than the case of alibi was contended by the learned Counsel for the Petitioner. The correctness or otherwise of the transactions undertaken by the Petitioner on 13.11.2020 at the airport is again a matter of trial and need not be decided at this juncture.

20. In view of the above, this Court is not inclined to interfere with the Order dated 06.06.2023.

21. Resultantly, the petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**DECEMBER 10, 2024**

*Rahul*