

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 217 of 2025

Arising Out of PS. Case No.-64 Year-2014 Thana- PATLIPUTRA District- Patna

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1. Vimal Kumar, S/O Late Satyanarayan Mishra Resident of village- Gandhara, Niwas, Shivpuri, Road No.-1, Police Station- Shastri Nagar, District- Patna- 800023.
 2. Arun Kumar Mishra S/o Late Satya Narayan Mishra Resident of Village- Gandhara Niwas, Shivpuri, Road no.-1, P.S. Shastri Nagar, District- Patna- 800023.
 3. Amit Kumar S/o Shalendra Kumar Resident of village-Kannu Lal Lane, P.S.- Jakkanpur, District-Patna- 800 001.

... .. Petitioner/s

Versus

1. The state of Bihar
2. Rajesh Kumar, S/o Tara Kant Ojha Resident of Village- East Mahesh Nagar, P.S.-Patliputra, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandra Bhushan Singh
For the Respondent/s	:	Mr. Kumar Veerendra Narayan

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 08-08-2025

1. The instant revision under Section 438 read with Section 442 of the BNSS challenges an order, dated 13th of February, 2025, passed by the learned Additional Sessions Judge, XXXth Court, Patna in Sessions Trial No. 255 of 2018, rejecting an application filed by the petitioners / accused persons for their discharge under Section 227 of the Cr.P.C. Consequent upon the order of rejection of the petition for discharge, the Trial Court fixed 25th of February, 2025, the



date for framing of charge. The petitioners have preferred the instant revision questioning correctness, legality and propriety of the impugned order.

2. It is pertinent to state here that on 1st of February, 2014, one Captain Suresh Kumar lodged a written complaint, stating, inter alia that on 19th of January, 2014, one Vimal Kumar, Arun Kumar Mishra and Anil Singh came in front of one small gate of his house and opened fire aiming at the house and fled away in the darkness of the area.

3. Subsequently, it was ascertained from the CCTV footage that on the date of occurrence at about 09:00 P.M., the above-named accused persons assembled in a shop of one Bunti. The CCTV footage also disclosed that accused Anil Singh was talking to another through his mobile phone and told them to assemble there. Then other accused persons assembled at the place of occurrence at about 09:00 P.M. It is also stated that a shop under the name and style of Bunti and Babli, owned by one Jay Shankar and his son Sita Ram remained open on the date of occurrence till 09:35 P.M. After the accused persons reached the place, the shutter of



Bunty and Babli shop remained half closed. The accused persons switched off the light of the said shop and conducted search for the informant. Involvement of the accused persons in the incident of firing was established from the CCTV footage. Local people could not speak out about the incident due to fear of Vimal Kumar, Arun Kumar Mishra and Others. The accused persons are habitual known offenders of the locality. On the basis of the said complaint, police registered Patliputra P.S. Case No. 64 of 2014, dated 1st of February, 2014, under Sections 307, 504, 506, 384, 452, 120B and 34 of the IPC and Section 27 of the Arms Act against the petitioners and others and took up the case for investigation. Investigation culminated in filing charge-sheet against the accused persons on 14th of August, 2014 under Sections 452, 506, 120B and 34 of the IPC and 27 of the Arms Act. The Judicial Magistrate, 1st Class, Patna took cognizance of offence against the petitioners.

4. The Lower Court Record shows that previously an application under Section 239 of the Cr.P.C. was filed on behalf of the accused persons. The said application was



rejected by the learned Judicial Magistrate, 1st Class, Patna vide an order, dated 26th of February, 2016 and the learned ACJM-15th, Patna framed the charge against the petitioners under Sections 452, 506, 120B and 34 of the IPC and Section 27 of the Arms Act on 11th of November, 2016. Subsequently, another charge-sheet was filed against the accused Amit Kumar under the above-mentioned penal provisions.

5. In the above-mentioned case, the learned Judicial Magistrate, 1st Class, Patna passed an order dated 21st of March, 2018 for commitment of the records of Trial No. 2285 of 2017 and 2286 of 2017 to the Court of Sessions under Section 323 of the Cr.P.C. Finally the order of commitment was passed on 10th of April, 2018.

6. The case was re-numbered and registered as Sessions Trial No. 255 of 2018 in the Court of learned Additional Sessions Judge- XVII, Patna on 19th of August, 2019. The petitioners along with accused Anil Kumar filed an application under Section 227 of the Cr.P.C. praying for discharge.



7. It is submitted by them that on the basis of the statement made by the informant, Patliputra P.S. Case No. 64 of 2014 was registered against the above-named accused persons and two others under Sections 307, 504, 506, 384, 120B, 452 and 34 of the IPC and Section 27 of the Arms Act. Police on completion of investigation, submitted Charge-sheet No. 246, dated 8th of August, 2014 against Vimal Kumar, Arun Kumar Mishra and Anil Singh. Investigation against other accused persons were kept pending. Subsequently, second Charge-sheet No. 201 of 2015 was filed by the police on 26th of October, 2015 against accused Amit Kumar, Petitioner No. 3 herein, keeping further investigation against rest two accused persons pending.

8. The learned Magistrate took cognizance of offence on the basis of the said charge-sheet also. Two separate trials were commenced against the petitioners. Subsequently, trial of both the cases were amalgamated before the Court of learned Judicial Magistrate and the witnesses were examined and cross-examined.

9. After recording of evidence, the learned Judicial



Magistrate, 1st Class, Patna passed order, dated 10th of April, 2018, upon an application filed by the prosecution/informant under Section 323 of the Cr.P.C., dated 3rd of February, 2018 with a prayer to commit the entire case to the learned Court of Sessions. The learned Judicial Magistrate, 1st Class, Patna allowed the said petition vide common order, dated 21st of March, 2018, whereby and whereunder, the learned Magistrate prima facie found sufficient material made out for offence punishable under Section 307 of the Indian Penal Code, besides other offences already charged against the accused persons.

10. Since offence punishable under Section 307 of the I.P.C. is exclusively triable by the learned Court of Sessions, the entire case record, arising out of Patliputra P. S. Case No. 64 of 2014, G.R. Case No. 719 of 2014, was transferred to the learned Additional Sessions Judge-XXX Court, Patna, before whom the petitioners filed an application under Section 227 of the Cr.P.C. The said petition, on being rejected, the petitioners have filed the instant revision.

11. It is further found from the records that in G.R.



Case No. 719 of 2014 and 719A of 2014, arising out of Patliputra P. S. Case No. 64 of 2014, the prosecution filed an application under Section 216 of the Cr.P.C. for alteration of charge and the said application was rejected by the learned Judicial Magistrate, 1st Class at Patna by an order, dated 8th of September, 2017.

12. Against the said order, the informant filed Cr. Revision Nos. 583 of 2017 and 584 of 2017 before the learned Sessions Judge, Patna. Both the revisions were finally disposed of by the learned Additional Sessions Judge, 5th Court at Patna, vide order, dated 4th of December, 2017. The above-mentioned two revisions were allowed on contest by the learned Additional Sessions Judge-V, Patna and the order, dated 8th of September, 2017, passed by the learned Judicial Magistrate, 1st Class, Patna in G.R. Case No. 719 of 2014 and 719(A) of 2014 were set aside, directing the Trial Court to pass fresh order in accordance with law.

13. In view of the order passed in the above-mentioned revisions and on the basis of the evidence on record, the order dated 10th of April, 2018 was passed.



14. After commitment of the record, the petitioners filed an application under Section 227 of the Cr.P.C. The said application was rejected by the learned Additional Sessions Judge-XXX, Patna in Sessions Trial No. 255 of 2018 vide order, dated 13th of February, 2025.

15. It is contented on behalf of the petitioners that alleged incident took place on 19th of January, 2014. F.I.R. was lodged after a lapse of 13 days. In the F.I.R., no motive of the accused persons was attributed. A long standing civil dispute over landed property is going on between the petitioners and the informant. Therefore, the investigation filed a false complaint at Patliputra Police Station on the basis of which, F.I.R., bearing Patliputra P. S. Case No. 64 of 2014 was registered.

16. It is further contended on behalf of the petitioners that the allegation made by the informant does not satisfy the ingredients of Section 307 of the I.P.C. Even accepting the prosecution case in its face value, it is found that the accused persons allegedly opened firing from the road in front of small gate of the house of the informant.



There is no allegation in the F.I.R. that gun shot were fired to commit murder of some named persons or that the petitioners had intention to kill the informant or any other family member of the house. In the absence of such evidence, no charge under Section 307 of the I.P.C. can be framed and, therefore, the order, dated 13th of February, 2025 suffers from illegality and impropriety.

17. The learned Advocate appearing on behalf of the State refers to the materials of case-diary, especially CCTV footage, which has established that the above-named petitioners opened fire aiming at the house of the informant on the date of occurrence at about 09.00 P.M. The objection raised by the learned Advocate for the petitioners that the F.I.R. was registered after 13 days of occurrence or that no motive was attributed against the petitioners, may be well taken at the time of final hearing of the case. Delay in lodging F.I.R. or absence of motive cannot be dealt with at the time of consideration of a petition under Section 227 of the Cr.P.C. It would not be out of place to mention here that the learned Advocate appearing on behalf of the petitioners attempts that



a long standing civil dispute is going on between the parties, therefore, the existence of civil dispute may also attribute as motive of the petitioners.

18. It is needless to say that framing of charge is an exercise of jurisdiction by the Trial Court in terms of Section 228 of the Cr.P.C., unless accused is discharged under Section 227 of the Cr.P.C.. Under both these provisions, the Court is required to consider the “records of the case” and the documents submitted therewith and after hearing the parties may either discharge the accused or where it appears to the Court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame charge. Once the facts and ingredients of the Sections exists, then the Court would be right in presuming that there is ground to proceed against the accused and framing the charge accordingly. This presumption is not a presumption of law. As such, the satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to the offence is a *sine qua non* for existence of such jurisdiction. It may even be weaker than a prima facie case.



Section 227 is expression of a definite opinion while Section 228 is tentative. Where there is strong suspicion that the accused has committed an offence, which, in put to trial, could prove him guilty, the Trial Court is entitled to frame charge against the accused persons.

19. Adjudicating the instant revision on the principle stated hereinabove, this Court finds no reason for interference against the impugned order, dated 13th of February, 2025, passed in Sessions Trial No. 255 of 2018, by the learned Additional District and Sessions Judge -XXX, Patna.

20. In this regard, we may refer to the well settled law laid down by the Hon'ble Supreme Court in the case of ***State of Bihar v. Ramesh Singh***, reported in **(1977) 4 SCC 39** as well as ***Amit Kapoor v. Ramesh Chander***, reported in **(2012) 9 SCC 460**.

21. In view of the above discussions, I do not find any merit in the instant Criminal Revision and the impugned order, dated 13th of February, 2025, passed in Sessions Trial No. 255 of 2018, by the learned Additional District and



Sessions Judge -XXX, Patna, is, accordingly, affirmed.

22. The Criminal Revision is, therefore, dismissed
on contest.

23. However, there shall be no order as to costs.

24. Office is directed to send the lower court
records to the concerned Court.

(Bibek Chaudhuri, J)

uttam/-

AFR/NAFR	N.A.F.R.
CAV DATE	31.07.2025/04.08.2025
Uploading Date	08.08.2025
Transmission Date	08.08.2025

