

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32241 of 2022

Arising Out of PS. Case No.-147 Year-2019 Thana- MAHILA P.S. District- Patna

Manish Kumar @ Manish Singh, S/o Arvind Kumar, Resident of Priyadashi
Nagar, Kumhrar, P.S.- Agamkuan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. x

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 02-09-2025

Heard learned counsel for the petitioner and
learned APP for the State.

2. The notice on opposite party no.2 has
validly been served.

3. The present application has been filed
invoking the inherent jurisdiction of this Court under section
482 of the Criminal Procedure Code, 1973 (for short 'Cr. P.C.)
for quashing the order dated 31.03.2022 passed by the learned
Additional Sessions Judge-1, Patna, in connection with
Sessions Trial No.766 of 2021, arising out of Mahila P.S. Case
No. 147 of 2019, whereby the discharge application filed by the
present petitioner under section 227 of the Cr. P.C has been



rejected.

4. The brief facts relevant for the present application is that, the opposite party no.2/ informant - prosecutrix had filed her written complaint on 09.12.2019 before the S.H.O, Mahila Police Station, Patna alleging therein that four persons including the present petitioner, had committed gang rape on her. It is alleged by the prosecutrix that on 09.12.2019 at about 01:15 P.M, one Bipul Kumar came to B.N. College, Patna where the prosecutrix was studying and had asked her to accompany him and had also threatened her that if she were not to accompany him as pillion rider, then he would make her rape video viral, which the aforesaid Bipul Kumar had made earlier. Therefore, the prosecutrix accompanied the aforesaid Bipul Kumar, who took her to the ground floor of an apartment situated at Nehru Nagar, Patna and thereafter, the accused Bipul Kumar, called his other friends, namely Manish Singh, the petitioner, Aman Bhumi and Ashwini Singh Rajput. It is next alleged by the prosecutrix that the aforesaid persons threatened with knife and said that they would make viral her aforesaid video. Thereafter, the aforesaid persons started closing the door, to which the prosecutrix shouted and called her sister at about 01:24 P.M. but the



aforesaid accused persons snatched her mobile phone and switched it off. The prosecutrix thereafter alleges that the aforesaid accused persons threatened her and forcefully committed sexual intercourse with her one-by-one and thereafter threatened the prosecutrix that if she were to disclose anything about the incident then they would kill her and her brother. The prosecutrix next stated that she knows the aforesaid accused persons very well and at about 04:00 PM, when she raised *hulla*, the aforesaid accused persons left her and fled away. It is next stated in the written complaint that the prosecutrix had not talked about the incident to her father because of fear, however her sister had narrated the entire story to her father. The father of the prosecutrix made several calls to the Patliputra Police Station and the City S.P. stating that some persons are misbehaving with her daughter. Thereafter when the prosecutrix came back to her home, she called the Patliputra Police Station and informed the police about the offence. The prosecutrix in her written complaint stated that she could identify the accused persons and also the place of occurrence. The prosecutrix had also stated that if the accused persons are not arrested forthwith then they would kill her and her brother.

5. Based on the aforesaid written complaint,



the Mahila P.S. Case No. 147 of 2019 was registered on 09.12.2019 under section 376(B), 420 and 324 of the Indian Penal Code. Upon investigation, charge sheet was submitted on 10.02.2020 under sections 376(D), 420, 324 read with section 120-B of the Indian Penal Code and thereafter cognizance was taken.

6. The learned counsel for the petitioner, at the outset, submits that the present petitioner is a law student pursuing B.B.A-L.L.B (Hons.) course from Chanakya National Law University, Patna and has been falsely implicated in the present criminal case in order to mar his prospective legal career, for reasons best known only to the prosecutrix. It is next submitted that the prosecutrix had known all the four accused persons and she was even aware of the mobile numbers of the aforesaid four accused persons. The learned counsel for the petitioner has asserted that the present case seems to be that of consensual bodily relations between the prosecutrix and the accused persons, however in the same breath the learned counsel has denied the aforesaid assertion in *toto*.

7. The learned counsel for the petitioner has argued that, three things could be culled out from the present F.I.R, *firstly*, that the accused persons were known to the



prosecutrix, *secondly*, the accused persons had earlier also met with the prosecutrix and may have established bodily relations and *thirdly*, that the prosecutrix being allegedly held captive had made a phone call under distress to her sister, however her sister had neither informed this fact to the family members nor the police authorities immediately. It is therefore argued that the present F.I.R is clearly a fabricated and concocted story, which is meant only to wreak vengeance and extort illegal demands from the petitioner and other accused persons. It is emphasised by the learned counsel that during the course of investigation the police had collected material that the prosecutrix had stayed at Hotel Adison on 08.11.2019 in room no. 102 with the accused persons and therefore, not only were the accused persons known to the prosecutrix but possibly there were bodily relations established as well. However later on, 09.12.2019, the prosecutrix had concocted the story and filed the present case.

8. It is further submitted that after registration of the present F.I.R, the police during the course of investigation, had recorded the statement of the witnesses, however, except the prosecutrix - informant, there were no eye witnesses to the alleged incident. It is further submitted that the prosecutrix in her statement under section 164 of the Cr.P.C had



reiterated her version, as alleged in the written complaint, based on which the present F.I.R was registered, but the prosecutrix had improved her case to the extent that she was introduced to the accused Bipul Kumar, who had recorded her earlier video in nude condition, through the present petitioner. The prosecutrix had further stated that the present petitioner had also made an objectionable video of her, which was later deleted upon insistence of the co-accused Bipul Kumar.

9. Adverting to the medical report of the prosecutrix dated 10.12.2019, the learned counsel has submitted that, in the aforesaid report, no mark of violence was present on the external part of the body, the perineum was healthy and there was no discharge. Further, no mark of violence was found on the private parts of the prosecutrix. The learned counsel has emphasised that even though as per the allegation four persons had committed gang rape on the prosecutrix but the medical report indicates that no spermatozoa was found, which clearly suggests that the entire story of the prosecutrix is false and fabricated. The age of the prosecutrix was assessed between 20-22 years and therefore, it is submitted that the prosecutrix was major and was free to make decisions as an individual.

10. The learned counsel has drawn the attention



of this Court to Mahila P.S. Case No. 11 of 2013 filed for the offence under section 376 of the Indian Penal Code by the mother of the present prosecutrix against her husband, i.e., the father of the prosecutrix when she had found her husband in compromising position with her daughter. In the aforesaid case, when the father of the present prosecutrix had filed a bail application before this Court, during the course of arguments, it was stated that the present prosecutrix is a patient of Schizophrenia. Subsequently the medical board therein in its report had negated the allegations of rape and pertinently the present prosecutrix had retracted from her statement. Therefore, the learned counsel has tried to argue that the prosecutrix is a patient suffering from Schizophrenia and had earlier also made similar allegations against her own father.

11. In order to further strengthen his argument, the learned counsel has thereafter submitted that according to the allegations originally levelled by the prosecutrix in her F.I.R, that four named accused persons, in her written complaint, had committed rape upon her, however the charge sheet was submitted against five accused persons. It is stressed by the learned counsel as to how this fifth person was charge sheeted when he was not named or even mentioned originally



by the prosecutrix in her written complaint, based on which the present F.I.R came to be registered and therefore, the entire allegation appears to be forged and fabricated. It is also vehemently submitted, that even upon a plain reading of the F.I.R, the prosecution story does not have legs to stand on, since if the accused Bipul Kumar was threatening the prosecutrix at the College gate to accompany him, then it is unfathomable as to why would the prosecutrix had not raised alarm there itself and rather submissively accompany the accused Bipul Kumar.

12. The learned counsel has also submitted that on the date of alleged occurrence the prosecutrix had made two phone calls on the mobile of the present petitioner and if the version of the prosecutrix is to be believed then at around 01:24 PM the alleged incident took place, however at 01:22 PM, i.e., merely two minutes prior to that the prosecutrix had made a phone call to the present petitioner, which on the face of it seems highly improbable that the incident as alleged would have occurred. Therefore, it is argued that there was friendliness between the prosecutrix and the petitioner, however in order to give bad name to the petitioner, the present case has been instituted. Further, as per the F.I.R version the accused persons had left the prosecutrix and fled away at about 04:00



PM, however, at about 05:26 PM the prosecutrix had again called the present petitioner on his mobile phone. Therefore, it is argued that, had the accused persons including the present petitioner committed such a heinous offence on the prosecutrix from about 01:25 PM till 04:00 PM, then it is not a natural corollary that the prosecutrix would have called the petitioner on his phone at 05:26 P.M..

13. It is next submitted by the learned counsel that evidently the prosecutrix had earlier also consensually established physical relations with accused persons and therefore without questioning the chastity of the prosecutrix, the statements of the prosecutrix would have to be questioned on veracity and truthfulness and cannot be accepted as the version of a chaste woman. It is further submitted that the present case is directed against the petitioner owing to his *bête noire* in the campus who do not wish to see the petitioner rise professionally.

14. The learned counsel has argued that though at the stage of considering an application for discharge, the Court is not expected to hold a mini-trial to ascertain the veracity of the evidences but, the Court must ascertain the probability of *probandum*, inasmuch as, the allegations levelled



would stand or fail. If the Court arrives at a conclusion that the allegations, as levelled, do not sustain, then there is no point in continuing and subjecting the petitioner with the rigors of criminal trial, which would in itself be a sheer wastage of judicial time. Adverting to the impugned order by which the application for discharge has been rejected, it is further submitted that the Trial Court had taken note of two judgements rendered by the Hon'ble Supreme Court wherein it has been held that at the time of deciding the application for discharge the subjective opinion of the Court would be appropriate and whether the suspicion is writ large or it wanes on the allegations levelled by the prosecution has to be seen. Evidently, the prosecutrix knows the present petitioner and both of them were on talking terms. The report of the Medical Board which was prepared within 24 hours of the alleged incident, also does not support the case of the prosecution. Since the accused persons and the prosecutrix are all major, therefore the consensual relations established cannot be characterised as rape.

15. A supplementary affidavit has also been filed on behalf of the petitioner bringing on record the D.N.A report dated 28.02.2022 from the Office of Director, Forensic Science Laboratory, submitted before the Trial Court on



18.10.2023, which has been accessed by the petitioner by way of filing an application filed before the concerned Trial Court, which was allowed on 07.11.2023. Adverting to the aforesaid report, the learned counsel has drawn the attention of this Court to the conclusion part (page no.9) of the aforesaid report, which reads as under :-

“The genetic profile generated from the source of exhibit marked 'C' (Source- Blood Sample of Manish Kumar alias Manish Singh) does not match with the genetic profile generated from the source of exhibit marked 'C/1' (Source condom cuttings, source of exhibit marked 'C/2' (Source- condom cutting), Source of exhibit marked 'C/3 (Source condom cuttings) & Source of exhibit marked 'C/ 4' (Source condom cuttings).”

16. On the strength of the aforesaid forensic report, it is argued that the petitioner has been falsely implicated in the present case with ulterior motive.

17. The learned APP for the State has opposed this application and has submitted that the impugned order rejecting the discharge application of the petitioner does not suffer from any illegality and therefore, this Court may not interfere with the same.

18. I have considered the submission of the



parties and perused the impugned order.

19. The present application has been filed assailing the order of rejection of the application for discharge preferred by the present petitioner under section 227 of the Cr.P.C.

20. Considering the facts of this case, it would be apposite to refer the law laid down by the Hon'ble Supreme Court in the case of ***State of Bihar vs. Ramesh Singh***, reported as ***(1977) 4 SCC 39***. Paragraph no.5 of the aforesaid decision reads as under :-

“5. In Nirmaljit Singh Hoon v. State of West Bengal [(1973) 3 SCC 753]-Shelat, J. delivering the judgment on behalf of the majority of the Court referred at p. 79 of the report to the earlier decisions of this Court in Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430]-where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 “that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process



could not be refused". Illustratively, Shelat, J., further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case".(emphasis supplied)

21. Recently, the Hon'ble Supreme Court in the case **Ram Prakash Chadha vs. State of U.P.**, reported as **(2024) 10 SCC 651** has held as under:-

"15. Section 227CrPC, reads thus:

"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."

16. We have already considered the meaning of the expression "the record of the case and the documents submitted therewith" relying on the decision in *Debendra Nath Padhi case* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] only to reassure as to what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227CrPC. In the light of the same, there cannot be any doubt with respect to the position



that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all. Once “the record of the case and the documents submitted therewith” are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.

17. The decision in *Yogesh v. State of Maharashtra* (2008) 10 SCC 394, this Court held that the words “not sufficient ground for proceeding against the accused” appearing in Section 227CrPC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out.
18. In the decision in *State of T.N. v. N. Suresh Rajan* (2014) 11 SCC 709 this Court held that at a stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true, and evaluate the materials to find out whether the facts taken at their face value disclose the existence of the



ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

19. In the decision in *B.K. Sharma v. State of U.P.* 1987 SCC OnLine All 314, the High Court of Judicature at Allahabad held that the standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion, based on the material on record, and would be sufficient to frame a charge.
20. We are in agreement with the said view taken by the High Court. At the same time, we would add that the strong suspicion in order to be sufficient to frame a charge should be based on the material brought on record by the prosecution and should not be based on supposition, suspicions and conjectures. In other words, in order to be a basis to frame charge the strong suspicion should be the one emerging from the materials on record brought by the prosecution.
21. In the decision in *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* [(1989) 1 SCC 715], this Court held that the word “ground” in Section 227CrPC, did not mean a ground for conviction, but a ground for putting the accused on trial.
22. In *P. Vijayan v. State of Kerala* [(2010) 2 SCC 398] , after extracting Section 227CrPC, this Court in paras 10 and 11 held thus: (SCC pp.



401-402)

“10. ... 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 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.”

23. In para 13 in *P. Vijayan case P. Vijayan v. State of Kerala*, (2010) 2 SCC 398, this Court took note of the principles enunciated earlier by this Court in *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, which reads thus: (*Prafulla Kumar Samal case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4:1979 SCC (Cri) 609]*, SCC p. 9, para 10)

“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 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.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 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.”

24. *In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227CrPC, and entering into the scope of power under Section 232CrPC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in Om Parkash Sharma v. CBI [Om Parkash Sharma v. CBI, (2000) 5 SCC 679] . Taking note of the language of Section 227CrPC, is in negative terminology and that the language in Section 232CrPC, is in the positive terminology*



and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232CrPC, available only after taking the evidence for the prosecution and examining the accused.

- 25.** *Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in Kaushalya Devi v. State of M.P [2003 SCC OnLine MP 672] It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the*



view, we make it clear that the expression “legal evidence” has to be construed only as evidence disclosing prima facie case, “the record of the case and the documents submitted therewith.” (emphasis supplied)

22. In ***Sajjan Kumar vs. CBI*** reported as **(2010) 9 SCC 368**, the Hon’ble Supreme Court had cautioned against accepting every document produced by the prosecution on face value, and held that it was important to sift the evidence produced before the Court. The Hon’ble Supreme Court had observed that:-

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

(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.”

23. Summarising the principles on discharge under Section 227 Cr.P.C, in ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat & Anr.*** reported as ***(2019) 16 SCC 547***, the Hon’ble Supreme Court had held as under :-

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into



evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.” (emphasis supplied)

24. The Hon’ble Supreme Court in ***M.E. Shivalingamurthy vs. CBI***, reported as ***(2020) 2 SCC 768*** had culled out the principles and held as under :-

“Legal principles applicable in regard to an application seeking discharge

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. *P. Vijayan v. State of Kerala* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist



of the statements recorded by the police or the documents produced before the Court.

17.4. 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 offence, then, there will be no sufficient ground for proceeding with the trial.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. 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.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar [State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 Cr.PC, is to be understood as the



documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568.”

25. The Hon’ble Supreme Court in the case of ***State of Gujarat vs. Dilipsinh Kishoresinh Rao*** reported as ***(2023) 17 SCC 688*** has held as under:-

“10. *It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.*

11. This Court in *State of T.N. v. N. Suresh Rajan* adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)

29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a



post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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 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."



12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency." (emphasis supplied)

26. From the afore-quoted decisions, it is abundantly clear that it is not proper for the Court to undertake a threadbare roving enquiry to consider the merits of the case at the stage of considering the discharge application of the accused. The Court is not to assess whether there exist sufficient grounds for conviction, which is a much higher threshold, but rather only to assess whether sufficient grounds for proceeding against the accused are made out or not.

27. The contention of the petitioner is that the prosecutrix is the sole eye-witness to the incident and that that the prosecutrix had subsequently improved upon her version. It is also contended that the prosecutrix was known to the accused persons including the present petitioner from before and they were in constant contact with each other, in this regard furthermore it is contended that the behaviour and the



conduct of the prosecutrix is unnatural, inasmuch as, there have been phone calls made by the prosecutrix to the accused petitioner. It is also the contention that the prosecutrix may have had prior sexual relationships with the accused persons. Lastly, it is vehemently argued that the absence of spermatozoa and the DNA report merits discharge of the petitioner.

28. In the considered opinion of this Court, none of the arguments put forth on behalf of the petitioner merits interference. At the cost of repetition, it is stated that the Court, at the stage of considering an application for discharge, is not expected to undertake a meticulous enquiry to assess the probative value of evidence and establish grounds of conviction. What the Court is required to assess is whether there are sufficient grounds for proceeding against the accused. The allegation against the petitioner and other accused persons is that of committing gang rape upon the prosecutrix. The prosecutrix has supported the case of prosecution in her statement under section 164 Cr.P.C.

29. The mere fact that the prosecutrix was the sole eyewitness, or the sexual history of the prosecutrix, or that the behaviour of the prosecutrix was unnatural according to the petitioner, could not be the grounds that are sufficient enough



to warrant discharge of the petitioner. Merely because the Police has charge-sheeted a fifth accused, who was not originally named by the prosecutrix, does not make the version of the prosecutrix intrinsically untrustworthy.

30. In the case of ***Raju @ Umakant vs. State of Madhya Pradesh***, reported as ***2025 SCC OnLine SC 997***, the Hon'ble Supreme Court had held as under :-

“18. As has been rightly observed, a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it will be improper and undesirable to test her evidence with suspicion. All that the law mandates is that the Court should be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of charge levelled by her and if after keeping that aspect in mind if the Court is thereafter satisfied that the evidence is trustworthy, there is nothing that can stop the Court from acting on the sole testimony of the prosecutrix. [See *State of Rajasthan v. N.K. the Accused*, (2000) 5 SCC 30, *Rameshwar v. State of Rajasthan*, 1951 SCC 1213, *State of Maharashtra v. Chandraprakash Kewal Chand Jain*, (1990) 1 SCC 550, *State of Punjab v Gurmit Singh*, (1996) 2 SCC 384]”. (emphasis supplied)



31. The absence of injuries on the private parts of the prosecutrix cannot be a ground to totally disbelieve the prosecution case. Recently, the Hon'ble Supreme Court in the case of ***Lok Mal @ Loku vs. State of Uttar Pradesh***, reported as ***(2025) 4 SCC 470***, has held as under:-

“13. Merely because in the medical evidence, there are no major injury marks, this merely cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. According to the version of the prosecutrix, the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks.”
(emphasis supplied).

32. The Hon'ble Supreme Court further in the case of ***State of Himachal Pradesh v. Manga Singh***, reported as ***(2019) 16 SCC 759***, had held that conviction can be rested



on the testimony of the prosecutrix alone and observed as under :-

“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”

33. It is trite that absence of spermatozoa in the forensic report does not vitiate the case of the prosecution. The presence of spermatozoa or trauma signs could corroborate the case of prosecution, but the absence thereof does not and could not lead to a conclusion that the offence as alleged never happened and the account of the prosecutrix is intrinsically untrustworthy or contradictory. The presence of trauma marks or spermatozoa is not a *sine qua non* ingredient for the offence of rape or gang rape. The contention that according to the prosecution the rape was committed by four individuals and the absence of semen or injury should vitiate the prosecution is



wholly unsustainable, more so, considering the pre-mature stage at which such a contention is raised herein. The contention that the bodily relations, if at all any, established was consensual in nature or not, is a contentious question of fact which can only be determined in trial upon the test of cross-examination.

34. The Hon'ble Supreme Court in the case of ***State of U.P. vs. Babul Nath***, reported as ***(1994) 6 SCC 29*** had held as under :-

“8. *It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:*

“Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the



male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her.”

35. The arguments made on behalf of the present petitioner are wholly repelled in view of the aforesaid decisions of the Hon'ble Supreme Court. Therefore, on the conspectus of the afore-quoted decisions and the discussions made hereinabove, no sustainable ground warranting interference from this Court at this stage of discharge are made out.

36. It is cautiously noted that the cases referred



herein above are not to dispel the merits of the case, but only to illustrate that no grounds for discharge are made out at this stage. The Court, at this stage, is only required to evaluate the materials and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence.

37. The grounds of seeking discharge put forth by the petitioner are meritless, inasmuch as, they fail to illustrate that the version of the prosecutrix is self-contradictory or intrinsically untrustworthy. This Court cannot conduct a mini-trial at this stage to circumvent the trial in order to ascertain the veracity of the allegations levelled against the petitioner. In the case of *State of Rajasthan vs. Ashok Kumar Kashyap*, reported as **(2021) 11 SCC 191**, the Hon'ble Supreme Court has reiterated that defence on merits is not to be considered at the stage of framing of charges/discharge.

38. There are sufficient materials available on record, as also recorded in the impugned order, to proceed against the petitioner. The trial court had rightly proceeded against the petitioner, based on the materials brought on record



by the prosecution, since the facts emerging from the materials taken on their face value, *prima facie* disclose the existence of the offence of gang rape. An exhaustive analysis was neither required nor warranted. This Court finds no error or illegality in the impugned order, by which the discharge application of the present petitioner was rejected.

39. For the forgoing reasons and discussions, this application is dismissed.

40. Pending interlocutory application(s), if any, stands disposed of.

41. Needless to state that this Court has not expressed any opinion on the merits of the case and the Trial Court shall proceed with the trial independently based on the merits of the case.

(Sandeep Kumar, J)

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