

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1954 of 2025

Arising Out of PS. Case No.-599 Year-2021 Thana- LAKHISARAI District- Lakhisarai

Deepak Sharma @ Miller S/O Ramanugrah Sharma Resident of Village- Aurey, P.S- Ramgarh Chowk, Post office- Aure, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar Patna
2. Mukesh Kumar Sharma S/O Late Rampukar Sharma R/O Village- Aure, P.S- Ramgarh Chowk, P.O- aure, Distt.- Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Girijish Kumar
For the Respondent/s : Mr.G.P 5

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 07-08-2025 Heard learned counsel for the petitioner and learned counsel for the State.

2. The present application has been filed on behalf of the petitioner for quashing of the order dated 22.07.2025 passed by Session Judge, Lakhisarai, in Sessions Trial No.256 of 2023. On the application under Section 227 of the Cr.P.C. filed on behalf of the petitioner in which prayer was made to discharge the petitioner in the aforesaid session case arising out of Lakhisarai P.S. Case No.599 of 2021.

3. As per the prosecution case, the petitioner along with other co-accused persons are said to have assaulted the father of the informant which resulted into his death.



4. After investigation, the police has submitted final form exonerating the petitioner, but the Trial Court differed the final form and took cognizance against the petitioner and others. Thereafter, the petitioner filed an application for discharge which was dismissed by the impugned order dated 22.07.2025.

5. 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.”

6. The Hon’ble Supreme Court in the case of *State of Gujarat vs. Dilipsinh Kishoresinh Sao* 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.
.....”*

7. From the perusal of the impugned order, it appears that a detailed discussion has been made by the Trial Judge and he has considered the materials which has come during investigation and has found strong *prima facie* case for trial of the petitioner.

8. In view of the discussions made above, this application is dismissed.

(Sandeep Kumar, J)

anand/-

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