

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Application No.109 of 2025

Manthan Kiran Bhosale ... Applicant
V/s.
State of Maharashtra ... Respondents.

**With
Interim Application No.633 of 2025
In
Criminal Application No.109 of 2025**

Gajanan Shrikant Ogale ... Applicant-
Intervenor

In the matter between
Manthan Kiran Bhosale ... Applicant
V/s.
State of Maharashtra ... Respondents.

Mr. Karma Vivan a/w. Mr. Tejas Kothalikar, Ms. Isha Rakesh Singh, Advocate Neel Paralikar	Advocates for the Applicant.
Mr. Aniket Nikam i/b.Mr. Sumit Patil	Advocate for the Intervenor.
Mr. C.D.Mali	APP for the State.
Mr. Manoj Kumar Pande	API, Pimpri Sant Tukaram Nagar Police station.

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CORAM : S.M. MODAK, J

DATE : 15th July 2025.

ORAL JUDGMENT :

The Intervention Application No.633/2025 filed on behalf of informant is allowed.

2. Heard learned Advocate for the Petitioner/one of the accused involved in Sessions Case No.472/2023. Also heard learned Advocate Nikam for the first informant and learned APP appearing for the State.

3. The only issue raised in this petition is “about non-compliance of the provisions of Section 226 and 227 of the Code of Criminal Procedure.” **Section 226** mandates the Prosecutor in-charge of the case to open up the prosecution case whereas **Section 227** mandates the Court to hear both the sides and then to take a decision whether to frame the charge or not?

4. In this case, the trial Court has framed the charge on 18th March 2024. It is for the offences punishable under Sections 302,363,364,364-A, 201 r/w Section 120B and Section 34 of IPC and under Section 66-C of the IT Act.

5. In order to buttress his submission the learned Advocate for the Petitioner invited my attention to the entries in the Roznama dt. 18th March 2024. **In nutshell, the Roznama reads thus:**

- (i) Both the accused are produced through V.C. from Taloja Jail.
- (ii) The Special Public Prosecutor was present
- (iii) Advocate for the Accused No.1/Petitioner was present, however, learned Advocate for Accused No.2 was absent.
- (iv) The charge was explained to both the accused and it was framed.

(v) The procedure for recording their pleas was completed.

6. About these notings both of them have made their respective submissions. **According to the Petitioners**, the roznama is indication of the happenings before the Court and the fact that the procedure was not complied with and that is why there is no noting in the Roznama. Petitioner's counsel relied upon the various judgments. He invited my attention to observations in case of ***Bharat Uttam Rajurkar v/s. State of Maharashtra***¹ Cr. WP No. 1232/17 dated 12th January 2018. Specifically, he read the observations in Para No.7.

7. As against this, **Mr. Nikam and learned APP** submitted that the grievance made in this petition ought to have been made before the trial Court. It is for the reason trial Court is the best forum and it can decide whether the procedure is followed or not. My attention is also invited to the noting in the Roznama dated 2nd April 2024. It records learned Advocate for both the accused were absent. Mr. Nikam relied upon one more circumstance. In all the Roznamas the fact that there is no reference of any protest on behalf of the Petitioner itself suggest that the procedure was followed.

8. To buttress his submission, he relied upon the observations in case of ***Prathamesh Sitaram Latne and ors. v/s. State of Maharashtra***² and observations in case of ***Om Wati (Smt.) and anr. v/s. State., through Delhi Admn. And ors.***³.

1 Cr. Writ Petition No.1232/2017

2 Criminal Application No.1688 of 2019

3 (2001) 4 Supreme Court Cases

CONSIDERATION

9. The provisions of Section 226 and 227 of Cr.P.C. need to be complied. There is a definite purpose in incorporating **Section 226** in the Code. It is a duty of the Prosecutor in-charge to open up the case so that the trial Court will come to know what is the evidence collected by the investigating agency. Certainly, it is helpful to the trial Court to arrive at a proper decision whether to frame the charge or not to frame. There is also definite purpose for incorporating **Section 227** in the Code. It nowhere says about framing of charge. That stage comes later on. The test is laid down in **Section 228** of Code of Criminal Procedure. **If we go by the chronology of the sections, it can be inferred that these stages are to be followed one after another.** Needless to say that if accused is not discharged, then the question of framing of charge will arise under Section 228 of the Code of Criminal Procedure.

10. In case of ***Prathamesh***, similar grievance was raised. The learned single Judge of this Court after going through the materials came to the conclusion that the grievance for non-compliance of the procedure is not well founded. This Court emphasized on “the presence of the APP and all the accused at the time of framing of charge.” This Court took a view that “the trial Court Judge has not restrained the accused persons from making their submissions.”

11. **I respectfully disagree with this view.** The ratio cannot be applied in favour of the Respondents. It is for the reason the earlier

view in case of ***Bharat Rajurkar*** was not brought to the notice of the learned Single Judge. Further more, we have to go by the notes in the Roznama. Two inferences can be drawn:-

- (a) Admittedly the accused persons have not insisted for compliance of the procedure under Section 226 and 227 of the Code and
- (b) there is no noting in the roznama that procedure under Section 226 and 227 of the Code is followed.

12. In case of ***Bharat Rajurkar***, the learned Single Judge of this Court has already observed **the compliance of the provisions is not an empty formality**. It has to be reflected from the record. It is true that Petitioner has not made his grievance before the trial Court. It is important to note that both the accused are under trial prisoners. Even though Accused No.1 is represented by the Advocate and even though the Roznama does not records the grievance made by the accused, it does not mean that the prosecution so also the learned trial Court Judge are relieved from their responsibility about the compliance of both the provisions.

13. I am not impressed by the submissions made by Mr. Nikam about not raising this grievance before the trial Court. When the grievance is about non-compliance of the provisions, argument cannot be accepted “if the grievance was raised, trial Court ought to have recorded”. So I am inclined to allow the petition. At the

sametime, certain facts are required to be noted about the possibility of misuse of these provisions at the instance of the Petitioner.

14. Learned Advocate for the Petitioner has invited my attention to the Roznama dated 23rd April 2025 which records filing of the pursis by the Special Public Prosecutor that prosecution is ready to go on with the trial. It is true in the certain Roznamas, there is recording about issue of supply of documents by the accused. Now, how this conduct of the Petitioner is to be weighed will be decided if grievance is raised for delay in trial. I can only say this that the prosecution is at liberty to make a submission that the grievance about non-compliance of provisions of Section 226 and 227 was not raised till filing of the petition and they are at liberty to emphasize on this aspect while describing the conduct of the accused persons. With these observations, I am inclined to allow the petition.

15. Mr. Nikam submitted that the Petitioner and co-accused may misuse the liberty granted by the Court and may delay further proceedings before the Court. The circumstances warrant me to observe that accused being under trial prisoners are not expected to delay the proceedings before the Court by filing unnecessary applications.

16. If the petition is allowed, then there has to be compliance of provisions of section 226 and 227 of Code of Criminal Procedure. In view of that following order is passed:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The framing of charge on 18th March 2024 is set aside.
- (iii) The trial Court is directed to seek compliance of the provisions of Section 226 and 227 of the Code of Criminal Procedure and then to adopt appropriate procedure as per law.

(S.M. MODAK, J.)