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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.14 OF 2023

Amit @ Haridas Laxman Gotpatriwar,
Aged about 29 Years,
R/o. Jairampur,
Tahsil Charmoshi,
District Gadchiroli.

.... APPLICANT

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station Ashti,
Tahsil Chamorshi,
District Gadchiroli.

.... RESPONDENT

Mr. R. M. Daga, Counsel for the applicant.
Ms. Sneha Dhote, APP for the respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17.07.2025

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. The present revision application challenges the order passed by the learned Sessions Judge, Gadchiroli below Exh.35 and Exh.1, rejecting the application of the present applicant, who is accused No.3 vide under Section 227 of the Code of Criminal Procedure (for short 'the Cr.P.C.').

4. The brief facts which are necessary for the disposal of this revision application are as under:

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The applicant is facing the trial in connection with Crime No.26/2016 on the basis of report lodged by one Firoz Salim Mulani serving as Police Sub-Inspector. On the report lodged by the informant, Ashti police has registered an offence vide Crime 26/2016 against one Satpalsingh Dangi and others for the offence punishable under Sections 307, 353, 279, 427 read with Section 34 of the Indian Penal Code and under Sections 65(a), 98(c) and 83 of the Bombay Prohibition Act and under Section 184 of the Motor Vehicles Act.

5. The applicant is arraigned as an accused No.3 in the said crime, on allegation that the present applicant was found transporting the illicit liquor and on restraining the vehicle, he drove the vehicle on the person of police officers and fled away from the spot of incident. After registration of the crime, the Investigating Officer has recorded the relevant statements of the witnesses, seized the vehicle involved in the said crime and after completion of the investigation, submitted the charge-sheet. After filing of the charge-sheet, the present applicant has filed an application for discharge under Section 227 of the Cr.P.C. on the ground that during the investigation, the vehicle was seized by the Ashti police on 29.09.2016 bearing No.MH-34-AM-7035. It is contention of the applicant that said vehicle was already seized in crime No.222/2016 and was with the police and it was released on 17.08.2016, after

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registration of the present crime. Thus, on the date of the crime, the vehicle was not with the present applicant. Moreover, he is not the owner of the said vehicle. The owner of the said vehicle is one Ballya Maroti Nimgade. He further submitted that none of the statements of the witnesses discloses that the presence of present applicant on the spot was seen by them or none of the statements is showing the number of the vehicle mentioned in the statement. Thus, except the suspicion, there is no material on record to connect the present applicant with the alleged offence.

6. Per contra, learned APP strongly opposed the said application and submitted the documents on which learned Counsel for the applicant is relied upon is not the part of charge-sheet and therefore, it cannot be considered at the stage of the discharge application. She submitted that the defence of the accused cannot be considered at the stage of the discharge application, but it is the matter of the trial. At this stage, the statements of the witnesses and the fact that the applicant fled away from the spot of incident is sufficient to frame the charge against the present applicant. In view of that, the application rightly rejected by the learned Sessions Judge and no interference is called for.

7. After hearing both sides and on perusal of the investigation papers, it reveals that the incident occurred on 12.08.2016 in between 3.00 to 4.30 p.m. near bank of river of

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Vainganga at Mouza Ashti near the paper mill. The informant received a secret information that illicit liquor was likely to be transported by one Dharma Rao, accordingly, the police team vigilance at the place of incident. 3 – 4 vehicles were noticed by the informant moving in suspicious condition. The informant tried to stop India Vista Car, a white coloured Scorpio which was coming from behind and one India Vista Car bearing No.MH-34-AA-1095 and TATA zenon vehicle bearing No. MH-33-G-1437. As per the allegation, the Scorpio Car was driven by the present applicant and he came from the back side. After giving signal, he did not stop the vehicle and driven the vehicle on the police personnel and ran away from the spot of incident. On the basis of the said allegation, the crime was registered vide crime No 26/2016 and during investigation, the vehicle i.e. Scorpio vehicle No. MH 34– AM-7035 was also seized. After completion of the investigation, the Investigating Officer has submitted a charge-sheet against the present applicant.

8. Before considering the merits of the claim of the present matter, 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

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ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

9. 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.

10. While considering the scope of Section 227, Cr.P.C. in **Sajjan Kumar v. Central Bureau of Investigation**, reported in **(2010)9 SCC 368** this Court laid down certain guiding principles for discharge 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.

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(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 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."

11. Thus, 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

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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.

12. Thus, the position of law is well settled that while exercising powers under Section 227 of the CrPC, the Judge concerned has to consider only record of the case and documents produced along with the same. If on such consideration the court forms an opinion that there is no sufficient ground to proceed against the accused concerned, he shall be discharged after recording the said findings in support of the said contention.

13. In the light of the above well settled position, if facts of the present case and the investigation papers are taken into consideration, admittedly, except the statement that one Scorpio Car was there and the driver taken the said car and fled away from the spot of incident. There is nothing on record to show that it was the Car bearing Scorpio No. MH-34-AM-7035. None of the statements reveals that the number of the Car was witnessed and the present applicant was also seen driving the said Car, though the police personnel were present there. Thus, except the suspicion, there is nothing on record to show the involvement of the present

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applicant. Thus, *prima facie* material if taken into consideration, even strong suspicion is not arising against the present applicant. Thus, there is sufficient ground to hold that the material which is collected during the investigation is not sufficient to frame the charge and no purpose will be served by insisting the present applicant to face the trial before the Sessions Court. In view of that, the application of the present applicant for discharge deserves to be allowed.

14. In view of that, the order dated 28.12.2022 passed by the learned Sessions Judge, Gadchiroli in Sessions Case No.41/2019, below Exh.35 and below Exh.1, rejecting the application is hereby quashed and set aside.

15. The applicant is discharged from the charges punishable under Sections 307, 353, 279, 427 read with Section 34 of the Indian Penal Code and under Sections 65(a), 98(c) and 83 of the Bombay Prohibition Act and under Section 184 of the Motor Vehicles Act, in connection with Crime No.26/2016 in Sessions Case No.41/2019.

16. The revision application is disposed of.

(URMILA JOSHI-PHALKE, J.)