



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 973/2025

1. Parth s/o. Ramdas Kale,
aged about 19 yrs., Occ. Education,
R/o. Asara Colony, Akot, Tah. Akot,
Dist. Akola.

Amendment carried
out as per Court's
order dated
29.07.2025

2. Aditya Sudhir Dhakare,
aged about 18 yrs., Occ. Student,
R/o. Akot Road, Akot, Dist. Akola.

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Akot City, Tah. Akot,
Dist. Akola.
2. Brajesh Gopal Barethiya,
Aged about 51 yrs., Occ. Business,
3. Rajveer Brijesh Barethiya,
Aged about 17 yrs., Occ. Student,
through natural guardian father
Brajesh Gopal Barethiya,
Both R/o. Bus Stand Road,
Methdoot Lodge, Akot, Tah.
Akot, Dist. Akola.

NON-APPLICANTS

Mr. Rohan Malviya, Advocate for applicants.
Ms. Shamsi Haider, APP for non-applicant No.1/State.
Mr. R.S. Kurekar, Advocate for Non-applicant No.2/complainant.

CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATE : 29.07.2025

ORAL JUDGMENT : (PER: M. M. NERLIKAR, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. By consent of parties, heard finally.

3. By this present application, the applicants are seeking quashment of charge-sheet No.70/2025 in Regular Criminal Case/Sessions Trial No. 18/2025 pending on the file of the learned Additional Sessions Court, Akola/Judicial Magistrate First Class, Akot arising out of First Information Report ("FIR") bearing Crime No. 20/2025 dated 17.01.2025 registered with Police Station Akot City, Tah. Akot, Dist. Akola for the offences punishable under Sections 109, 352, 3(5) of the Bharatiya Nyaya Sanhita, 2023 ("BNS").

4. The present application initially was filed by one of the accused namely Parth s/o. Ramdas Kale, however as per order of this Court dated 29.07.2025, amendment was carried out and second

accused namely Aditya Sudhir Dhakare was impleaded as applicant No.2. Both are seeking quashment of criminal proceedings.

5. The brief facts are as under:-

Non-applicant No.2 who is father of non-applicant No.3 lodged a complaint against the applicants and one minor namely Manthan Santosh Bunde. It is alleged that on 16.01.2025 at about 02.30 p.m. to 03.00 p.m. his son Rajveer i.e. non-applicant No.3 was at his home, however his friend namely Manthan Bunde took him out on motorcycle. It is further alleged that at about 04.00 p.m., he got information that someone has assaulted his son by knife. After primary treatment in Rural Hospital, Akot, he was referred to Akola for further treatment. During inquiry with Jatin Barethiya and Ganesh Barethiya who are relatives of non-applicant No.2-informant, he came to know that there was an ongoing quarrel since last 5 to 6 months between applicant No.1 Parth and non-applicant No.3 i.e. Rajveer on account of playing Pubji game. Manthan, in order to sort out the dispute between them, took Rajveer behind Shri Shivaji College, Daryapur Road, Akot. However, behind Shri Shivaji College, there was a scuffle between Parth and non-applicant No.3-Rajveer and

they slapped each other. Being annoyed, applicant No.1-Parth gave multiple blows on shoulder and under the arm of non-applicant No.3. Applicant No.2 and Manthan Bundeale caught hold of the hands of non-applicant No.3-Rajveer. However, thereafter non-applicant No.3 Rajveer was admitted in the hospital. It is alleged that at Ozone Hospital, Akola on 16.01.2025, the surgery was performed and gallbladder was removed. Based on these allegations, FIR bearing Crime No. 20/2025 dated 17.01.2025 for the offences punishable under Sections 109, 352, 3(5) of the BNS was registered. After investigation, the charge-sheet was filed and now the case is pending with the learned Additional Sessions Court, Akola/Judicial Magistrate First Class, Akot as Regular Criminal Case/Sessions Trial No. 18/2025.

6. We have heard learned counsel for applicants, learned APP and learned counsel for non-applicant Nos. 2 and 3. It is contended by learned counsel for applicants that the matter has been settled. The applicants and non-applicant Nos. 2 and 3 are residing in nearby Colonies. They are having good relations since last many years. They are students having age around 18 years. It is further submitted that

the ingredients of Section 109 of BNS are not made out, at the most, the offence may fall under Section 118 of the BNS and there is no bar to quash the criminal proceedings, if the offence falls under Section 118 of the BNS. It is further submitted that the dispute was between the applicants and non-applicant No.3. All are of tender age of near about 17 and 18 years. Their entire future depends on these proceeding and if the criminal proceedings are not quashed, it would amount to denial of justice to them.

7. Learned counsel for non-applicant Nos. 2 and 3 admits that the settlement has arrived at between the parties. In order to leave happily in future without any grudge in the mind of the parties, considering the age of non-applicant No.3 and the applicants and also considering their future, they have decided to settle the matter.

8. Learned APP, however vehemently opposed the application on the ground that the offence is serious. Section 109 of the BNS was declared as a serious and heinous offence. The Hon'ble Supreme Court in number of judgments has specifically stated that being a heinous offence, it cannot be quashed on the basis of settlement. There are multiple injuries as many as 12 injuries which are inflicted

on the vital parts of the body by applicant No.1. It is further submitted by learned APP that recovery of knife is at the behest of applicant No.1 Parth under Section 27 of the Indian Evidence Act. Though certain injuries are simple in nature, one injury is grievous and the weapon used is knife, therefore criminal proceedings may not be quashed.

9. Upon careful perusal of the FIR and charge-sheet, it transpires that all the accused are between 17 to 19 years old. Even non-applicant No.3 who is injured is also 17 years and 11 months. As per allegations, applicant No.1 gave multiple blows by knife either on the shoulder or under the arm, however there is one stab injury which is of grievous nature. The question before this Court under such circumstances is whether the attending circumstances depict that Section 109 would attract or Section 118 of the BNS would attract, though in the charge-sheet Section 109 of the BNS is leveled. Merely mentioning Section 109 in the charge-sheet is not sufficient the same could be applied only after scrutinizing the allegation.

10. No doubt in the case of *Gian Singh vs. State of Punjab and another*, in *2012 Cr.L.J. 4934*, section 307 of the Indian Penal Code

which deals with attempt to murder and was considered as a heinous offence and it was laid down that settlement would not be permissible in view of the fact that it has an impact on the public at large in the society. Section 109 of BNS deals with attempt to murder under the new Act and the same is equivalent to Section 307 of the Indian Penal Code. Therefore, we have considered the allegations in the FIR and the material collected by the Investigating Officer. The injury certificate demonstrates that most of the injuries are simple in nature and inflicted either on the left arm and left axilla which refers to the armpit area on the left side of the body. However, the injury No.9 was termed to be grievous which is of size 1 cm x 0.5 cm x cavity deep (Involving thoracic and peritoneal cavity) and was inflicted over left side of lower chest area, 12 cm lateral to midline along anterior axillary line and 3 cm below left nipple. Injury Nos 10, 11 and 12 are injuries corresponding to external injury No.9. It is important to note that the weapon used is the knife, however the size of knife is 5.5 inch after opening and 3.5 inch after it is folded. The blade of the said knife is 2.00 inch which can be gathered from the Muddemal Pawati and total length of the knife is 5.5 inch.

11. Section 109 reads as under:-

“109 Attempt to murder – (1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person’s natural life.”

Therefore, the important ingredient to be considered is the intention or knowledge of a person who is committing the offence. Here in the present case, it seems from the recital of the FIR, statement of non-applicant No.3-injured, the medico legal certificate, wherein the injuries are described and the size of the weapon which was used, speaks for itself that there was no intention on the part of applicant No.1 to commit the offence under Section 109 of the BNS. Recital of statement of the non-applicant No.3 injured depicts that applicant No.1 and the Rajveer i.e. non-applicant No.3 both are good friends, however on account of playing Pubji game, there was some quarrel

between applicant No.1 and the non-applicant No.3. However, in order to settle the dispute, another friend Manthan took him behind Shri Shivaji College, where the applicants along with some other friends were also present. However, applicant No.1 while talking, slapped to non-applicant No.3 and in turn, he also slapped him and within a spur of moment, applicant No. 2 and Manthan caught hold the hands of non-applicant No.3 and applicant No.1 took out the knife from his pocket and inflicted the multiple injuries on the body of non-applicant No.3. During investigation, knife was recovered at the behest of applicant No.1, not only that there is also material to show that the knife is having blade of 2.00 inch. Further, from the statements, it can be gathered that injuries inflicted on the body of Rajveer are not intentional or that it cannot be said that applicant No.1 is having knowledge such multiple injuries will eventually lead to the death. It seems from the record that injury was inflicted not by a big knife, but by a small knife having blade of 2.00 inch. Had it been the case that applicant No.1 was having knowledge or intention to kill non-applicant No.3 in that case, he would have come with preparation and brought a big knife which would penetrate deep in the body so as

to cause death. It is further to be noted that in the entire charge-sheet the Doctor has not opined that the injuries will lead to death and therefore, even by stretch of imagination, it cannot be said that the offence would fall under the provision of Section 109 of the BNS. However, at the most, it would fall under Section 118 of the BNS. There is no bar to quash the FIR under Section 118 of the BNS.

12. In the recent judgment delivered by Hon'ble Supreme Court in case of ***Naushey Ali and others Vs. State of Uttar Pradesh and another, (2025) 4 SCC 78***, the Hon'ble Supreme Court has observed in paragraph Nos. 17, 22 and 23 as under:-

“No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having

arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

Though offence under Section 307 is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well.

Mere mention of Section 307 IPC in the FIR or the charge-sheet should not be the basis for adopting a hands-off approach. It would be open for the court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or whether there is evidence to back it. The courts may go by the nature of injuries sustained; as to whether the injuries are inflicted on the vital/ delicate parts of the body and the nature of

weapon used. “

13. Thus, the Hon'ble Supreme Court has, in the clear terms, clarified that mere mentioning of Section 307 of the Indian Penal Code vis-a-vis Section 109 of the BNS would not suffice the purpose. However, there should be material to back it. So far as the present case is concerned, in our opinion Section 109 of the BNS would not attract as there is no intention or knowledge on the part of the applicants that the blows would lead to death. There is absence of mens rea on the part of the applicants. Further, the knife used was having blade of 2.00 inch. It is also to be noted that victim's injuries does not show the intent of killing. No doubt, there are multiple injuries, however that would at the most fall under Section 118 of the BNS.

14. The applicants and non-applicant No.3 are of young age. They are of 19, 18 and 17 years respectively. Their entire future is before them and therefore, if the parties have arrived at a settlement, then in our considered opinion, it will have to be accepted in order to do substantial justice.

15. In view of the settlement arrived at between the parties, there is likelihood of acquittal in view of compromise or the chance of

conviction are remote. It is further to be noted that the unfortunate incident which took place, seems to be of personal nature and there is no serious impact on the society at large. It is needless to mention that the settlement between the parties is going to result in harmony between them which may improve their future relation.

16. The parties are present before this Court. We have interacted with applicant Nos. 1, 2 and non-applicant No.3 injured. Non-applicant Nos. 2 and 3 have specifically stated that they have settled the dispute and accordingly, non-applicant No.2 has filed the affidavit in the present proceedings and he has given no objection to quash the proceedings. Even non-applicant No.3 has consented before us for quashing the proceedings. They have further stated that now they are living happily and there is no grudge against each other and therefore, they requested to quash the proceedings.

17. Considering over all facts and continuation of the proceeding will result into the abuse of process of law, we are inclined to exercise powers under Section 528 of the BNS. Hence, the following order:-

(I) Application stands allowed.

(II) We hereby quash and set aside charge-sheet No.70/2025 in Regular Criminal Case/Sessions Trial No. 18/2025 pending on the file of the learned Additional Sessions Court, Akola/Judicial Magistrate First Class, Akot arising out of First Information Report (“FIR”) bearing Crime No. 20/2025 dated 17.01.2025 registered with Police Station Akot City, Tah. Akot, Dist. Akola for the offences punishable under Sections 109, 352, 3(5) of the BNS.

18. Application stands disposed of in above terms.

19. The above order is given effect only after payment of cost of Rs. 20,000/- each by the applicants.

20. The cost be paid to the High Court Bar Association, Nagpur within a period of two weeks from the date of uploading this order.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)