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*CrI.R.C.(MD) No.1211 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.03.2025

Delivered on : 09.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

CrI.R.C.(MD)No.1211 of 2024  
and  
CrI.M.P(MD)No.12669 of 2024

Sadam Hussain

: Petitioner

Vs.

State of Tamil nadu through  
the Inspector of Police,  
Dindigul Town North Police Station,  
Dindigul District.  
Crime No.447 of 2023.

: Respondent

**Prayer :** This Criminal Revision has been filed under Section 438(1) r/w 442 of BNSS, to call for the records connected with the order in Cr.M.P.No.1832 of 2024, dated 30.09.2024 on the file of the learned Principal District and Sessions Court, Dindigul and set aside the same as illegal.

For Petitioner : Ms.P.Krishnaveni

For Respondent : Mrs.M.Aasha,  
Government Advocate (Criminal Side)



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## **ORDER**

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The Criminal Revision Case is directed against the order passed in Cr.M.P.No.1832 of 2024 in S.C.No.163 of 2023, dated 30.09.2024 on the file of the learned Principal District and Sessions Court, Dindigul, dismissing the petition for discharge filed under Section 227 of the Code of Criminal Procedure.

2. The petitioner, who is the fourth accused in S.C.No.163 of 2023, is facing a case of murder. On the basis of the complaint lodged by one Bhavadharani, FIR came to be registered in Crime No.447 of 2023 against one Alashik and the persons, who had accompanied him for the alleged offence under Section 302 IPC. The respondent police, after completing the investigation, has laid the final report against nine accused including the petitioner for the alleged offence under Sections 120(B), 147, 148, 149 and 302 IPC. When the sessions case was pending for framing of charges, the fourth accused invoking Section 227 of Cr.P.C., has filed the petition seeking discharge from the above case.

3.The case of the prosecution is that the first accused had previous enmity with the deceased Saravanakumar @ Pattarai Saravanan with respect



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of murder of one Ibrahim; that on 26.06.2023 a whatsapp video came to be circulated showing that the first accused was found masturbating with a minor child; that the first accused had developed enmity as if the deceased alone had circulated the whatsapp video and entered into the conspiracy with the other accused 2 to 9 and in pursuance of the same, they had way-laid the defacto complainant, who has come in a bike along with his child, attacked him with deadly weapons and murdered the said Pattarai Saravanan.

4. The petitioner's case in the discharge petition is that none of the witnesses examined under Section 161(3) of Cr.P.C., has stated about the involvement of the petitioner in the alleged occurrence; that the prosecution has not recovered any property from the petitioner on the basis of the confession alleged to have been taken that the deceased was having several cases including murder cases and was having enmity with so many persons; that the petitioner came to know that the said Pattarai Saravanan was murdered by somebody on night of 27.07.2023 and after coming to know that the police has planned to arrest six or seven persons to sidetrack the murder case and hence, he along with some other persons surrendered before the Court of Judicial Magistrate, Aruppukkottai; that the petitioner has never seen the deceased nor had any enmity with him; that the petitioner has no acquaintance nor any connection with the deceased; that the prosecution has

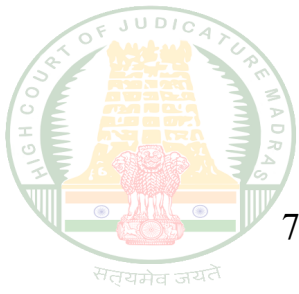


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not produced any iota materials to frame charges against the petitioner and that therefore, the petitioner is entitled to be discharged from the above case.

5. The respondent has filed a counter raising objections and further stated that the petitioner himself had voluntarily surrendered before the Aruppukottai Court; that the grounds alleged by the petitioner for discharge are not believable; that the petitioner is a history sheeted person in H.S.No.18 of 2023, dated 30.08.2023 and is having three cases under the provision of NDPS Act; that the petitioner is a habitual offender; that the occurrence witness L.W.2 and another witness L.W.3 have stated about the involvement of the petitioner in the alleged occurrence; that the occurrence witness L.W.2 had identified the petitioner and other in the identification parade conducted by the learned Judicial Magistrate; that the said Saravanakumar @ Pattarai Saravanan was brutally murdered in front of his one year old daughter; that the above petition has been filed only to drag on the proceedings and that therefore, discharge application is liable to be dismissed.

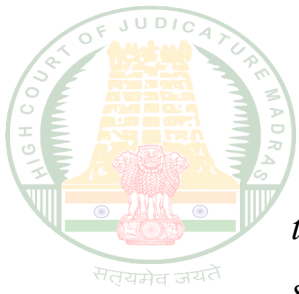
6. The learned Principal Sessions, after conducting enquiry, has passed the impugned order, dated 30.09.2024, dismissing the petition.



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7. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in **(2018) 13 SCC 455**.

*“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjan Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider*



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*the broad probabilities of the case, the total effect of the statements 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 mater and weigh the materials as if he was conducting a trial”*

8. It is settled law that at the stage of framing charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

9. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.



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10. It is pertinent to note that the Courts while dealing with the application for discharge, are required only to see whether a prima facie is made out against the accused and detailed enquiry is not required at this stage. It is necessary to refer the judgment of the Hon'ble Supreme Court in *State through Deputy Superintendent of Police Vs. R.Soundirarasu and others* reported in *2022 LiveLaw (SC) 741*, wherein, the case of *State of Karnataka Lokayukta, Police Station Bengaluru Vs. M.R.Hiremath* reported in *(2019) 7 SCC 515* and the decision in *State of Tamil Nadu Vs.N.Suresh Rajan* reported in *(2014) 11 SCC 709*, were referred, wherein, it has been specifically held that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence and that 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.

11.It is pertinent to note that the present case is a murder case. According to the prosecution, the first accused entered into conspiracy with



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the other accused including the petitioner and brutally murdered the deceased Saravanakumar @ Pattarai Saravanan and the eye witnesses in their statements under Section 161(3) of Cr.P.C., would say that they can identify the assailants.

12. It is pertinent to note that the learned Magistrate has conducted identification parade in respect of accused 1 and 2 and the accused 3 and 4 separately and submitted a report stating that the eye witnesses had identified all the four accused including the petitioner in all three occasions. Although the occurrence witnesses did not name the accused in their statements, they mentioned that the assailants can be identified. As rightly observed by the learned Sessions Judge, there existed *prima facie* materials.

13. Considering the statements of the eye witnesses and also the test identification parade report, this Court has no hesitation to hold that there are materials available sufficient enough to frame the charges against the petitioner. Hence, the impugned order dismissing the discharge petition cannot be found fault with. Consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.



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14. In the result, the Criminal Revision Case is dismissed.

Consequently, connected Miscellaneous Petition is closed.

**09.04.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
das

To

- 1.The Principal District and Sessions Court,  
Dindigul.
- 2.The Inspector of Police,  
Dindigul Town North Police Station,  
Dindigul District.
- 3.The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR, J.**

das

Pre-delivery order made in  
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