

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1648 OF 2026

BASAVRAJ
GURAPPA
PATIL

Rohit Tribhuvan Rai

.. Petitioner

Digitally signed by
BASAVRAJ GURAPPA
PATIL

Vs.

Date: 2026.06.09
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The State of Maharashtra

.. Respondent

...

Mr. Siddharth Singh i/b. Mr. A. M. Saraogi for the
Petitioner.

Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

CORAM : RAVINDRA V. GHUGE, ACJ &
GAUTAM A. ANKHAD, J.

DATE : 9th JUNE, 2026

P.C. :

1. The Petitioner has put forth prayer clause (a), as under :-

“(a) that this Hon’ble Court be pleased to issue appropriate writ, order and direction directing the Respondents to if required, carry out further investigation and place proper chargesheet with proper sections including the provisions of Section 109(1) of BNS before the Court concerned on such terms as this Hon’ble Court may deem fit and proper”.

2. We have heard the learned Advocate for the Petitioner for quite some time.

3. We have referred to the judgment of the Hon'ble Supreme Court in *P. Kartikalakshmi v. Sri Ganesh & Anr., (2017) 3 SCC 347*. In paragraph Nos.6 and 7, the Hon'ble Supreme Court has held as under :-

“6. Having heard the learned Advocate for the respective parties, we find force in the submission of the learned Senior Advocate for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to

the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.”

4. In view of the above, the learned Advocate for the Petitioner submits that the Petitioner would make an Application before the Trial Court for further investigation and/or addition of Section 109 of the Bharatiya Nyaya Sanhita, 2023 (for short BNS).

5. During the course of the hearing, we have perused the colour photographs of the injuries suffered by the Petitioner. The Petitioner suffered a head injury which led to severe bleeding from the left ear. A knife was used to assault the Petitioner. A knife injury below the left ear, as well as on the leg and the arm of the Petitioner, indicate the severity of the wounds. It would be appropriate for the Trial Court to consider this material and assess as to whether the Investigating Officer has inappropriately not invoked

Section 109 of the BNS.

6. In view of the above, **this Petition is disposed off as withdrawn**, on instructions, since the Petitioner is desirous to move an Application under Section 239 of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the Trial Court. Needless to state, the Trial Court would consider the material placed before it by the Petitioner while dealing with his Application on its own merits.

7. The Petitioner informs that the next date before the Trial Court for framing of Charge is scheduled on 11th June, 2026. We would request the Trial Court to adjourn the proceedings for a month since the Petitioner desires to make an Application and after granting a reasonable opportunity of hearing to all concerned, pass an appropriate order on the said Application.

[GAUTAM A. ANKHAD, J.]

[ACTING CHIEF JUSTICE]