

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 349 OF 2026

Noor Mohd. Mehboob

Pathan And Anr.

...Applicants

VS

The State Of Maharashtra and Ors.

...Respondents

Mr. Ashraf Kazi a/w Mr. Govind B. Munde, a/w Ashish Saxena i/b Mr. Viupl Dushing and Adv. Swanand Govind Wap, learned Advocate for Applicants.

Mr. S. A. Karmakar, learned A.P.P. for the State/Respondents.

CORAM : ASHWIN D. BHOBE, J.

DATE : 26th FEBRUARY 2026.

P.C. :

1. Heard Mr. Ashraf Kazi, learned Advocate for Applicants and Mr. Karmakar, learned A.P.P. for the State. By this Application filed under Section 528 of BNSS the Applicants have sought for the following substantive relief :-

“That this Hon’ble Court may be pleased to quash and set aside the Order of the Ld. Sessions Court of Framing of Charge dated 31/01/2026 in Sessions Case No. 119/2025 and pass any other order in the interest of justice.”

2. Mr. Ashraf Kazi submits that the grievance of the Applicants is in respect of the charge in Sessions Case No. 119 of 2025 being framed without notifying the date of the matter and without

hearing / affording an opportunity of hearing to the Applicants before passing the order framing charge. He relies on paragraph No. (F) on Page 6 of the application paper book which reads as follows:

“F. The Applicants submit that, on 31/01/2026, Accused No. 1 was not physically produced from the jail, present Applicants were not given documents they requested for under section 207 of Cr.PC. nor were they given chance to a lawyer to peruse the records but instead the Charge came to be framed against the Applicants. The Applicants contend that no arguments were heard, nor were any opportunity provided for a hearing on the charges through advocate. Furthermore, as he was appearing he wasn't fully aware of the proceedings. Consequently, the Applicants were denied the opportunity to be heard on the Framing of charges.”

3. Mr. Karmakar, learned A.P.P. for the State submits that the Roznama dated 31st January 2026 of Sessions Case No. 119 of 2025 does not indicate the matter being fixed for framing of charge and / or Applicants being afforded a hearing before passing the order directing framing of charge.

4. Mr. Ashraf Kazi, learned Advocate relies on the decision of this Court in the case of ***Sanjay Hariram Agrawal Vs. State of Maharashtra and Another*** passed in Writ Petition No. 77 of 2026 dated 13th January 2026 which according to him is on identical issue.

5. Arguments heard. Perused records.

6. Facts which are not in dispute are that the Additional District

and Sessions Court, Junnar (Sessions Court) passed order dated 31st January 2026 on Exh -1 on the file of Sessions Case No. 119 of 2025 ordering framing of charge. Roznama dated 31st January 2026 does not indicates the Applicants being heard. Mr. Ashraf Kazi submits that on 31st March 2026 even the prosecution did not advance any arguments.

7. Mr. Kazi submits that though this Application is filed on behalf of Accused No. 2 and 3, he represents the Accused No.1 in Sessions Case No. 119 of 2025 who is presently in custody. He submits that this Application be treated as an grievance on behalf of the Accused No.1 (Latif Pathan) also, who is presently in custody. He submits that he has instructions from Accused No.1 to make a statement before this Court that the Accused No.1 is aggrieved by the impugned order and therefore Mr. Ashrf Kazi learned Advocate for the Applicants requests that the impugned order dated 31st January 2026 be set aside qua all the Accused Sessions Case No. 119 of 2025. Mr. Karmakar, learned A.PP. submits that this would be a proper recourse.

8. Mr. Ashraf Kazi states that on the date fixed in the matter for framing charge none of the Applicants would take adjournment on any ground and would advance their case/arguments before the Additional District Judge and Sessions Judge, Junnar.

9. Mr. Ashraf Kazi undertakes to produce this copy before the Additional District and Sessions Judge, Junnar.

10. Scheme of Section 239 and 240 of Code of Criminal Procedure, 1973, requires Magistrate to provide an effective

opportunity of hearing to the Prosecution as well as to the Accused before charge is framed. Order dated 31st January 2026 does not indicate the Applicant was afforded any opportunity of hearing before framing of charge. Roznama dated 31st January 2026 relied by Mr. Ashraf Kazi does not record the Magistrate had heard the Prosecution or the Accused. Thus, the Applicants had no opportunity. For this reason alone, the order dated 31st January 2026 of framing charge against the Applicants deserves to be quashed and set aside. Useful reference can be made to the view expressed in the case/s of *Bharat Uttam Rajurkar And Others v/s. The State of Maharashtra*¹; *Zenon John Pereira v/s. The State of Maharashtra And Anr*²; *Khurshid Jaat Imran Jaat v/s. The State of Maharashtra*³; *Ajay Arun Kumar Chougule v/s. The State of Maharashtra*⁴; *Ambadas Kashirao Kharad v/s. The State of Maharashtra*⁵; *Wasumati Ashok Thakre And Another v/s. The State of Maharashtra*⁶ and *Sheikh Rashid v/s. The State of Maharashtra And Another*⁷, wherein this Court has held that an opportunity of hearing is required to be afforded to the Accused prior to framing of the charge.

11. In view of the above, the present Application is partly allowed on the following terms :-

a) Order dated 31st January 2026 impugned in this Application as well as the charge as framed against the

1 Criminal Writ Petition No. 1232 of 2017 decided on 12.01.2018.

2 Writ Petition No. 5915 of 2025 decided on 18.11.2025.

3 Criminal Revision Application No. 25 of 2025 decided on 24.02.2025.

4 Criminal Application No. 1298 of 2018 decided on 04.12.2019.

5 2007(1) Bom.C.R. (Cri.) 881.

6 Criminal Revision No. 135 of 2010 decided on 12.08.2010.

7 Criminal Revision Application No. 74 of 2024 decided on 02.07.2024.

Applicants, stand quashed and set aside.

b) Applicants shall appear before the learned Additional District and Sessions Court Junnar on 9th March 2023.

c) Learned District and Sessions Court Junnar shall pass an order on framing of charge after providing an effective opportunity of hearing to the Prosecution and the Applicants (Accused), in accordance with law.

d) No order as to costs.

[ASHWIN D. BHOBE, J.]