

18.02.2026

Present: Sh. Ajay Kumar Aggarwal, Ld. Substitute Addl. PP for the State.
Accused Ravi (on bail) in person.
Accused Sumit produced from JC by CJ-01 through VC.
Accused Arun produced from JC by CJ-03 through VC.
Accused Amit produced from JC by CJ-04 through VC.
Ms. Malvika Kulkarni, Ld. Counsel for accused Sumit through VC.
Sh. Rajesh Rathore, Ld. Counsel for remaining accused persons.

1. By this order, this Court shall dispose of application under Section 216 Cr. PC/239 of BNSS filed on behalf of prosecution seeking addition of charge framed against accused persons.

2. Arguments have already been heard on behalf of State and accused persons as well and today, matter is listed for orders.

Brief facts

3. Accused persons are facing trial to have entered into a criminal conspiracy to commit crime and in the intervening night of 08th /09th February, 2021 killed Heena by stabbing and strangulating her and thereafter, caused to disappear the evidence of the offence and gave false information to screen the offenders. Accordingly, vide order dated 23.03.2023, charges were framed against all the accused persons under

Section 302 read with Section 120B IPC; Section 201 IPC against accused Sumit; Section 201/120B IPC against accused Arun Diwakar @ Chhota Gabbar and Amit @ Chuha and Section 380 read with Section 411 IPC against accused Ravi.

Arguments addressed on behalf of applicant/State

4. Ld. Addl. PP for the State submitted that all the accused persons are facing trial for the offences under Section 302/120B, additionally, accused Sumit for the offence under Section 201 IPC, accused Arun Diwakar @ Chhota Gabbar and Amit @ Chuha for the offence under Section 201/120B and accused Ravi for the offence under Section 380 r/w Section 411 IPC; that during investigation exhibits collected/lifted from the spot as well as blood stained wearing cloths of accused persons at the time of incident and blood stained knife were sent to FSL, however, their result was not received when the respective charges were framed against the accused persons i.e. till 23.03.2023; that FSL result of said exhibits received and filed before the Court through supplementary chargesheet on 20.05.2024; that FSL result reveals that the blood sample of accused Sumit matched with the semen stains on underwear of deceased, vaginal swab of deceased, semen stains on bedsheet and anal swab of deceased; that blood sample of deceased Arun also matched with semen stains on bedsheet; that blood sample of accused Amit matched with nail clippings of deceased, therefore, addition of charge under Section 376A, 376D and 377 IPC against the accused persons be framed.

Arguments addressed on behalf of accused Sumit

5. Ld. Counsel for accused Sumit vehemently opposed the present application and argued that no offence under Section 376A or 377 IPC is made out against the accused Sumit in the absence of essential ingredients of provisions of law. He further argued that it is an admitted case of consensual physical relationship between the deceased and accused Sumit prior to the incident, hence, mere detection of semen, without corresponding medical evidence of force or injury, cannot convert a consensual act into an offence of rape. He further argued that the postmortem attributes the cause of death was combined effect of antemortem ligature strangulation of neck and haemorrhagic shock as a result of antemortem incised wound to neck produced by sharp edged weapon, hence, the the said death is linked to homicidal assault with sharp weapon and not to any alleged sexual act. He further argued that neither the chargesheet nor the MLC nor the Postmortem Report of the deceased suggest any injury on the private parts and without proof of coercion or absence of consent, Section 377 IPC cannot be invoked.

Arguments addressed on behalf of accused Arun Diwakar @ Chhota Gabbar, Amit @ Chuha and Ravi

6. Ld. Counsel for the accused persons opposed the present application and argued that the present application seeking addition of offence under Section 376 IPC by the prosecution is at this belated stage and prejudicial stage; that first the charge was framed on 23.03.2023 and even after receipt of FSL result dated 30.04.2024, the prosecution failed to take necessary steps on time and took substantive time to file the present application; that the Court is empowered to alter or add any charge **only**

when additional material clearly makes out a distinct and prima facie offence and mere presence of semen/DNA on the body or clothing of deceased is not conclusive to make a case of rape; that neither MLC nor Postmortem Report of deceased nor the FSL result relied upon by the prosecution suggest use of force, signs of resistance or penetration, which are essential to invoke a case under Section 376 IPC; that DNA evidence without corroboration or contextual narrative is not sufficient to infer a rape; that the prayer sought in the application is solely built upon the forensic data alone, which is inadequate to support the gravity of the charge sought to be added.

7. Both the Ld. Counsel for the accused persons also opposed the present application on its maintainability while stating that the prosecution has no right to move such application.

Rebuttal arguments

8. However, Ld. Addl. PP for the State has filed case law on the point that the prosecution is well within its power to move such an application, however, it is discretion of the Court to add or alter the charges.

8.1 To substantiate her arguments, Ld. Addl. PP for the State has placed reliance upon the judgment rendered by Hon'ble Supreme Court of India in Crl. Appeal No. 1934/2019 titled as ***Dr. Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors. (Dated 21.01.2020)***, wherein such application was filed and allowed by the Ld. Trial Court and it was held that :

“20 From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time

before judgment is pronounced” in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court’s power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

Relevant Provision of Law and Case Law

9. This Court heard the rival submissions advanced on behalf of Ld. Addl. PP for the State and Ld. Counsels for the accused persons and perused the entire material available on record.

10. Before proceedings further, this Court deems it appropriate to reproduce the relevant section involved in adjudicating the present application i.e. Section 216 Cr. PC, which reads as under :

“216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge has been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

11. Hon’ble Supreme Court of India in case titled as ***Jasvinder Saini Vs. State (NCT of Delhi)*** reported in ***(2013) 7 SCC 256***, has held that

“11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be

followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court."

12. In a recent case, Hon'ble Supreme Court in case titled as ***Directorate of Revenue Intelligence Vs. Raj Kumar Arora & Ors.*** reported in ***2025 SCC OnLine SC 819***, while discussing the mandate of Section 216 Cr. PC has referred various judicial precedents on the subject and held that :

“ 143. Under this provision, any Court is empowered to “alter” or “add” to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 Cr.PC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

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149. Therefore, to alter a charge would be to vary an existing charge and make a different charge. Hence, when the Court exercises its power under Section 216, either on its own motion or on an application made by the parties, and “alters” a charge, it would be necessary that the existing charge be varied and a new charge be made. XXXXXXXXXXXX”

13. From the above, it is abundant clear that the Court has been given exclusive power under Section 216 Cr.PC to alter or add any charge at any stage before the pronouncement of the judgment.

Court's Observation

14. In the instant case the accused persons are facing trial for different offences and vide order dated 23.03.2023, respective charges were framed against them, as detailed in the preceding paragraphs.

15. The FSL result dated 30.04.2024 has been filed through supplementary chargesheet before the Court on 21.05.2024. The prosecution has formed the FSL Result as basis for preferring the present application with prayer that there is sufficient *prima facie* material brought on record in form of FSL result by the prosecution to add charges against the accused persons under relevant sections of sexual assault committed upon the deceased before stabbing her and strangulation.

16. As per aforesaid FSL result, human semen was found on following exhibits :

Exhibit	Particulars of Exhibit
2(c)	Underwear of the deceased
2(e)	Bedsheet
11	Condom
25(b)	Cotton Wool Swab labelled as High Vaginal of deceased
25(c)	Cotton Wool Swab labelled as Low Vaginal of deceased
25(d)	Cotton Wool Swab labelled as Peri Vaginal of deceased
25(e)	Cotton Wool Swab labelled as Anal Swab of deceased
26(a) & 26(b)	Nail Clippings of deceased.

17. The blood sample of **accused Sumit** is stated to have **matched** with the male DNA Profile generated from source of exhibits 2(c) [**Semen stains on underwear of deceased**], 2(e)-1 [**Semens stains on bedsheet**], 11 [**Condom from SOC**], 25 (b) [**Vaginal swab of deceased**], 25(e) [**Anal Swab of deceased**],

18. The blood sample of **accused Arun** is stated to have **matched** with DNA profile generated from Source of Exhibit 2(e)-2 [**Semens stains on bedsheet**].

19. The blood sample of **accused Amit** is stated to have **matched** with DNA profile generated from Source of Exhibits 26(a) and 26(b) [**Nail Clippings of the deceased**].

20. This conclusion in FSL Report *prima facie* surfaces that the deceased was gang raped by the aforesaid accused persons since semen stains were found on the private parts and innerwear of the deceased as well as on the bedsheet recovered from the scene of crime. There have been resistance marks also in form of nail clipping matching with DNA profile of accused Amit.

21. Ld. Counsel for accused Sumit argued that admittedly, he was in consensual relationship with the deceased, hence, the question of rape by him does not arise. However, a previous consensual relationship cannot wash away or exonerate accused Sumit from the offence of a gang rape since consent by the deceased has not been proved for the same.

22. However, it has been argued and brought on record that the deceased died due to stabbing and strangulation and not because of commission of rape against her, hence, section 376A is not made out in the present matter.

23. In view of the aforesaid discussion, the present application stands allowed since a *prima facie* case under Section 376 (D) and 377 IPC is made out against accused Sumit, Amit and Arun.

24. Application stands disposed of.

(Shefali Barnala Tandon)
ASJ-06 / New Delhi District
Patiala House Court/18.02.2026 (gr)