

**Criminal Case No. 97/2018****Order below Exhibit 21**

(1) The present application has been filed by the accused under Section 239 of the Code of Criminal Procedure (Cr.P.C.), contending that the original complainant, Bharatsinh Hemantsinh Chudasama, filed a complaint against the present accused on 14/07/2017, which was registered as C.R. No. I-21/2017. After investigation, the Investigating Officer filed a charge sheet against him, and thereafter this Court issued summons to the accused. Thereafter the accused has been given the papers of the case except FSL, and thereafter the accused wants to file the application for discharge, however the Court has framed the charge against him. Subsequently, the copies of the FSL report were supplied to the accused on 30/07/2022. Further it is contended that looking to the charge sheet, the papers on record, and the FSL report, no prima facie case appears to have been committed by the accused. If the trial were to proceed, it would be futile and would conclude inconclusively. The accused further contends that he is innocent and is suffering from jaw cancer, and to face the trial he is required to travel frequently from Ahmedabad, which would subject him to physical and mental hardship. Hence, considering the reasons mentioned below, the accused prays to be discharged from the said offences. It is contended that the accused is innocent and has not committed any crime. The accused is the owner of an electronic media company, K-News, and is duty-bound to place the true facts before the general public. He has published various articles

against the Government in his news channel. Therefore, the government, with an intention to suppress the truth and pressurize the accused, has filed the present complaint on misleading grounds and misused the police machinery to lodge this baseless complaint. It is further contended that, considering the statements, documents, and the FSL report, no prima facie case is made out against the accused. The accused has not taken part in any kind of offence. Even assuming, for the sake of argument, that the allegations in the complaint are true, the complainant himself has stated that he gave Rs. 3,50,000/- to the accused for obtaining an order for an arms licence. The accused has already returned the said amount to the complainant, and this fact is mentioned in the complaint itself. Hence, no offence is made out against the accused. It is also contended that, under Sections 467, 468, and 470 of the Indian Penal Code, an offence is said to be committed only when a document is fabricated and used as genuine with knowledge of its falsity, for wrongful gain or wrongful loss to another. From the complaint, it is prima facie clear that the accused has neither fabricated any document nor used any false document for such purposes. Therefore, offences under Sections 406, 420, 465, 466 etc of IPC are not made out. With regard to Section 66-C of the IT Act, as mentioned in the charge sheet, such offence is said to have been committed only in cases where an electronic signature or password is misused. In the present case, no such electronic signature or password has been used by the accused. Furthermore,

if Section 467 IPC is invoked, Section 66-C of the IT Act cannot simultaneously be applied, because if a document is fabricated, the use of a bogus electronic signature or password becomes irrelevant. Hence, it is clear that a false and fabricated case has been filed against the accused. It is further contended that, according to the complaint, the accused had allegedly prepared a letter for an arms licence and sent it through WhatsApp in PDF format to the complainant. The FSL report has also been filed before this Court. However, the FSL report does not prove that the accused fabricated the alleged document. Thus, on the basis of the FSL report, the offence is not proved against the accused. Looking to the charge sheet and the papers filed along with it, no offence is made out against the accused. Considering the various judgments of the Hon'ble High Courts and the Hon'ble Supreme Court, it is settled law that if no prima facie case is disclosed from the charge sheet and papers along with it, and if the accused is facing serious medical issues, it would be irrelevant and unjust to subject him to a lengthy trial. Therefore, the accused prays that he be discharged as per the provisions of law, and specifically under Section 239 of the Cr.P.C.

- (2) Heard the learned advocate for the accused. It is submitted that the complainant is present in Court and that the present complaint has been obtained under pressure, by threatening him to falsely implicate. The learned advocate further submitted that the contents of the application may be treated as his arguments, and he has accordingly prayed for discharge of the accused

under Section 239 of the Cr.P.C.

(3) On the other hand, the learned APP has submitted that, while deciding the present application, the Court is only required to examine whether a *prima facie* case has been made out. The issues as to whether the documents are bogus or fabricated, or whether the licence is forged, are not matters to be decided at this stage. It is further submitted that the transaction of money is admitted by the accused in present application, and therefore the contentions raised by the accused cannot be considered at this juncture. Hence, the learned APP has prayed for rejection of the application. In support of his submissions, he has relied upon the following judgments, and by relying on the ratios laid down by the Hon'ble the Apex Court, has prayed for dismissal of the present application.

1. 2013 (11) SCC 476, Sheoraj Singh Ahlawat Versus State Of Uttar Pradesh
2. 2010 (9) SCC 368, Sajjan Kumar Versus Central Bureau Of Investigation
3. 2010 (2) SCC 398, P.Vijayan Versus State Of Kerala
4. 2012(9) SCC 460, Amit Kapoor Versus Ramesh Chander

(4) Heard the learned advocate for the accused and learned APP. It is pertinent to note that the present application has been filed by the accused after framing of charge against him. The Charge was framed against the accused on date 27/11/2019 vide Ex. 11, and the present application is filed by the accused on date 24/08/2022. At this stage, it is required to go through provisions of Section 239 of the Code of Criminal Procedure, which reads as follows.

*Section 239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

- (5) On a bare reading of the provisions of Section 239 of the Cr.P.C., it is crystal clear that a discharge application is required to be filed **before** the charge is framed against the accused. However, in the present case, the charge was already framed on 27/11/2019, whereas the present application has been filed much later, on 24/08/2022, on the ground that the copy of the FSL report was supplied to the accused only on 30/07/2022. Once the charge is framed, the Court cannot review its own order even if the contention raised by the accused with respect to denial of fair trial and even on grounds of natural justice. It is pertinent to note that certain provisions have now been incorporated in the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), which has come into effect from 01/07/2024. Under the BNSS, the time for filing a discharge application has been fixed as 60 days from the date of supply of copies of police papers. However, no such limitation period was prescribed earlier under the Cr.P.C.

- (6) In the present case, the accused appeared before this Court on 16/03/2019 and was supplied with the charge sheet and police papers.

Thereafter, the Court granted several adjournments, yet the accused failed to file a discharge application. Moreover, the accused remained absent on multiple occasions. This Court, while passing order below Ex. 8 (Exemption Report), specifically directed the accused to remain present as the matter was pending for plea/charge, and the last opportunity was granted. On 21/10/2019, the accused appeared and sought time for filing a discharge application after receiving the FSL report. Even then, the Court granted a final chance to file such an application on the next date, if so desired. However, the accused again remained absent on 20/11/2019 and was granted last exemption. Subsequently, on 27/11/2019, the charge was framed against him. From the above sequence, it is clear that this Court had afforded ample opportunities to the accused to file a discharge application, but he failed to do so. Once the charge is framed, this Court cannot entertain a discharge application. In the present application, the accused has submitted that the complaint was obtained by pressurizing the complainant. However, the veracity of the complaint, i.e., whether it is genuine or not, is a matter that can only be adjudicated upon after the conclusion of trial. At the stage of framing of charge, the Court is only required to see whether a prima facie case is made out or not. In the present case, while framing the charge vide Ex. 11, this Court has already held that a prima facie case is made out against the accused. Therefore, once the charge has been framed, this Court cannot entertain the present application, and the same is liable to be rejected.

(7) At this stage, it is required to go through the observation made by Hon'ble the Apex Court in case of *Bharat Parikh Versus C.B.I.*, which reads as under:

14. Appearing for the Central Bureau of Investigation (hereinafter referred to as 'CBI'), learned Additional Solicitor General, Mr. Mohan Parasaran, submitted that a similar application (Criminal Application No.1129 of 1997) made by the appellant had been dismissed on 2nd November, 1998, as none of the parties were represented at the time of hearing of the application. He also submitted that having regard to the decision in *Debendra Nath Pathi's case* (supra) and also in *Ratilal Bhanji Mithani's case* (supra), **the earlier ambiguity had been removed and it had been clearly laid down that not only could the trial court not recall its order framing charge, which would result in re-opening of the proceedings,** but it could not also consider the material produced on behalf of the accused at the time of framing charge.

15. Of the two propositions raised in this appeal, the first proposition has been completely answered in *Debendra Nath Padhi's case* (supra) regarding the trial court's power to recall its order framing charge against an accused. Having regard to the language of Secs. 207 and 227 of the Code of Criminal Procedure, while framing charges the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. The decision in *Satish Mehra's case* (supra) having been overruled in *Debendra Nath Padhi's case* (supra) the contention of Mr. Desai that the Magistrate should have re-opened the matter on the basis of the documents produced by the prosecution at the instance of the accused, is no longer res-integra. ***The question of discharge by the learned Magistrate after framing of charge does not, therefore, arise, notwithstanding the submissions advanced with regard to denial of natural justice and a fair and speedy trial as contemplated under Art. 21 of the Constitution, which have no application whatsoever to the facts of this case.***<sup>1</sup>

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<sup>1</sup> *Bharat Parikh Versus C.B.I.* reported in 2008 (10) SCC 109

(8) From the settled position of law, it is clear that once the charge has been framed against the accused, this Court is not empowered to entertain an application for discharge. In view of the aforesaid reasons, the present application, having been filed after the framing of charge, is not maintainable and is liable to be dismissed. Under such circumstances, this Court hereby passes the following order in the interest of justice.

**ORDER**

1. The application filed by the accused is hereby dismissed.
2. No order as to costs.

Signed and pronounced in the open court on today's date.

Date: 03/09/2025

Place: Dholera

**(Mr. Piyush Navinbhai Lakhani)**

Principal Civil Judge and  
Judicial Magistrate First Class  
Dholera, Dist. Ahmedabad(Rural)  
Judge Code GJ01565