

CC/457/2025

Order on discharge application of the accused vide
exhibit 3

APPEARANCE :-

Learned APP Shri P R CHAUDHARI for the complainant.

Learned advocate Mr. D B PATEL for the accused.

1. The present accused has filed an application in connection to the criminal case number 457/2025 in pursuance to the FIR number 11199005230988 of 2023 registered with NETRANG police station, for the alleged offences punishable under **SECTIONS 323, 504, 506(2)** for discharge as per the provisions of the BNSS/CRPC and has argued that there is no prima facie case against the accused and has submitted written arguments in this case vide exhibit 6.
2. The applicant-accused has preferred the present application under provisions of BNSS 2023 seeking prayer to discharge the present applicant in connection to the present criminal case.

The brief facts of the case are as under

3. The said FIR is filed against the present applicant namely accused as on dated 05/12/2023.
4. The brief allegations of the said FIR number are that the present accused named Sanjaybhai sundarbhai rajwadi on dated 04/12/2023 in the afternoon at the place -house of Hasmukh patel. The accused assaulted the present complainant named shivlalbhai chitubhai damjibhai.
5. The investigation was carried out by the investigating officer statements of witnesses were recorded, Charge-sheet was filed against the accused and present criminal case was registered vide number 457/2025.

Arguments canvassed by the learned advocate Mr. D B Patel on the behalf of applicant-accused.

6. Learned advocate has argued that there is no material or evidence available on record which connects the present applicant accused with the commission of offence further it is submitted that even if the entire charge-sheet is taken as a gospel

truth the same do not constitute any offence against the present applicant as alleged.

7. Further the learned advocate appearing for the applicant accused has argued that the present applicant is not present at the scene of the offence. It is argued that the name of the present applicant is only on the basis of prior rivalry. further it is the say of the learned advocate that there are no deposition of independent witnesses by the investigating officer or there is no other material connecting the present applicant accused to the said alleged offence.
8. There are no other statements of witnesses which reflects the involvement or presence of the present applicant at the place of the offence and neither there are any materials pointing out the involvement of the present applicant on record.
9. Lastly it is prayed to discharge the present applicant-accused for the said offences.

Arguments canvassed by the additional public prosecutor.

10. Learned Additional Public Prosecutor has submitted that there is a prima facie case against

the present applicant-accused and after thorough investigation and recording of statements of witnesses and panch witness the present applicant-accused is charge-sheeted as per section 173 of the code of criminal procedure.

11. Learned Additional Public Prosecutor has further submitted that there is enough ample material available on the record as evidence and the said material evidences and documents is annexed with the charge-sheet.

12. There is a specific role assigned to the present applicant-accused, the allegations in the FIR is that the present applicant-accused has assaulted the complainant which was also told to the doctor during the treatment of the complainant. Lastly it is requested to reject the present application of the accused and to frame the charges as mentioned in the charge-sheet.

Law relating to discharge

13. Before proceeding to discuss the facts of present case let the relevant law of discharge be discussed.

2018 (13) SCC 455 (CRPC) Para 7 and para 10

In the case of Sajjan Kumar v. CBI (2010) 9 SCC 368, this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles:

(i) The Judge while considering the question of framing the charges under Section 227 of the CRPC 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. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court,

any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the

prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

PARA 10: It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that material brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

14. The Hon'ble apex court in the case of 2019 4 ALJ 154

While considering discharge application, the court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings the court is not to hold the mini trial by marshalling the evidence.

15. The hon'ble apex court in the case of 2020 (2) SCC 768

Legal principles applicable in regard to an application seeking discharge:

Para 17: This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., P. Vijayan v. State of Kerala and discern the following principles:

17.1 If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2 The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3 The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

17.5 It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7 At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8 There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

Para 18: The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CRPC (See State of J & K v. Sudershan Chakkar). The expression, "the record of the case", used in Section 227 of the CRPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of

the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See State of Orissa v. Debendra Nath Padhi).

16. **The issue is whether the present accused person is liable to be discharged from the present facts and circumstances of the case?**

Reasons and findings

17. Having heard the arguments advanced by both the learned advocates and after perusal of the documents on record. Considering the submissions and arguments advanced before this court. This court is of the opinion that in the interest of justice and in the present facts and circumstances of this case present application to discharge the applicant-accused of this criminal case deserves to be rejected. Following are the findings and reasons for the same.

18. After perusing the entire charge-sheet and the documents annexed with the charge-sheet it appears that the name of the present applicant-accused is mentioned in the FIR. what is the exact specific role of the present applicant-accused involved in the commission of the crime, it is stated

in the supporting documents. There is ample material or evidence available on record which connects the present applicant-accused with the commission of offence.

19. Further from the allegations made in the FIR it is true that the present applicant-accused is present at the scene of the offence when the assault was conducted. After perusal of the statements annexed with charge-sheet it is true that the name of the present applicant-accused is there and specific allegations are made in this case.

20. Therefore, this court is inclined to put a finding that the charge-sheet against the applicant-accused appears to be genuine though typographical errors are there but the charge-sheet should be read as a whole and the court cannot read only specific portion, and hence, in view of the foregoing discussion and finding, the following final order is passed in the interest of justice.

FINAL ORDER

1. The discharge application of the accused is hereby rejected.

2. No order as to costs.
3. The accused should remain physical present on next date 5th January 2025.

Pronounced in the open Court today on this
18th December 2025.

(Bharat Ramchand Lakhwani)
Judicial Magistrate First Class, netrang
Judge Code-GJ01711