

GJBK010030102021



**IN THE SESSIONS COURT BANASKANTHA, AT
PALANPUR.**

Sessions Case No. 107/2021

Complainant :- State of Gujarat.

Versus

Accused :- Ashifbhai Habibbhai Marediya & ors.

Order below Exh. 14.

1. The application below Exh. 14 is filed by the accused (1) Sharifbhai Vajirbhai Sunasara, (2) Latifbhai Sharifbhai Sunasara, (3) Ishmailbhai Yusufbhai Sunasara, (4) Mustakimbhai Rahimbhai Sunasana, (5) Javidbhai Sharifbhai Korvaliya, (6) Shafikbhai Sharifbhai Korvaliya, (7) Ishmailbhai Nasirbhai Korvaliya, (8) Nasrulla Karimadbhai Marediya, (9) Jabirbhai Yasinbhai Marediya (Accused No. 27, 24, 23, 18, 28, 25, 20, 19 & 22) under Section 227 of Cr.P.C., to discharge from charges levelled

against them on the basis of the FIR being registered with Vadgam Police Station vide I. CR. No. 190 of 2020 for the offences punishable under Sections 147, 148, 149 307, 323, 324, 294 (B), 337, 506(2), 188 of Indian Penal Code (for short "IPC") and Section 135 of Gujarat Police Act with Section 51(B) of National Disaster Management Act.

2. A complaint filed by one Shubhraben Yasinbhai Habibbhai Chaudhary (Muslim). In the complaint it is alleged that on 29.04.2022 when she was going to give Mamta Card to Sakiraben Sunsara at 8.10 p.m. that time people were gathered near Milk Dairy as a Asha Worker she took photographs and instructed them due to pandemic Covid -19 lockdown is declared why you are gathered, keep same distance and put on mask. At that time Imran Suleman Korvadiya, Taiyab Sharif Korvadiya, Harun Sharif Korvadiya, Sohil Ushman Korvadiya, Junaid Abbas Marediya, Vahis Sharif Sunsara, Asif Habibbhai Sunsara, Sahidbhai Habibbhai Marediya, Idrishbhai Rajibhai Marediya, Rahemtulla Habibbhai Marediya had abused and that time her husband came there and he intervened and told them why abuse his wife ? At that time they have made an assault with deadly weapons and mob

gathered and pelted stone. In this connection complaint being lodged against 16 accused.

3. Investigation was carried out and the Charge-sheet came to be filed before the learned Judicial Magistrate First Class, Vadgam, being a Criminal Case No. 5 of 2021 and learned Judicial Magistrate First Class, Vadgam committed the present case to this Court since alleged offence was Sessions triable.
4. As per the say of the present applicants / accused whatever statements recorded by Investigagion Officer during the investigation the name of present applicants /accused arraying as accused. Though, 17 statements of witnesses being recorded, no one witness has spelled out a role or spoken about the involvement of present applicants / accused in alleged commssion of crime. Even they have not stated about the present at the spot or role of accused. Though subsequently, the names of present applicants / accused are not mentioned in investigation paper merely based on medical papers. Accused are implecated as an accused. Merely, based on

reputation of people they are dragged in to present litigation. Hence, he has requested to discharge them.

5. I have heard the Ld. Advocate Mr. M. L. Chaudhary for the accused and Ld. P.P. Mr. N. M. Joshi for the state and perused the investigation papers.
6. The moot question is required to be considered in the present matter is that, is there prima facie allegations or material are in order to prove the charge against the the accused (1) Sharifbhai Vajirbhai Sunasara, (2) Latifbhai Sharifbhai Sunasara, (3) Ishmailbhai Yusufbhai Sunasara, (4) Mustakimbhai Rahimbhai Sunasana, (5) Javidbhai Sharifbhai Korvaliya, (6) Shafikbhai Sharifbhai Korvaliya, (7) Ishmailbhai Nasirbhai Korvaliya, (8) Nasrulla Karimadbhai Marediya, (9) Jabirbhai Yasinbhai Marediya (Accused No. 27, 24, 23, 18, 28, 25, 20, 19 & 22) does exist to frame the charge u/sec. 147, 148, 149 307, 323, 324, 294 (B), 337, 506(2), 188 of Indian Penal Code (for short "IPC") and Section 135 of Gujarat Police Act with Section 51(B) of National Disaster Management Act.

7. The provision under Section 227 is as under: 227. Discharge.-

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

8. I have given thoughtful consideration, arguments canvassed by the learned Advocates, prior to deal with the present application, the legal principals applicable regards to the application seeking discharge is required to be considered. Prior to deal with submissions it is required to mentioned that scope of exercise jurisdiction 227 which may be summarized is as under:

(i) 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.

(ii) The Trial Judge is not a mere Post Office to frame the charge at the behest of the prosecution.

(iii) 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.

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

(v) It is open to the accused to explain away the materials giving rise to the grave suspicion.

(vi) 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 mean entitle the Court to make a roving inquiry into the pros and cons.

(vii) 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.

(viii) 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.

9. I have gone through the complaint, Investigation papers and statements recorded during the investigation. Prima facie, it appears that during the investigation initially complaint was filed against (1) Vahid Sharif Sunsara, (2) Imran Suleman Korvadiya, (3) Idrishbhai Rajibhai Marediya, (4) Asif Habibbhai Marediya, (5) Sahidbhai Habibbhai Marediya, (6) Rahemtulla Habibbhai Marediya, (6) Sharif Vajirbhai Kolvadiya, (7) Harun Sharif Korvadiya, (8) Sohil Ushman Korvadiya, (9) Junaid Abbas Marediya, (10) Aykub Sharif Korvadiya, (11) Rahim Alimat Sunsara, (12) Taiyab Sharif Korvadiya, (13) Afzal Habib Sunsara, (14) Habib Rasul Sunsara, (15) Nooriben Habib Marediya, (16) Zikranaben Wahid Korvadiya. Then during the course of investigation in total 17 name are disclosed during the investigation from the statement recorded of witnesses. Going through the medical

certificate and history also names of any accused is given so far present applicants / accused are concerned, no one witness has uttered whisper about their presence or involvement in the offence. Merely based on case papers name of present accused is implicated in the alleged offence and their name is involved in the Charge-sheet. It is worth to mentioned that in the entire bulky record and statement of witnesses no were found the name or involvement of present applicants / accused, even injury certificate produced of injured at Mark- 4/13 to Mark- 4/16 issued by C.H.C. Vadgam, Mark- 4/ 21 & Mark-4/22 issued by General Hospital, Palanpur. No where name of assailant has been given in the history. While case paper produced at Mark – 4/17 to Mark – 4/20 where in names of present accused / applicants have been mentioned. Pursunt to that the names of present accused are implicated in the offence. Perusing the case papers, this case papers are for diagnosis and prescriptions of medicines, nature of injury is mentioned and subsequently word inserted injury done by present accused persons and Medical Officer has put his signature. Perusing the aforesaid facts, prima facie it appears some suspicious as Medical Certificates are

finally prepared based on case papers. But, in Medical Certificates the name of assailants / accused were missing. Hence, to verify aforesaid facts, this Court has called for M.L.C. register of C.H.C. Vadgam. Perusing the aforesaid M.L.C. register, it appears that register is not properly maintained and at Serial No. 33 name is scored out, no where mentioned time of admission, who brought them such column left blank and the incharge signature of Incharge Medical Officer is not put them, merely the words of Dr. Dabhi and intial three column on the same page signature of Doctor is found. Thus, on the same day presence of Doctor and entry in the M.L.C. register is found satisfactory, Hence, merely based on said entry in the case papers in the absence of any allegation and role of accused spelled out by any injured witness or witnesses. Order of framing a charge affects a person's liberty substantially and therefore, it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It is cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. It is humble opinion of this Court, So far presnet applicants / accused are concerned, going through the entire

evidence on record, no any material or evidence which would that suggest the involvement of accused. there is no any sufficient material collected by Investigation Officer during the Investigation which may enough to proceed against the accused and to frame the charge at this juncture. However, it is kept open for the prosecution if, during the course of recording evidence, if any material or evidence broght on record against the accused then prosecution may have liberty to take appropriate recourse known by the law.

10. In wake of above discussion and forgoing reasons, I am considered of opinion that, the accusation made against the present applicants / accused is concerned there is no sufficient material and grounds for proceeding against the accused. Hence I am inclined to allow present application and I pass following order.

:- ORDER :-

The present application filed below Exh. 14 by accused (1) Sharifbhai Vajirbhai Sunasara, (2) Latifbhai Sharifbhai Sunasara, (3) Ishmailbhai Yusufbhai Sunasara, (4) Mustakimbhai Rahimbhai Sunasara, (5) Javidbhai Sharifbhai Korvaliya, (6) Shafikbhai Sharifbhai

Korvaliya, (7) Ishmailbhai Nasirbhai Korvaliya, (8) Nasrulla Karimadbhai Marediya, (9) Jabirbhai Yasinbhai Marediya (Accused No. 27, 24, 23, 18, 28, 25, 20, 19 & 22) is hereby allowed and ordered to discharge from the charges levelled against them under Section 147, 148, 149 307, 323, 324, 294 (B), 337, 506(2), 188 of Indian Penal Code (for short "IPC") and Section 135 of Gujarat Police Act with Section 51(B) of National Disaster Management Act.

*Dictated, Signed and pronounced in open Court today on this
11th day of July , 2022.*

(Hasmukh D. Suthar)
Sessions Judge
Banaskantha at Palanpur
Code No. : GJ00911

//A.B.G//