

IN THE COURT OF SESSIONS JUDGE
PORBANDAR

Order Below Application Exh.11
in
Sessions Case No.61/2024

- [1] This application is filed under Section-250 of B.N.S.S (corresponds to Section-227 of Cr.P.C.) seeking discharge from the offence punishable under Section-323, 326(b), 323, 504, 506(2), 114 of I.P.C. and Section-135 of the G. P. Act.
- [2] Learned advocate for the accused submits that initially FIR was lodged alleging commission of offence punishable under Section-323, 504, 506(2), 114 of I.P.C. and Section-135 of the G. P. Act, however, during the course of investigation vide report dated 31.12.2021 the accusation for offence punishable under Section-326(b) of I.P.C. was added which was approved by the concerned jurisdictional magistrate on 11.01.2022 and therefore, upon conclusion of investigation the charge-sheet was filed on 15.02.2024.
- [2.1] It is submitted that initially there was no mention of use of acid in the entire complaint by any of the complainant and the story of use of acid was introduced after delay of 11 day. It is submitted that there is no mention of any use of acid or any of the accused having a bottle of acid in his hand at the time of incident in the complaint and even as per the seen of panchanama on 09.09.2021 there is no

mention of any traces of acid found at the place of incident. It is further argued that even as per the arrest of accused panchanama pertaining to accused Samir Yunus Kadari (accused No.2) there is no recovery of bottle of acid and even the clothes of accused No.3 were not recovered or seized by the police during the investigation.

[2.2] It is submitted that the complainant did not disclosed about use of acid in the alleged assault in his history before the Medical Officer and the story of use of acid by the accused has been introduced belatedly through the statement of witness Kulsumben. It is also argued that during the course of investigation, the Investigating Officer sent a letter for obtaining the medical certificate of witnesses Usmangani, Kulsumben, Rafikbhai, Muskanben MLC No.731/2021 dated 08.09.2021 vide letter dated 12.09.2021 and thereafter, again a letter dated 09.10.2021 was sent for obtaining MLC No.731/2021 dated 08.09.2021 pertaining to treatment of witness Usmangani, Rafikbhai, Muskanben despite of that the Medical Officer rather than sending treatment certificate pertaining to MLC No.731/2021 sent MLC No.633/2021 and 697/2021 and the treatment certificates of witnesses Rafikbhai and Muskanben were not sent despite two reminders, therefore, for what reason the Medical Officer sent medical certificate of MLC No.633/2021 and 697/2021 instead of MLC No.731/2021 is doubtful and not explained by the prosecution. It is contended that witness Rafikbhai Halepotra having influential person and leading advocate of Porbandar is a

near relative of the said witness and therefore, using such influence, the story of acid attack has been belatedly included through the statement of witness Kulsumben and the household hydrochloric acid was sprinkled on the clothes of Kulsumben and thereafter, her clothes were handed over to the police and by using influence, the history of acid attack before the Medical Officer was also changed solely with a view to ensure that the accused herein are made to suffer by invoking grave offence.

[2.3] Learned advocate further submits that there is an absence of ingredients for invoking section-326(b) of I.P.C. There is no grave injury to the complainant or other witness including Kulsumben and there is no material to indicate that any injury was caused by acid attack and the story of use of acid at the time of incident is fabricated, hence, the accused may be discharged from the offence punishable under Section-326(b) of the I.P.C.

[3] *Per contra*, learned P. P. submits that the prosecution has adduced sufficient material collected during the course of investigation of the offence which is indicative of use of acid by the accused. It is further submitted that the contention with regard to belated recording of the statement of witness Kulsumben can be appreciated after the evidence is recorded in the matter and the same can not be merely because the statement of the said witness was recorded after 11 days of the incident. Learned advocate further argued that as per the prosecution case, the offence

punishable under Section-326(b) of the I.P.C. was added after it was reported by the FSL that the clothes of witness Kulsumben traces of hydrochloric acid.

[3.1] It is also submitted that as per the MLC No.633/2021 pertaining to treatment of witness Kulsumben, the said witness was examined by the Medical Officer on 08.09.2021 at 01:20 p.m. and the said witness gave history assault by accused Samir by sprinkling acid and as per the said medical certificate, the said witness had three injuries which were swelling on right chick with conjunctivitis right eye with tenderness, swelling lips and tenderness back of the scalp and it is noted that these injuries can be caused by acid and blunt hard object, therefore, having regard to the fact that use of acid at the time of incident is clearly spelled out from the statement of witness Kulsumben and is substantiated by the injury certificate issued by Medical Officer, General Hospital Porbandar, the present application is required to be dismissed. Learned P. P. further argued that the material sought to be produced by the prosecution can not be controverted or doubted at the stage of deciding discharge application and therefore, having regard to the over all facts and circumstances of the case, this application may kindly be dismissed.

[4] In light of the above submissions and upon perusal of the police papers, it is evident that the complaint was lodged by Usman Gani Suleman Dinani alleging commission of offence punishable under Section-323 504, 506(2), 114 of

the I.P.C. and Section-135 of the G. P. Act on 08.09.2021 alleging that on 08.09.2021 at 10:30 hrs. with a contention that the complainant and witnesses had gathering for Majalis at an open plot near Nava Kumbharvada, the accused No.1 questioned them about the gathering and started abusing them and also assaulted the complainant with fist and kick blows whereas the accused No.2 inflicted blow of wooden-plan to witness Rafikbhai and the accused No.3 & 4 assaulted witness Kulsumben and pushed her to the ground and it was also alleged that the accused gave death threats.

[4.1] Thus, it is evident that initially there was no mention of use of any acid bottle in the FIR, however, the statement of Kulsumben was recorded on 20.09.2021 wherein it was disclosed that during the incident, the accused Samir had a bottle of acid in his hand and he sprinkled acid on her and thereafter, she was assaulted with wooden-plank. It is evident from perusal of police papers that in the statement of witness recorded on 09.09.2021 there is no mention of use of acid in the attack by the accused by any of the witnesses, however, the statement of witness Kulsumben was not recorded on 09.09.2021. Thus, it was not the case where witness Kulsumben failed to disclose about use of acid in the offence and later on introduced the story of use of acid by the accused. Moreover, the injury certificate issued by the Medical Officer Porbandar indicates that witness Kulsumben was examined on 08.09.2021 at 01:20 p.m. and she gave history of assault by the accused Samir

sprinkling acid at around 11:30 a.m. on 08.09.2021 and the said witness Kulsumben is reported to have swelling on right cheek with conjunctivitis right eye with tenderness, swelling lips and tenderness back of the scalp. Moreover, the FSL report dated 23.12.2021 is also indicative of presence of traces of hydrochloric acid on the clothes of witness Kulsumben.

[4.2] In **AIR 2000 SC 2583: State of MP vs. Mohan Lal Soni-**

The Hon'ble Supreme Court while referring to several previous decisions, held that the crystallized judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude as to whether the materials produced are sufficient or not for convicting the accused. It was further held that, each case depends upon its particular facts and circumstances and sometime even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out.

[4.3] Having regard to the above discussion and keeping in view the settled legal position that while deciding the discharge application, material sought to be relied upon by the

prosecution is not to be controverted, coupled with the fact that the contention put forward by the learned advocate for the accused in the nature of fabrication of medical certificate and belated introduction of false story about use of acid attack, would qualify as defence and the same can only be considered at the time of adjudication of the case on merits after the parties have adduced evidence. Hence, it would not be permissible for this Court to enter into roving inquiry to test the veracity of the case of prosecution on merits at this stage. Accordingly, this Court is of the view that the present application is void of merits and accordingly following order is passed.

:: ORDER ::

(a) The present application Exh.11 filed by the accused to discharge for the offence punishable under Section-326(b) of the I.P.C. in the present Sessions Case, is hereby rejected.

(b) The accused are directed to remain present for framing of charge on next date.

Signed and pronounced in the open Court today
on this **11th DAY OF MAY, 2026 at PORBANDAR.**

Date:- 11.05.2026
Place:- Porbandar

(**M. A. BHATTI**)
Principal District & Sessions Judge,
PORBANDAR
Code No. **GJ01506**