

=====

**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS
JUDGE (MR.R.T.PANCHAL), AT PORBANDAR.**

=====

Order below Exh.11 in Sessions Case No.8/2021

- [1] The applicants/accused have preferred this application u/s.227 & 228 of the Cr.P.C. for discharge u/s.395, 397 & 398 of the I.P.C. in Sessions Case No.8/2021 arising out of the offence registered before the Ranavav Police Station vide C. R. No.I 11218015201218/2020.
- [2] Learned advocate Mr. S. D. Jokhia for the applicants/accused has mainly relied on the contentions raised in the memo of application and has argued that the F.I.R. bearing C. R. No.I 11218015201218/2020 came to be registered with the Ranavav Police Station against the applicants/accused for the offences punishable u/s.395, 397, 398, 323, 326, 435, 34, 506(2) of the I.P.C. and u/s.135 of the G.P. Act regarding which charge-sheet came to be filed after completion of investigation and case was registered vide Sessions Case No.8/2021. It is also submitted that, on the basis of the F.I.R., investigation was carried out, statements of witnesses were recorded and panchanama was drawn, but from bare perusal of record, it can not be said that there exists any ingredients to commit dacoity. It is

further submitted that the conduct of applicants/accused were not such so as to commit robbery or dacoity looking to the statements. It is further submitted that the Sections-395, 397 & 398 of the I.P.C. are invoked only to give colour of seriousness and to see that the trial is conducted by the Sessions Court, while every other alleged offence is Magistrate triable. It is further submitted that it can not be held that there was any intention to dacoity or robbery considering the evidence collected by the police and produced before this Court in the form of charge-sheet. Learned advocate for the applicants/accused has relied upon case-law reported in (2012) 9 SCC 512 in case of Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao and submitted that, at the stage of discharge if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge is empowered to discharge the accused. Learned advocate for the applicants/accused has relied upon case-law Madevbhai Meghabhai Patel V/s. State of Gujarat, decided by the Hon'ble Gujarat High Court in Criminal Misc. Application No.13015/2014 and submitted that the Hon'ble Gujarat High Court in the said case-law has considered the ratio of attending circumstances in commission of offence under Robbery or Dacoity and again the Hon'ble Gujarat High Court in case of Thakarshibhai @ Tusharbhairab V/s. State of

Gujarat in Special Criminal Application No.3439/2013 has also followed the above judgment. Learned advocate for the applicants/accused has relied upon case-law reported in (2000) 2 GLH 97 in case of Nanubhai Vastabhai Katariya V/s. State of Gujarat and submitted that the Hon'ble Gujarat High Court in the said case-law has emphasized that in the application for discharge by group of accused, the lower court is duty bound to appreciate role of each accused considering the gravity of allegation levelled against each. Learned advocate for the applicants/accused has also relied on case-law Special Criminal Application (Quashing) No.9248/2016 decided by the Hon'ble Gujarat High Court in case of Pratik Jagdishbhai Thakkar V/s. State of Gujarat. It is further submitted that the applicants/accused have not filed any other application either in this Hon'ble Court or in any other Court with regard to the subject matter of this application. Lastly, it is prayed to discharge the applicants/accused for Sections-395, 397 & 398 of the I.P.C. from the above Sessions Case in the interest of justice.

- [3] Learned advocate Mr. S. D. Jokhia for the applicants/accused has filed pursis vide Exh.18 and submitted that, due to some typographical mistake, it seems that the present discharge application has been filed for one accused person. However, it is submitted

that the present discharge application is considered to be filed for all the accused persons. Moreover, it is also submitted that the year of F.I.R. has been mentioned to be Year-2019 by mistake, but the same is to be considered for the Year-2020 as per the record. Further, it is also submitted that Sec.224 of the I.P.C. is mentioned in the present application by mistake and hence the same is not required to be considered while deciding the present application.

- [4] Mr. P. D. Jadav, P.S.I., Ranavav Police Station, District Porbandar has submitted affidavit vide **Exh.17** in which he has stated that the applicants/accused have committed serious offence punishable u/s.395, 397, 398, 323, 326, 435, 34, 506(2) of the I.P.C. and u/s.135 of the G.P. Act. It is also stated that **the applicants/accused have beaten and abused the complainant and witnesses with blows of wooden-stick and axe in the complainant's farm and also snatched and robbed pistol from witness and thereafter caused damage to complainant's vehicle car setting fire on it and further threatened to kill them and thereby the applicants/accused have committed serious offence of assault, dacoity and robbery due to some resentment regarding possession of agricultural land property.** It is further stated that, **during the investigation, accused Jagdish**

alias Jaga Kara Mushar has produced pistol which was snatched from the witness. It is further stated that the complainant, witnesses and applicants/accused are having their farms nearer to each other and there is possibility that the applicants/accused may commit another cognizable offence out of resentment. It is further stated that the applicants/accused are directly involved in the offence and they have been arrested on the basis of enough evidences against them and lastly it is prayed not to consider the present application. **Ld. DGP** has argued parallel to the facts of the affidavit filed by the police vide Exh.17 and prayed to reject the present application.

- [5] Heard the Ld. Advocates for the respective parties. This Court has gone through the memo of application, FIR, affidavit filed by the police vide Exh.17 and other case papers. Considering the record of present case, it seems that the applicants/accused are alleged to have been involved in the alleged offence registered before the Ranavav Police Station bearing C. R. No.I 11218015201218/2020, punishable u/s.395, 397, 398, 323, 326, 435, 34, 506(2) of the I.P.C. and u/s.135 of the G.P. Act. Looking to the case papers as well as an affidavit filed by the police vide Exh.17, it prima-facie reveals that the applicants/accused have committed serious offence by way of beating and abusing the

complainant and witnesses with blows of wooden-stick and axe in the complainant's farm and they have also snatched and robbed pistol from witness and thereafter caused damage to complainant's vehicle car setting fire on it and further threatened to kill them and thereby the applicants/accused have committed serious offence of assault, dacoity and robbery due to some resentment regarding possession of agricultural land property. Further, considering the charge-sheet, affidavit of police Exh.17 and especially Panchanama Mark-9/15 on record, it reveals prima-facie that the accused Jagdish alias Jaga Kara Mushar has snatched and robbed pistol from witness. In this regard, as per the affidavit filed by the police vide Exh.17, during the investigation, accused Jagdish alias Jaga Kara Mushar has produced pistol which was snatched and robbed from the witness. In this circumstances, looking to the police-papers, charge-sheet and documentary-list Exh.9 (Mark-9/1 to Mark-9/47) produced by the Ld. D.G.P. at this juncture, there is a prima-facie evidence against the applicants/accused for frame the charge for the offence u/s.395, 397, 398, 323, 326, 435, 34, 506(2) of the I.P.C. and u/s.135 of the G.P. Act. Learned advocate for the applicants/accused has relied upon case-laws (1) Central Bureau of Investigation, Hyderabad V/s. K. Narayana Rao reported in (2012) 9 SCC 512, (2) Madevbhai Meghabhai Patel V/s. State of Gujarat,

decided by the Hon'ble Gujarat High Court in Criminal Misc. Application No.13015/2014, (3) Thakarshibhai @ Tusharbhai Rabari V/s. State of Gujarat in Special Criminal Application No.3439/2013, (4) Nanubhai Vastabhai Katariya V/s. State of Gujarat reported in (2000) 2 GLH 97 and (5) Special Criminal Application (Quashing) No.9248/2016 decided by the Hon'ble Gujarat High Court in case of Pratik Jagdishbhai Thakkar V/s. State of Gujarat. But, the facts and circumstances of the said case-laws are different from the facts and circumstances of present case and therefore, the said case-laws are not helpful to the applicants/accused in the present case at this juncture. Therefore, present discharge application is not acceptable in eye of law. Hence, I pass the following order.

ORDER

The present application Exh.11 filed by the applicants/accused to discharge them for Sec.395, 397 & 398 of the I.P.C. from the present Sessions Case, is hereby dismissed.

Signed and pronounced in the Court today on 14th day of July, 2022.

Date: 14/07/2022
Place: Porbandar

(Rameshkumar Thakorbbhai Panchal)
(GJ00413)
Principal District & Sessions Judge,
Porbandar.