

KAUK210000602025



**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC., ANKOLA
AT: UTTARA KANNADA**

Presided Over by **ARPITHA B BELLAD**
B.Com., LL.B.,
Civil Judge and J.M.F.C.,
Ankola.

CRIMINAL CASE NO. 29/2025

Dated this the 3rd day of October 2025

COMPLAINANT: State by
ASI, Ankola.

(By Learned A.P.P.)

-Vs-

ACCUSED PERSONS: 1) Murari Narayan Gaonkar,
Age: 71 years,
Occ: Labourer,
R/o Bobruwada, Tq. Ankola

2) Pradeep Murari Gaonkar,
Age: 34 years,
Occ: Labourer,
R/o Bobruwada, Tq. Ankola

3) Mohini Murari Gaonkar,
Age: 65 years,
Occ: Housewife,
R/o Bobruwada, Tq. Ankola

- 4) Preeti Pradeep Gaonkar,
Age: 34 years,
Occ: Engineers,
R/o Bobruwada, Tq. Ankola

(By: Sri. C.D.N., Advocate)

ORDERS ON DISCHARGE APPLICATION

The learned counsel for the accused No.4 has filed an application under section 250 of BNSS seeking to discharge the accused No.4 from the charges leveled against her in the ends of justice and equity.

2. It is stated in the application that the Ankola Police have registered a false case against Accused No.4 for the offence punishable under section 115(2), 118(1), 352 and 3(5) of BNS and lodged the FIR. The offence alleged against accused No.4 is false as she has not committed the offence alleged against her. The accused No.4 is the permanent resident of the Bobruvada, Ankola Taluk and on the date of lodging the complaint against accused No.4, she was pregnant and unable to move freely. Moreover, the accused No.4 is doing service. There was property dispute between the complainant and accused family and the complainant is always searching chance to take revenge on the accused family. The complainant has intentionally dragged these

accused under the criminal case only to take revenge against these accused and to make undue benefit from accused family.

3. It is further contended that the complainant knowing fully that the accused No.4 is pregnant and it is the right time to take revenge on accused family have lodged the false complaint against accused family and the police officers have not shown proper reasons at the time of filing of chargesheet against the accused about present incident and filed a chargesheet without making proper investigation. If the application is not allowed, injustice and inconvenience will cause to accused No.4 and her family members. The accused No.4 is the old age person and is unable to attend this Court to face false allegation against her. Hence, prays to discharge the accused No.4 by allowing the said application.

4. The prosecution opposed the application by filing statement of objections contending that there are sufficient materials to prove the guilt of the accused No.4. The reasons assigned in the application are not tenable in the eye of law and the accused No.4 cannot escape from the criminal liability on the ground of her being pregnant. There are sufficient materials to frame the charge against the accused No.4. The accused No.4 has not made out genuine grounds for discharge. Thus there are sufficient materials to proceed against her. Thus, prays to dismiss the application.

5. Heard on application.

6. **Point for consideration:-**

1) ***Whether the Accused No.4 has made out any grounds for her discharge?***

7. My answer to the above point is **negative** for the following.

REASONS

8. **Point No.1:** On the basis of the complaint lodged by the first informant, the Ankola Police have registered a case against the accused persons for the offence punishable under section 115(2), 118(1), 352 and 3(5) of BNS. It is alleged that 06/08/2024 at 09-15 AM, when the first informant was on her way to an agricultural property, accused No.1 to 4 in furtherance of the common intention obstructed the first informant and abused the first informant in vulgar language and accused No.1, 3 and 4 beaten her with bare hands causing and accused No.2 assaulted her by means of bamboo stick causing her injuries and thereby committed the offences stated supra.

9. The accused No.4 has come-up with the present application for discharge her from the allegations leveled against her. The main ground urged by the accused that she was a pregnant and unable to move freely and she is doing service and she is old age and unable to attend the Court.

10. Before proceedings further, lets go through the relevant provision in respect of the discharge of the accused which is extracted hereunder -

262. When accused shall be discharged.

(1)The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230.

(2)If, upon considering the police report and the documents sent with it under section 193 and making such examination, if any, of the accused, either physically or through audio-video electronic means, 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.

11. On going through the said provision, it is clear that the Court after taking into materials placed on record and the final report submitted before teh Court, if the Magistrate finds the charges leveled against the accused are groundless, then the Court may discharge such accused person.

12. In the instant case on hand, only the accused No.4 has sought for discharge her from the charges leveled against her. The prosecution papers reveal that the accused No.4 along with remaining accused in furtherance of the common intention, abused the first informant in vulgar language and beaten her

with bare hands thereby causing her injuries. The only ground the accused No.4 has taken up a contention that she was pregnant on the date of alleged incident and she is doing service and she is old aged lady and unable to attend the Court. But it is pertinent to note here that the first information statement, spot panchanama, wound certificate of the first informant and the statement of the witnesses clearly discloses the involvement of the accused No.4 in committing the alleged offences. Merely because the accused No.4 was pregnant, it cannot be said that she is not involved in the alleged offences and moreover, it is not even stated as to how many months she was pregnant to contend that she was unable to move freely at the date of alleged incident. Even it is not forthcoming as to whether the doctor has advised her bed rest. It is also pertinent to note here that, she herself contended further that she is doing service. If she is unable to move freely, then how it was able for her to go for a job. While addressing the arguments, the counsel for the accused No.4 vehemently argued that accused No.4 is doing a job and she goes for job from 09-00 AM till evening as such it was not possible for to her to commit the offences. On hearing the said submission made at Bar, it appears that plea of alibi is being taken as a defence but the plea taken by the accused cannot be considered at this stage and she can substantiate the same at the proper stage after adducing the evidence to that effect. Further it is contended that she is old aged lad and unable to attend the court but the said contention is not at all believable one. At one stretch it is contended that she

was pregnant and at the same time at another stretch, it is contended that she is old aged lady. Further the prosecution papers reveal the age of accused No.4 as 34 years, under such circumstances, the contention that the accused No.4 is old aged lady and she is not unable to attend the Court cannot be a believable ground to discharge the accused No.4 from the alleged offences.

13. It is well settled law that the court at the time of considering the discharge application shall examine the police report and charge sheet materials. As per Section 262 and 263 of BNSS, at the time of framing of a charge court is required to consider only the police report referred to under section 193 of BNSS and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. In this regard, this Court relies upon the judgment reported in **Minakshi Bala V/s Sudhir Kumar 1994 (4) SCC 142**. In para 6 of the said judgment it is held that :

Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case that magistrate was to proceed in accordance with section 239 and 240 of the code at the time of framing of the charges. Under the above sections the Magistrate is first required to consider

the police report and the documents sent with it under Section 173 of Cr.P.C and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 of Cr.P.C conversely, if he finds that there is ground for presuming that the accused has an offence triable by him he has to frame a charge in terms of Section 240 Cr.P.C.

14. Another judgment reported in **2013 (3) Crimes 291 (KAR) between State -V- Vithal**. It is held that at the stage of framing charge as spell out under section 239 Cr.P.C the court can only consider the report and the documents sent with it by the police and afford an opportunity of hearing to the prosecution as well as the accused in either holding that the charge against the accused is groundless and the court can not take in to consideration any document or material produced before the court.

15. Another decision reported in **2014(1) Crimes 1 (S.C.)** which reads as under:

***(b) Code of Criminal Procedure, 1973-
Section 239- Discharge- While
considering application for discharge***

court has to consider whether there is a ground for presuming that the offence has been committed- It does not have to consider whether a ground for conviction has been made out.

16. Now on careful perusal of the said decisions and other charge sheet materials this court is of the opinion that the plea taken by the accused cannot be considered at this stage and he can substantiate the same at the proper stage after adducing the evidence to that effect. There is sufficient evidence against the accused No.4 in the charge sheet materials and the said materials true, false and believable or not is not considered at this stage and this Court at this stage cannot come to the conclusion regarding involvement or non-involvement of the accused No.4 in committing the alleged offences. Moreover, the accused No.4 has not made out any prima-facie ground for discharge. There is prima facie case made out against accused No.4. The prosecution papers also reveal that there is a property dispute between both the parties. Previous enmity is a double edged weapon which cuts both the ways, as such without going for a trial, this Court cannot come to the proper conclusion at this stage. The grounds urged by the accused can certainly be taken as her defence at the appropriate stage. At this juncture, I find no grounds to discharge the accused No.4 for the alleged offences. Hence the application lacks merits. With these observations, this Court has answered the above point in the Negative and proceeds to pass the following:

ORDER

**The application filed by the
accused No.4 under Section
262 of BNSS is hereby rejected.**

(Typed and prepared by me, directly on computer then corrected by me and then pronounced by me in the open court on this the 3rd day of October 2025)

**(Arpitha B. Bellad)
C/c. Addl. Civil Judge & JMFC.,
Ankola.**

**(Order pronounced in the open court
vide separate order.)**

ORDER

**The application filed by
the accused No.4 under Section
262 of BNSS is hereby rejected.**

**C/c. Addl. Civil Judge & JMFC.,
Ankola.**