

MHAH010036962023



: Order below Exh.102 in Sessions Case No.225/2023 :

(CNR – MHAH01003696-2023)

State of Maharashtra

Vs.

Afzal Asir Shaikh (Accused No.08)

This is an application filed by accused No.08- Afzal Asir Shaikh to discharge him, under Section 227 of the Cr.P.C. from C.R.No. I 241/2023 dated 28/02/2023 for the offence punishable under Sections 307, 323, 324, 120(b), 143, 147, 148, 149 of the Indian Penal Code & Section 4(25) of Arms Act.

2] Read application and say. Heard learned Advocate appearing for the applicant and learned APP.

3] Following points arise for my determination. Points and my findings are as under:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether there are sufficient grounds to proceed against accused ?	:- ..In the Negative
2.	Whether accused can be discharged?	:- Yes
3.	What order?	:- As per final order

REASONS

AS TO POINT No.1 TO 3 :

4] The learned advocate for accused/applicant submitted that, as per allegations of the prosecution, on 27/02/2023 at about 22.15 to 22.30 hours at Ramwadi area, near abate petrol pump, informant-Kunal Bhandari and his friend Karan Dhapase well going from Ramwadi to Tarakpur Bus Depo, near abate petrol pump. They saw rush of public. Therefore, they stopped them. At that time, accused No.2, 1, 3 to 22 came near them. Accused No.2 was talking on phone and was armed with chopper. He came near informant Kunal and his friend and told “येच है वो चादर चढानेवाला”. Thereafter, he told witness Karan Dhapase to go from them. Thereafter, he gave mobile handset in the hands of informant and told “ये ले अफजल भाईसे बात करलो”. However, informant refused to talk. Thereafter accused No.2 told him “साहेबान जहाँगिरदारने बोलेला है इसका काम करदो”. Thereafter, accused No.3 instigated others to assault informant and all of them assaulted him by wooden log, iron rod, chopper and fists and kicks. Due to assault, informant sustained grievous injury on the stomach and other parts of body. Thereafter FIR was lodged.

5] Police investigated the case and had filed charge-sheet before the learned Magistrate. As the offence punishable under section 307 of IPC was made out, the case was committed to this Court.

6] The learned advocate further submitted that, applicant/accused was not present on spot. There is nothing on record to show that, applicant/accused hatched conspiracy to kill informant. In fact, accused No.2 has stated to complainant that, one

Sahiban Jahagirdar had hatched them to murder informant. That Jahagirdar was given clean chit by investigating officer. There is no *iota* of evidence against applicant/accused. Hence, this application.

7] The Ld.APP has resisted this application by filing say vide Exh.104 and submitted that, applicant/accused have taken active part in commission of offence and have shared common intention. The charge-sheet indicates that, at the time of incident applicant/accused was on phone call. There is strong *prima facie* ground against applicant/accused to sustain the charge. The applicant/accused have raised hypothetical and imaginative grounds. Therefore application be rejected.

8] To support his argument The Ld.APP has relied on- 1) *State of M.P.Vs. S.B.Johari & Others on 17 January.2000*, 2) *Criminal Appeal No.1452-1453/2022 State Through Deputy Superintendent of Police Vs. R. Soundirarasu Etc.*, 3) *State of Maharashtra Vs. Priya, April 1997 S.C. 2041*, 4) *Sudarshan Bhore Vs. Jagjit Singh 2006, All MR(Cri) 3154 Hon'ble Bombay High Court*, 5) *State of Maharashtra Vs. Somnath Thapa and others 1996(4) SCC 659*.

9] Admittedly, applicant/accused was not present on spot at the time of incident. According to police papers, applicant/accused has hatched conspiracy to murder informant and other accused persons acted in agreement to that conspiracy. The main elements of a criminal conspiracy is that; a) an object to be accomplished, b) a plan or scheme embodying means to accomplished that object, c) an agreement or understanding between accused persons whereby they

already to cooperate for accomplish of the object and d) an overt act.

10] In this case, the only allegations against applicant/accused is that accused No.2 was talking to him on phone and he asked informant to talk with applicant/accused. When informant refused accused No.2 utter a name of Saheban Jahagirdar and said he had told them to murder informant. All the witnesses have stated similar fact in their statement to police. *Prima facie* the usage of weapons and grievous hurt on stomach of informant indicates that other accused persons have committed offence as stated in charge-sheet. However, there is nothing on record to show that, applicant/accused, prior to incident was intending to murder informant, for this purpose he made a plan, he asked other accused persons to help him in executing that plan and in furtherance of achieving the intention of applicant/accused assault was carried out of informant. All the above ingredients are missing. In fact, it is the case police that, randomly informant and his friend was passing by and they themselves stopped to see why public had gathered. It is no ones case that, accused/persons had stopped them. Therefore, this itself shows that, there was no plan or meeting of minds to assault informant. Even Accused No.2 does not say to informant that applicant/accused had asked them to murder him. Accused No.2 has uttered the name of Saheban Jahagirdar to whom police has given clean chit.

11] The Ld.APP has relied on- *State of M.P (cited Supra)* that case was with respect to Prevention of Corruption Act,1988 in which

there was fraud regarding purchase of items by government servants, as this case is on different fact I am of the opinion that the ratio laid down in that case is not applicable. *In case of Deputy S.P.(cited Supra) the Hon'ble Supreme Court* has observed that at the stage of framing of charge or considering discharge Courts must not conduct a mini trial or meticulously examined evidence, but rather except prosecution materials as true to determined if a *prima facie* case exists. Guided by above observation I have perused the charge-sheet of this case. *In case of Priya (cited Supra) the Hon'ble Supreme Court* has observed that at the stage of framing charges the evidence should not be weighed. Guided by above observation I have perused the charge-sheet of this case. In case of *Sudarshan (cited Supra)* this case was about illegal construction hence not applicable to present case and In *Somnath Thapa (cited Supra) the Hon'ble Supreme Court* has defined the essential elements required to sustained a charge under section 120(a) of The IPC . Guided by the above observations I have appreciated the documents on record.

12] In my view, as per Section 227 of Cr.P.C. the Court has to consider the record of case and the documents submitted therewith and after hearing both sides, if the Court consider that there is no sufficient ground for proceeding against the accused then only it can discharge the accused. After going through whole charge-sheet it can be seen that, the materials with regard to offence under section 120(b) of IPC is not *prima facie* made out against applicant/accused. Though for the sake of argument it is assume that prior to commission of offence accused No.2 received a call from

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..6..

(Order below Exh.102)

applicant/accused, that itself cannot be sufficient ground for proceeding against accused. Hence, I answered points no. 1 and 2 accordingly and pass the following order.

: ORDER :

- 1) Application (Exh. 102) is allowed.
- 2) Applicant/accused namely Afzal Asir Shaikh (Accused No.8) is discharged under section 227 of Cr.P.C. for offence punishable under section 120(b), 307, 323, 143, 147, 148, 149 of Indian Penal Code read with Section 4(25) of Arms Act.

Date : 23/02/2026.
Ahmednagar.

(M.S. Lone)
Additional Sessions Judge,
Ahmednagar.