

**ORDER BELOW EXH.15 IN R.C.C. NO.127/2022**

The accused Nos. 2 and 3 have sought discharge *vide* S.250 (1) of B.N.S.S. It is claimed that the informant, Prasad Nimbhekar, lodged the FIR against unknown persons, alleging that 300 grams and 250 grams of Silver Tabak and 15 to 16 silver coins have been allegedly stolen from his house. Accordingly, Crime 195/2022 came to be registered against unknown persons. In this regard, the local crime branch in Akola got input and arrested three accused persons; two of them are the present applicants. They were arrested on 09.05.2022, nearly one year after the alleged crime. Accordingly, they were produced on 04.06.2022 before this court, but nothing was recovered from accused no. 2 and 3. Apart from that, during the investigation, the I.O. did not record statements of Mr. Jitendra Soni, who had allegedly purchased the stolen muddemal from main accused no. 1 of this crime. I.O. has recovered muddemal property that was already recovered by Mr. Hatwar, and the statements of Mr. Jitendra Soni were also recorded by said Mr. Hatwar, ASI local crime branch Akola. Therefore, according to accused no.2 and 3, there is no evidence against them for framing the charge in the entire chargesheet. Accused no. 2 and 3 also submitted that the I.O. directly recorded an additional statement from the informant and there is no independent eyewitness to the alleged crime. In this crime there are two seizure punches, namely Jay Nidhane and Raj Pachore. They stated that on 31.05.2022 muddemal property was seized in front of them from Jitendra Jitendra Ramchandra Soni and

Kiran Pingalkar. But there is no recovery from the accused no. 2 and 3. The statement of Mr. Jitendra Soni is that Ashish Lodiya, i.e., accused no. 1, had sold stolen property to him. But the accused no. 2 and 3 have no concern with said stolen property, and they have no nexus with Jitendra Soni and Ashish Lodiya. The entire investigation is defective. Accused no. 1 did not give a written confession to the I.O. The statement of Sagar Hatwar states that Ashish, i.e., accused no. 1, had given an oral confession to him, and he stated that present accused nos. 2 and 3 were accompanied by him in doing said crime.

2. Accused Nos. 2 and 3 further submitted that not only this, but there were 14 crimes registered against them, and the seizure and muddemal property are the same, which were done by Jitendra Soni and Kiran Pingalkar. Out of 14 crimes accused, no. 2 and 3 came to be acquitted in three cases, i.e., RCC No. 663/2022, RCC No. 741/2022, and RCC No. 835/2022. Therefore, according to the accused, there is no direct or indirect evidence in the entire charge sheet to show that any case is made out against them. Therefore, on all these grounds, discharge is sought.

3. The Ld. APP has resisted the application by filing vide Exh. 19 on the ground that no reasonable ground is made out for discharge and the present application is not tenable. Additional statements of the informant and purchaser Jitendra Soni show the role and involvement of accused no. 1 to 3. Said evidence is cogent and sufficient for framing charges against the accused. Hence, Ld. APP prayed that the application, being

devoid of merit, be rejected accordingly.

4. Perused application, say, and the record. Heard Advocate Shri.Sumit Thakur for the accused no.2 and 3 and Ld. APP Shaikh Mustaque. The Ld. Advocate Shri.Sumit Thakur for Accused Nos. 2 and 3 contended that no property was recovered from them. The Investigation Officer (I.O.) did not record material statements linking them to the alleged theft. The main purchaser of the stolen property, Mr. Jitendra Soni, attributed the transaction solely to accused no. 1. There is no direct, circumstantial, or independent evidence connecting them to the crime. They have previously been acquitted in three similar cases (RCC No. 663/2022, RCC No. 741/2022, and RCC No. 835/2022) out of 14 registered. The entire investigation is defective and only an oral confession by accused no. 1 allegedly mentioned their involvement.

5. On the other hand, the Ld. APP, Mohmmad Mushtak argued that an additional statements of the informant and Mr. Jitendra Soni implicate all three accused, including the applicants. The evidence on record is sufficient and cogent for framing of charges.

6. At the outset, it needs to be mention that while deciding the discharge application, the court will have to consider parameters such as whether the materials on record, if unrebutted, would make out a prima facie case. Secondly, the court is not required to conduct a mini-trial. It should not evaluate the sufficiency of evidence, only whether there's some material that, if unrebutted, could support a conviction. The

court should only look at the entire record, including the FIR, statements under Section 161 CrPC, documentary evidence, and medical reports (if any). It is a settled principle that an accused cannot be discharged if there is prima facie material in the charge sheet and there exists a strong suspicion of involvement, and defense claims require evidence and cross-examination.

7. In the backdrop of the aforesaid settled principle, now I proceed to scan the charge sheet and statements of the witnesses. Admittedly, the present offense came to be registered against an unknown person. Upon careful perusal of the charge sheet, the FIR, statements of witnesses, and other documents on record, the following is evident no stolen property has been recovered from Accused Nos. 2 and 3. The only material linking the applicants is the alleged oral confession of accused no. 1 before the police, which, by itself, is inadmissible against co-accused under Section 30 of the Indian Evidence Act unless corroborated by substantive evidence.

8. So also, there is no independent eyewitness or direct evidence showing the applicants' participation in the alleged offence. The main purchaser, Mr. Jitendra Soni, stated that he purchased the stolen articles from accused no. 1, no mention has been made of accused nos. 2 and 3's involvement. The applicants have been acquitted in similar cases, although not conclusive, this raises grave doubts on habitual implication without cogent evidence. The seizure witnesses confirm recovery from Jitendra Soni and Kiran Pingalkar, not from the applicants. Any deficiency or defect in the investigation does not, by itself,

entitle discharge, but the absence of linkage to the recovered property and lack of independent corroborative evidence is crucial. Discharge at this stage is warranted only if the materials on record, even if taken at face value and accepted in entirety, do not make out any prima facie case against the accused.

9. It is a settled principle that suspicion, no matter how grave, cannot take the place of legal proof. There is no independent material to suggest that the applicants were in any manner concerned with the commission of the crime. Reliance solely on statements which are inadmissible or insufficient to create even a prima facie nexus is untenable. In view of the above discussion, I find that no prima facie case is made out against Accused Nos. 2 and 3 for framing the charge.

10. The accused sought discharge relying on section 258 of BNSS, which is applicable to sessions trial case. Present case is warrant trial case. In this regard, Honble Apex court in several cases held that technicalities should not override substantial justice, if the ingredients of discharge are satisfied, the court may grant discharge irrespective of incorrect section cited. Hence, the accused's right to seek discharge will not be defeated merely because the application mistakenly refers to Section 250 BNSS instead of the correct Section 239 of Cr.P.C. The court can treat the application under the proper provision if the legal grounds for discharge are made out. The provisions of CrPC, 1973 (Section 239) continues to apply to all cases instituted before the BNSS came into force. The BNSS, 2023 applies only to cases instituted on or after the date it comes into force, i.e.,

1st July 2024, as notified by the Government of India. Since the present case was filed in the year 2022, Section 239 of CrPC would apply, not Section 258 of BNSS. Thus, the application for discharge is liable to be allowed as per Section 239 of CrPC. Accordingly I pass following order.-

ORDER

1. The application (Exh.15) filed by Accused Nos. 2 and 3 is allowed.
2. Accused Nos. 2 and 3 are discharged from Crime No. 195/2022 vide Section 239 of CrPC.
3. Their bail bonds, if any, stand cancelled.
4. Case to proceed against the accused No.1.
(Dictated and pronounced in open court)

Date:- 29/07/2025

(A.G.Tamboli)
J.M.F.C., Murtizapur

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment/Order.

Name of the Steno	P. J. Yadav
Name of the Court	CJJD & JMFC, Murtizapur
Date of Order & Judgment	29.07.2025
Order/Judgment Signed by the PO. on	29.07.2025
Order/Judgment uploaded on	30.07.2025