

**ORDER BELOW EXH.3**

The present application is filed by accused no.1 (*for short “the applicant”*) as per Sec.245 of the Code of Criminal Procedure, 1973 (*for short “Cr.P.C.”*).

1. According to the applicant, a C.R.No.38/18 is registered Ganeshpeth Police Station, Nagpur for offences punishable under Secs. 394, 504 r/w. 34 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act, on the basis of a report lodged by one Salman Ahmed alleging that the said accused has committed the above-stated offences.
2. Therefore, the present applicant has filed this application on the following amongst other grounds:-
  - a) That the applicant is a law abiding and peace loving citizen of India. That the applicant is residing on the above mentioned address along with his family. That the applicant is a qualified engineer and had passed his B.E. Examination in Summer 2018 in Mechanical Engineering from J.D. College of Engineering & Management, Nagpur. That the applicant is in service at All India Institute of Medical Science, Butibori, Nagpur on the post of Mechanic (A/c & R) from 11.05.2021 under Principal Security & Allied Services Pvt. Ltd., Nagpur.
  - b) That on 14.01.2018, on the festival day of Sankranti, that the accused Nihal Ansari, Faizal Ahmed @ Tannu and Mohd. Arif Ansari, All R/o Behind Haj House, Nagpur have been assaulted by the deadly weapons i.e. knife on the Tausif Ansari, Sahajad Ansari & Arif Ansari, in the said crime, Mohd. Tausif sustained

injury on head, Sahajad Ansari sustained injury on abdomen and Arif Ansari sustained injury on face by knife of accused persons. That in the said crime the report has been lodged by the complainant Mohd. Sahajad Ansari on 14.01.2018 with the Police Station, Ganeshpeth, Nagpur and the P.S.O. of Ganeshpeth Police Station, Nagpur on the report of the complainant, Mohd. Sahajad, registered the offence against all the accused persons vide crime No.12/2018 punishable u/s 324, 34 of IPC therefore the complainant Mohd. Sahajad Ansari with shaking the hands with P.S.O. Ganeshpeth, Nagpur and falsely implicated the applicant/accused in crime No.38/2018.

- c) That the applicant has been falsely implicated by the investigation officer at Police Station Ganeshpeth, Nagpur in crime No.38/2018, punishable u/s 394, 504, 34 of IPC r/w 4, 25 Arms Act & u/s 135 B.P. Act on the false report of complainant Salman Shakil Ahmed, dated 04.02.2018 against the applicant and other co-accused persons.
- d) That in the said crime, the P.S.O. of Ganeshpeth Police Station, Nagpur has filed the false and bogus charge sheet against the applicant and other co-accused on 06.06.2020, after more than two and half years, without having any intimation to the applicant.
- e) That, on perusal of the entire charge-sheet that there is no any evidence in support of prosecution against the applicant moreover no any incrimination article has been seized from the applicant in the said crime.
- f) That there is no case made out against the applicant has been made out which if unrebutted, would warrant his conviction

moreover the Hon'ble Judge consider the charge to be groundless against the applicant.

- g) That the statements of witnesses give the clue that the FIR registered against the applicant is filed after meeting of mind. That the applicant/accused submits that the medical report does not show anything against the accused persons, nothing is done by the applicant in the present crime which is against the law.
- h) That there is nothing in the charge sheet to connect the applicant/accused with the crime. That the applicant/accused may be acquitted/discharged in the present crime, as there is nothing against the applicant/accused. Hence in the interest of justice and equity, the applicant/accused may kindly be discharge in the present crime.

3. The learned A.P.P. has filed say ***on a plain paper attached to this application*** and resisted the same. According to her, the application is false and wrong. Hence, she denies the same in toto. The application is not tenable in the eyes of law. There is prima-facie evidence against the applicant. The I.O. has filed the charge-sheet against all the accused after completion of investigation. The offence registered against the accused is serious one. It is very much necessary to take the evidence of all the witnesses during the course of hearing of this case. This will help the Court in arriving at a just decision. Hence, she prayed that the application may kindly be rejected.
4. Perused the record. Heard both the sides. The learned advocate for the accused has relied upon the following case-law, in support of his submissions-***Meghraj Vishwanath Tarde vs. Nagorao Tulsiram Ingle & Ors., reported in 2021 ALL MR (Cri) 3242. I have gone through the same. Indeed, the aspects laid down therein are well-known. However,***

*in para no.10 therein, it is stated that none of the witnesses supported the case/theory of the informant/prosecution. Whereas, over here, the witnesses have spelt out name of this accused at various times/places. Hence, the said authority is unhelpful to/for the said accused.*

5. Now, while deciding the prayer made by the applicant, it is necessary to consider the above circumstances along with the relevant applicable provisions. In this regard, Secs. 239 and 240, Cr.P.C. are to be read together. ***Sec. 239 provides "If, upon considering the police report and the documents sent with it under Sec.173 and making such examination, if any, of the accused 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". Sec. 240(1) provides "If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused".***
6. Keeping in mind the above provisions, perusal of the charge-sheet reveals that the facts alleged prima-facie disclose commission of offences punishable under the sections stated therein, by all the accused. ***The factor warranting discharge of accused under Sec.239 is 'groundless charge', which in other words means non-existence of material to frame the charge.***
7. It will not be out of place to mention here that ***even strong suspicion about the existence of facts constituting the offence is sufficient to come to a conclusion of 'presuming that the accused have committed an***

*offence'* as is provided in Sec.240(1).

8. The learned advocate for the applicant submitted that the said accused is a highly qualified person. Conducting trial against him would be abuse of process/waste of time. The documents as regards his job offer are attached herewith. This accused was severely injured in the earlier incident. This is the only case pending against him. No amount and/or mobile is seized from any of the accused. The case is filed with a malafied intention. No notice to the said accused was/is given before filing the charge-sheet. There is delay in filing the same. On 12.1.20, a supplementary statement is recorded. There is only simple abrasion. The signature on the document dated 25.2.20 is bogus (not of the accused). The said accused was not in police custody when his statement was recorded. There is no possibility of conviction of the said accused in this case. Hence, he prayed that the accused may kindly be discharged.
9. Per contra, the learned A.P.P. intensely submitted that the Court has issued the summons for trial of the accused after considering the documents on record. The alleged offences are serious in nature. Therefore, discharging the applicants without giving an opportunity to lead evidence, to the prosecution would be improper. To bring truth before the Court, opportunity to lead evidence should be given. The said accused is actively involved in the crime. Hence, she prayed that the application may kindly be rejected.
10. In *State of Himachal Pradesh vs. Krishan Lal Pardhan and others*, AIR 1987 SC 773 it is held that *“accused persons not sent up for trial-predecessor judge finding sufficient material on record to summon them for trial-successor judge finding that no ground existed, discharging them at stage of framing charges-amounts to review of predecessor’s order-not permissible-full-fledged order passed on merits*

*and without satisfying whether prima facie case is made out-not in accordance with law". Further, it is one of the cardinal principles of law that at the intermediary stage, the Court should not speculate about the truthfulness or falsity of the allegations brought to its notice.* Moreover, at this stage, detailed, meticulous and elaborate assessment/examination of the materials put forth by the prosecution is uncalled for. The learned advocate for the accused was found arguing so/in such manner, that too, repeatedly.

11. In view of above discussion, I find that there is no such position on record so as to justify discharge of the said accused in the light of Sec.239, Cr.P.C. In fact, the learned advocate for the accused has prayed for discharge under Section 245 (which in fact applies to complaint cases-though that is not the only criteria to reject this application) and has filed case-law, which discusses Section 239. Moreover, the F.I.R. is not expected to be an encyclopedia. Various aspects are revealed/discovered only after investigation by the police. Hence, the overall arguments of the learned advocate for the accused seem to be unconvincing. Considering the evidentiary material on record, it cannot be said that the said accused is in no way connected with the alleged crime/offences.

12. Hence, for the reasons stated above and considering the overall situation, I proceed to pass the following order:-

**ORDER**

Application Exh.3 is rejected.

Sd/-

Date:-27.10.21

**(P.V.Kapadia)**

J.M.F.C. Court No.1, Nagpur