

**Order below Exh.34 in Spl. Case (NDPS) No.83/2025
(CNR No.MHOS01-001584-2025)**

On behalf of the applicant/accused No.5-Deepraj @ Omkar Diliprao Shinde, this application is filed under Section 250 of the B.N.S.S. and old Section 227 of the Cr.P.C. for discharge of the offence under Sections 8(c), 20(b)(ii)(a), 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The prosecution case in nutshell is that, the informant is A.P.I. On 31-05-2025 in the evening at around 07.30 p.m. while he was at police station along with P.I. and another colleagues, confidential information was received that the person names Kunal Anil Pawar r/o Dharashiv is selling psychotropic substances in Tambari Vibhag. Accordingly, station diary to that effect was taken and for the purpose of raid necessary arrangements of the panch witness, police staff and the articles required for the seizure was made. Police team effected raid in the presence of panch witnesses and they came across 4 persons who were consuming contraband psychotropic substance by Chilim and one person was providing said contraband. The four persons consuming contraband were Jishan Ali Saheb Ali, Vipul Dipak Khobre, Shahrukh Dawal Mujawar and Omkar Dilip Shinde and the person who was selling contraband was Kunal Anil Pawar r/o in front of Bhosale High School, Tambari Vibhag. Raiding team following due process of law of seizure, seized the contraband of worth Rs.41,000/- and had seized 2 Kg. 50 gram of greenish coloured substance which seems to be Ganja. Said 5 persons were taken into custody and F.I.R. No.272/2025 to that effect came to be registered for the offence punishable under Section 8(c), 20(b)(ii)(a), 27 of N.D.P.S. Act against the 5 persons. After due investigation charge-sheet in the matter is

filed.

3. Vide Exh.34 on behalf of accused No.5-Deepraj @ Omkar Diliprao Shinde discharge application is filed on the ground that, from the F.I.R. it is clear that except accused No.1 the other persons including accused No.5 were not apprehended on the spot. It is submitted by the accused No.5 that from the recitals of F.I.R. it is clear that accused Nos.2 to 5 were consuming Ganja and the said implication was made deliberately and intentionally by the police though it is false. It is further submitted that, accused No.5 was further referred for his medical examination and nothing positive was found for the prosecution thus, accused No.5 is falsely implicated in the F.I.R. It is submitted that, there is no seizure from accused No.5, he has no criminal antecedents, he is student of 5 year law course, his father is educated and he is from well educated family and he is law abiding person. It is pointed out that, the investigating machinery has not followed the mandatory provisions of Section 41, 42, 52, 52(A), 55, 57 of N.D.P.S. Act as well as Section 100 & 165 of Cr.P.C., therefore offences levelled against accused No.5 are not attributed to him. As per the case of prosecution the role attributed to accused No.5 is only to the extent of Section 27 (a) of the N.D.P.S. Act and to prove the said charge medical report must be positive. Finally, it is prayed that the accused No.5 be discharged of the charges levelled against him.

4. To the present application, the prosecution has filed say vide Exh.37 contending that, no ground for discharge is made out and perusal of F.I.R. shows that there is active involvement of accused No.5 in the present offence. It is submitted that the F.I.R. is abundantly clear that the police machinery has accosted the accused No.5 on the spot

itself and found the accused No.5 consuming Ganja through Chilim which is prohibited by the law. It is submitted that there is sufficient evidence that 2 Kg. 50 gram Ganja was seized and the C.A. report is awaited. It is prayed that, considering the prima-facie case against the accused No.5 his application be rejected.

5. Heard, the learned advocate for the applicant/accused no.5. He has submitted in the tune of the contents of the present application. Learned P.P. has submitted in tune of the contents of Exh.37.

6. On behalf of the accused reliance has placed on the observations made by the Hon'ble Supreme Court in Karan Talwar Vs. The State of Tamil Nadu 2025(1) Acquittal 74 (SC) as under :

“Narcotic Drugs and Psychotropic Substances Act, 1985-Section 27(a)-Indian Evidence Act, 1872-Section 25-Criminal Procedure Code, 1973-Section 227 (Bharatiya Nagarik Suraksha Sanhita, 2023- Section 250)-Supply of narcotics-Rejection of discharge petition-While calling upon to exercise power under Section 227, Cr.P.C., Judge concerned has to consider only record of case and documents produced along with same-Court could sift materials produced along with final report only for the purpose of considering question whether there is ground to proceed against accused concerned-In absence of any other material on record to connect appellant with crime, confession statement of co-accused by itself cannot be reason for his implication in crime- No contraband was recovered from appellant-Confessional statement of accused before police is inadmissible in evidence- In a

case where there is no material at all which could be translated into evidence at trial stage it would be a miscarriage of justice to make the person concerned to stand trial- Impugned order quashed and set aside and appellant discharged from case.”

7. Following points arise for my determination to which I have recorded my findings against each of them for the reasons to follow:

POINTS

FINDINGS

1. Whether there is sufficient ground to proceed against the applicant/ accused?

Yes.

2. What order?

Accused is not entitled for discharge for the offences U/Section 8(c), 20(b)(ii)(a), 27 of N.D.P.S. Act

:: REASONS ::

As to point No.1:-

8 It is well settled that charge can be framed if *prima-facie* case is made out. If court finds that no case against the accused is made out, the Court of Sessions can discharge accused as per Secx. 250 of BNSS (Sec.227 of Cr.P.C.) Thus, while deciding discharge application, Sessions Court has to consider *prima-facie* evidence on record to ascertain involvement of the accused in the case and if it goes un rebutted, it would warrant conviction.

9 In order to appraise the submissions advanced before me, by advocates of both the sides, I have perused the record. *Prima facie*

perusal of F.I.R. shows that there is active involvement of accused No.5 in the present offence. FIR *prima-facie* discloses that the police machinery has accosted the accused No.5 on the spot itself and found the accused No.5 consuming Ganja by Chilim which is prohibited by the law.

10 At this juncture, while deciding discharge application, it is not necessary for the court to enter into the *pros* and *cons* of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Sec. 250 BNSS (Sec.227 of Cr.P.C.) the court has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which *ex-facie* disclose that there are suspicious circumstances against the accused.

11. In the case of **P. Vijayan V. State of Kerala and Anr, AIR 2000 SUPRME COURT 663**, it is observed by the Hon'ble Apex Court that,

*“In a subsequent decision i.e. in **Union of India V/s Prafulla Kumar Samal, (1979) 3 SCC 4**, this Court after adverting to the conditions enumerated in Section 227 of the Code and other decisions of this Court, enunciated the following principles:-*

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been

properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

12. Bearing in mind the settled legal position in this regard, at the stage of framing the charge meticulous examination for consideration of the evidence and material is not necessary because even if there is strong suspicion which lead the Court to feel that there is a ground to proceed against the accused upon belief that the accused has committed offence. It must be treated as sufficient ground to proceed further in the matter to frame charge. The citation as relied on behalf of accused no.5 as mentioned *supra* cannot be applied to facts in hands as the observations therein are made as the accused therein was implicated based on the statement of ci-accused. Same is not in the facts in hands. *Prima-facie* in the present case the accused no.5 came to be implicated as he was accosted raid-hand consuming the contraband.

13. At this juncture only prima-facie case is to be seen and considering the prima-facie case no grounds for discharge are made out

hence application deserves to be rejected. Hence, the following order is passed :

:: O R D E R ::

Applications (Exh.34) stands rejected.

Date : 17-03-2026.

(A.D.Deo)
Special Judge, Osmanabad.

CERTIFICATE

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

Name of Stenographer	-	A.S.Aghor, Stenographer (Grade-I)
Court	-	District Court, Osmanabad (On Deputation)
Date	-	17-03-2026
Order signed by the Presiding Officer on	- -	24-03-2026
Order uploaded on	-	30-03-2026