

MHPU120006622024	<u>ORDER BELOW EXH.34 IN</u> REGULAR CRIMINAL CASE NO.143/2024 (State of Maharashtra Versus Prakash Khandu Kachare and others)
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This is an application filed by accused No. 3 to discharge him for the offence punishable under sections 326, 323, 504, 506, 109 read with Section 34 of Indian Penal Code, as per Section 262 of Bhartiya Nagarik Suraksha Sanhita (hereinafter referred to as "B.N.S.S.")

Brief facts of the application of the accused :-

02. It is contention of the accused that the police authority of Rajgad Police Station investigated the offence and filed charge-sheet against him and other accused. However, after perusal of charge-sheet no prima-facie strong evidence appears against present accused. Further, after perusal of statement of the informant it appears that present accused did not beat the informant or abused in filthy language. Furthermore, present accused did not present at the time of alleged incident. The accused contended that incident occurred on 28.05.2024. However, at relevant time he was taken treatment in Tech. Clinic Connect Pvt. Ltd., Dhankavdi, Pune. This shows that accused is not concerned with alleged incident. Further, it is case of the prosecution that present accused made phone call and as per his say other accused assaulted the informant. However, during investigation the police neither obtained CDR of the accused nor seized mobile phone of the accused. Per contra, he did not make any phone call. He contended that he is suffering from B.P., diabetes

and other old age ailments. Further, he is not concerned with the offence. Hence, he filed present application.

03. Ld. APP strongly resisted the application by filing his say at Exh. 37. He denied each and every contention of the accused. He contended that informant told that accused Prakash Kachare made phone call to present accused. Thereafter, as per say of present accused they assaulted her. Therefore, evidence to that aspect will come during the trial. Further, it is not necessary to see whether evidence to convict the accused will come on record or not. Furthermore, documents filed by the accused cannot be looked at this stage. He contended that it is incumbent upon the accused to provide medical paper to Investigating Officer. However, he failed to do so. Further, as per statement of the informant and other witnesses it appears that the accused involved in present offence. Therefore, he prayed to reject the application.

04. Heard Ld. Advocate for accused and Ld. APP. Ld. Advocate for accused reiterated his contention of the application. He vehemently argued that due to previous enmity name of present accused is falsely roped in present offence. Lastly, he prayed to allow the application. As against this, Ld. APP also argued in consonance with say. In buttress to her argument she relied on Judgment of Hon'ble Supreme Court in case of State of Delhi Vs Gyan Devi and others, (AIR 2001 SUPREME COURT 40), State of Orissa Vs Debendranath Padhi (AIR 2005 SC 359).

05. Perused Record. Present application is for discharge as per Section 262 of B.N.S.S. According to Section, if upon considering the police report and the documents sent with it under section 193 and making such examination, if any, the Magistrate considers the

charge against the accused to be groundless, he shall discharge the accused. Hence, it is necessary to decide present application on touchstone of aforesaid provision.

06. Further, the Hon'ble Supreme Court in case of *State by Karnataka Lokayukta, Police Station, Bengaluru Vs. M. R. Hiremath, (2019) Supreme Court Cases 515*, held that at the stage of considering an application for discharge court must proceed on the assumption that material which has been brought on record by prosecution is true and evaluate material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of ingredients necessary to constitute offence. Further, in *State of Orissa (supra)*, The Hon'ble Supreme Court held that, mini trial at the stage of framing of charge is not permissible. Now, if facts of present case scan in view of dictum laid down in aforesaid judgments it appears that the informant specifically stated that as per instigation of present accused, accused No. 1 and 2 assaulted her. Accordingly, section 109 of IPC is added in final report.

07. It is settled law that court cannot evaluate or appreciate evidence at the time of discharge application. The court is only concerned with prima-facie material. In *State of Delhi (supra)*, Hon'ble Supreme Court held the same. In present case as stated earlier the informant i.e. injured specifically stated that phone call made by accused No. 1 to accused No. 3. Thereafter, as per instigation of present accused incident took place. Therefore, at this juncture it cannot be said that there is no material against present accused. Further, plea of alibi of the accused can be decided during evidence. Moreover, it is own defence of the accused that due to previous enmity his name is falsely roped in present offence. Therefore, it appears that there is enmity between the accused and

informant. In this situation, it is necessary to give opportunity to prosecution to lead evidence in support of their case. Further, evidentiary value of the evidence produced by the prosecution can be decided during the trial. It cannot be decided at this stage. The accused has opportunity to put his defence during the trial. Prima facie sufficient material is available against accused to frame the charge. Hence, it would not appropriate to allow the application. Accordingly, I pass the following order :

- O R D E R -

Application (Exh. 34) is rejected.

Date:-24.06.2025.

(S.D.Shirsat)

2nd J.M.F.C. Bhor.