



**State of Maharashtra
Vs.
Gautam Kakade & Ors.**

ORDER BELOW EXH.96

Accused no.4-Sachin Vasant Motkate has filed present application under Section 227 of the Code of Criminal Procedure (for short 'Cr.P.C.') for discharging him from the case in offence punishable under Sections 302, 307, 143, 147, 148, 149, 352, 504, 506, 201 of the Indian Penal Code (for short 'IPC'), and under Sections 3/25, 29 and 30 of the Arms Act.

2] Applicant-accused no. 4 submitted that he is prosecuted as above alongwith other accused on the report of informant-Ankita Nimbalkar not arraying him. Allegations were made in the report that on account of a Bullock sale transaction, when deceased Ranjit Nimbalkar had been to accused no.1, accused no.2 shot a bullet in his head resulting into his death. Present accused came to be arrested on 01.07.2024, and on the basis of the statement of accused no.5-Ajit Kisan More, Section 201 of IPC was invoked. The charge-sheet is filed after investigation and the case is committed to this Court. The accused raised grounds for discharge that he is not named in FIR and in statements of eye witnesses-Vaibhav Kadam and Pintu Jadhav, as also, of the other witnesses. He is not named in bullock transaction, assault and regarding his presence on the spot. No offence is made out with any *prima facie* case against him. There is no material filed with charge-sheet against the accused with reasonable grounds to believe his involvement in the crime. The

accused submitted that there are material discrepancies in T.I. Parade showing his identification by complainant and eye witnesses-Vaibhav and Pintu. T. I. Parade was conducted of all three accused at a time not permissible by law. It was conducted on 24.07.2024 and report was prepared on 26.07.2024. No signatures of panchas on each page are taken. There is no recovery or discovery against accused. Accused has not committed any offence or did any act. There is no evidence against him on record to frame charge. Therefore, accused no.4 submitted to allow discharge application.

3] Ld. APP and I.O. filed their replies at Exhs.103 and 117 opposing the application contending that in the murder of deceased committed by accused persons, the present accused has played a role of approaching the spot on the call of accused no.1, who abused the deceased and during the course of committing of offence by them, accused no.2 used pistol to shot the deceased in head. He is identified by eye witnesses to be the person who took part in unlawful assembly which acted in prosecution of common object to murder the deceased. Both the eye witnesses described the accused as per their clothes which were seized from them after arrest, including that of present accused as per seizure panchnama dated 03.07.2024. Accused no.4 has confessed to have committed the crime. Therefore, prosecution submitted to reject the application.

4] Complainant also appeared with Ld. Advocate and filed say at Exh.101 denying all the grounds on which discharge is claimed by accused. The complainant stated that there is a *prima facie* case against the present accused of his being present on the spot and taking part in the murder of deceased. The accused was

identified by clothes. The complainant and two eye witnesses had seen the present accused and described him sufficiently establishing identification, and also, identified him in T.I. Parade. The grounds taken in application regarding discrepancies in T.I. Parade cannot be considered at this stage which relates to relevant fact only. Recovery is not a mandatory requirement. There is sufficient material against accused and no mini-trial can be held at this stage.

5] Heard Ld. Advocate for accused no. 4, Ld. APP for State and Ld. Advocate for complainant. Perused the charge-sheet, material placed with it and the documents filed on record.

6] Section 227 of Cr.P.C. provides as under:

“Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

7] Keeping in view the ingredients of above section, if there is no sufficient ground to proceed against accused, then only he shall be discharged from the case. As per the settled law, at the stage of framing of charge roving and fishing inquiry is impermissible and no mini-trial shall be held at the stage of framing of charge, which would defeat the object of the Code. Section 228 of Cr.P.C. refers to consideration under Section 227 of Cr.P.C., which has to be made after taking into account the record of the case and the documents submitted therewith. If the charge against the accused is groundless, then only he shall be discharged.

8] In the submission of Ld. Advocate for accused no. 4 on the lines of grounds raised in the application, apart from

accused having not named in FIR and in statements of two eye witnesses, and statements recorded by Ld. Magistrate under Section 164 of Cr.P.C., no allegations are made as to taking part in crime. The description by clothes is not contemplated by law and is not sufficient to array and prosecute accused. Supplementary statements of above material witnesses also do not disclose any whisper against accused no.4. There was no physical description of the accused. The seizure panchnama of clothes shows they were already available in police station on 03.07.2024 prior to panchnama, without any explanation therefor. The T.I. Parade is of no avail and further that it is conducted with delay of about 23 days. The accused was shown to the witnesses during the line-up of T.I. Parade vitiating the same. Serial number of suspect in the line-up touched by witness is not mentioned by Executive Magistrate. Witness Ajay Bhosale has not mentioned specific act on the part of accused. Ld. Advocate relied on the following citations:

(i) ***Sajjad alias Raju alias Salim Vs. State of West Bengal [(2017) 11 SCC 150, decided on 06.01.2017]***, wherein, Hon'ble Apex Court held that:

“16. In the case in hand, apart from the fact that there was delay in holding the test identification parade, one striking feature is that none of the prosecution witnesses concerned had given any identification marks or disclosed special features or attributes of any of those four persons in general and the accused in particular. Further, no incident or crime had actually taken place in the presence of those prosecution witnesses nor had any special circumstances occurred which would invite their attention so as to register the features or special attributes of the accused concerned. Their chance meeting, as alleged, was in the night and was only for some fleeting moments.

19. In the instant case, none of the witnesses had disclosed

any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simpliciter cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the prosecution was failed to establish its case against the appellant.”

(ii) ***Vikramjit Kakati Vs. State of Assam [(2022) 17 SCC 249]***, in which, Hon’ble Supreme Court observed as follows:

“9.. Before we proceed to examine the matter on merits any further, it will be apposite to take note of the legal principles applicable seeking discharge, for which we may refer to a judgment of this Court in P. Vijayan v. State of Kerala, which has been further reiterated by this Court in the recent judgment in M.E. Shivalingamurthy v. CBI and discerned the following principles: (M.E. Shivalingamurthy case, SCC pp.776-77, para 17)

“17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no

sufficient ground for proceeding with the trial.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true. 17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

“13. So far as the conspiracy, as alleged, is concerned, some evidence ought to have emerged or the prosecution could have brought on record some prima facie material whereby the appellant along with the accused persons had prior meeting of mind to execute the alleged offence and in the given facts and circumstances, there is no justification for the appellant to undergo the agony of facing trial, to which the appellant is not even prima facie connected. Still the prosecution filed charge-sheet on 30th August, 2011 for offence implicating the appellant under Sections 302/120-B/201 IPC along with the wife of deceased (A1) and mother of wife of the deceased (A3).”

9] Per contra, Ld. APP for State submitted that in the say filed by prosecution, role of the accused is specifically mentioned that he approached on the spot on the call of accused no.1 and acted in prosecution of common object while accused no.2 who accompanied present accused, shot pistol in the head of deceased resulting into his death. The case is serious one. Accused is identified by complainant and two eye witnesses. The CCTV footage was tried to be destroyed, and report of C.A. is not yet received regarding recovery of such a seized footage from D.V.R. He submitted that at this stage of the matter, there is sufficient

material against accused to frame charge, and therefore, to reject present application.

10] Ld. Advocate for complainant also submitted that at the time of framing charge, a mini-trial cannot be held and only the Court shall proceed on the premise whether there are sufficient grounds to proceed against the accused. The *prima facie* case has to be seen from the material filed with charge-sheet. Ld. Magistrate has already found such material while committing the case to Sessions Court arraying the present accused. There are grounds to raise suspicion against the accused with evidence of his presence on the spot and identified by witnesses. The evidence of Identification Parade falls under the head of relevant facts and the material evidence is of eye witnesses who have described the accused in FIR by clothes which are already seized. Ld. Advocate relied on provisions of Section 250 of BNSS laying mandate to file application within 60 days on committal of case by accused to discharge him from the case, and the case having been committed after coming into force of BNSS, its provisions are applicable to the trial. Thus, Ld. Advocate submitted to reject the application relying on following citations:

(i) ***Dinesh Tiwari Vs. State of Uttar Pradesh and Anr. [Cri. Appeal No. 1365 of 2014, decided on 07.07.2014]***, wherein, Hon'ble Apex Court observed as under:

"...From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227.

*10. Relative scope of Sections 227 and 228 Cr.P.C. was noticed and considered by this Court in **Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460**. This Court held as follows:*

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh: (SCC pp. 41- 42, para 4)”

(ii) ***State of Bihar Vs. Ramesh Singh [Cri. Appeal No. 51 of 1977, decided on 02.08.1977]***, in which, Hon’ble Supreme Court held that:

“At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion

against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.”

11] Regarding the ground raised by the accused of not naming him in FIR by complainant and in their statements by eye witnesses Vaibhav Kadam and Pintu Jadhav, at this stage of the matter, it *prima facie* appears from statements of said persons that they have described the unknown accused to them by their clothes, in which, the present accused is alleged to have been described by clothes that he had worn a T-shirt of red colour, which is seized from the present accused. Ld. Advocate for the accused submitted that no bodily description was given by complainant or witnesses, and the seizure is not carried out as per law. The said challenge is sought to be made by Ld. Advocate for accused would at the most be the matters of which evidentiary value would be determined after holding trial. However, at this stage of the matter, the evidence so brought by the prosecution raises a sufficient ground against the accused.

12] The next ground for discharge is the challenge to Identification Parade, not having been carried out in the manner provided by law by the Executive Magistrate. Ld. Advocate for accused referred to the said Identification Parade and the discrepancies therein agitated by him mentioned hereinabove. At this juncture, it is necessary to consider the value to be attached to the evidence by way of Identification Parade, being a relevant fact under the Evidence Act. As per law, identification in the Court is

the substantive evidence, and the Test Identification during investigation can only be used for the purpose of corroboration. It is a rule of prudence to be followed where accused is not known to the witness or complainant. In the case at hand, the complainant and witnesses have identified the accused, however, the manner of conducting the said parade is challenged at this stage making a ground for discharge.

13] Ld. Advocate for accused relied on *Md. Sajjad's case (supra)*, in which, there was appreciation of the evidence on trial and matter had gone in appeal before Hon'ble Supreme Court, in which above observations are made. The present case is at the stage of deciding discharge application, wherein as held in the cases of *Dinesh Tiwari, State of Bihar Vs. Ramesh Singh (supra)*, the Court has to see sufficient ground to proceed whether strong suspicion lies against the accused. In the case of *Vikramjit Kakati (supra)*, no *prima facie* material was found against the accused in the case regarding motive and the facts of the case led to discharge of accused. Now turning to the facts of the present case, it would *prima facie* appear from the evidence and material brought with charge-sheet that accused is described by clothes in FIR by eye witness-complainant and other two eye witnesses present with her. Accused approached the spot on the call of accused no.1 with accused no.2, and the accused no.2 had shot pistol in the head of deceased, who succumbed to brain injury. The present accused during the course of investigation came to be arrested and the Test Identification Parade was conducted by Executive Magistrate, wherein the accused is identified by eye witnesses. There are further statements of the said witnesses recorded by Ld. Magistrate and I.O. Thus, the complainant being wife of deceased has seen

the present accused committing crime at the spot alongwith two eye witnesses. The clothes of accused have been seized by I.O. vide seizure panchanama. There was also a CCTV camera found on the spot, of which D.V.R. machine was not so found and it is the case of prosecution that the D.V.R. was handed over to accused no.6 by accused no.2-Gaurav, which was seized from said accused. The said D.V.R. is stated to have been sent to the forensic laboratory for analysis, and report is awaited.

14] Thus, the evidence brought by the prosecution with charge-sheet is sufficient at this stage of the matter to proceed against the accused, as there are sufficient grounds for the purpose, and as agitated for accused, no case is made out to discharge him of the charges invoking Section 227 of Cr.P.C. as sought by him. Hence, the following order:

ORDER

Application is hereby rejected.

Date :- 29.09.2025

Additional Sessions Judge,
Baramati.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : V.B.Lalsangi
Stenographer (G-1)

Court Name : Additional Sessions Judge,
Baramati, Dist. Pune.

Date of Order : 29.09.2025

Order signed by
Presiding Officer : 29.09.2025

Order uploaded on : 30.09.2025