



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

ORDER BELOW EXH.59

This application is moved under Section 227 of the Code of Criminal Procedure (for short 'Cr.P.C.') for discharging accused no.3-Shahajirao Mugutrao Kakade 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] It is contended by applicant-accused no. 3 that he is prosecuted as above alongwith other accused on the report of informant-Ankita Nimbalkar, wherein he was not named. On arrest of accused no.2-Gaurav being his son, on 28.06.2024 at 6.04 a.m., he came to be arrested at 1.30 p.m. 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 grounds raised in the application by him are that he is not named in FIR and in statements of Vaibhav Kadam and Pintu Jadhav, as also the other witnesses. He is not named in bullock transaction, assault and regarding his presence on the spot. He is only arrayed on the statement of accused no.5-Ajit More for offence under Section 201 of IPC, in respect of which, there is no material that he destroyed evidence. There is no evidence of consent given by the accused to use his weapon and that he instigated co-accused. Only because weapon is in the name of any person, he cannot be said to have

committed crime. No offence is made out against him. No *prima facie* case is brought against him. He has not used the weapon. There is no material filed with charge-sheet against the accused with reasonable grounds to believe his involvement in the crime. Therefore, accused no.3 submitted to discharge him from the case.

3] Say is filed by prosecution at Exh.60 that in the murder of deceased committed by accused persons, the present accused has played a role of destroying the evidence by wiping out the blood of deceased on the spot through accused-Ajit Kisan More, whereby, Section 201 of IPC was invoked against the present accused, who assisted the other accused in the crime. Present accused is the licence holder of the pistol, by which deceased was killed, which he handed over to accused no.2, and it was used in the offence to shoot the deceased in head. Accused has abetted the commission of crime, in which, pistol was recovered from accused no.1, at whose instance, accused no.2 fired shot towards deceased. Accused no.3 has committed breach of law and committed offence under Sections 3, 25, 29 and 30 of the Arms Act. Ld. APP filed say at Exh.70 and added that witness Ajay Mansing Bhosale also stated against the present accused that accused asked him to destroy the evidence of spot by washing the place. He submitted that there is sufficient evidence against the present accused, and therefore, to reject application.

4] Complainant also appeared with Ld. Advocate and filed say at Exh.65 opposing the application and submitted that evidence collected against the present accused would show that there are grounds to proceed against him for the offence alongwith other accused.

5] Heard Ld. Advocate for accused no. 3, 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. under which the application is filed to discharge accused no. 3, lays down 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] Thus, according to the 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] Ld. Advocate for accused no. 3 argued on the grounds taken in the application that accused is not named in FIR and no role of the accused is stated in the offence of murder in the statements of witnesses Santosh Todkar, Vaibhav Kadam, Pintu Jadhav and supplementary statement of complainant. Statements of Ajay Mansing Bhosale and Ajit More cannot be relied on to invoke and frame charge under Section 201 of IPC. He further argued on the ground taken regarding non-applicability of Sections 29 and 30 of the Arms Act, in view of no evidence against accused no.3, with whom, accused nos. 1 and 2 being his sons stayed.

Intention to commit offence on the part of the present accused is not shown by any evidence. He further relied on the law relating to consideration for discharge. Thus, Ld. Advocate for accused submitted to discharge the accused.

9] On the other hand, Ld. APP for State submitted on the lines of say filed by the prosecution, as well as, Ld. Advocate for the complainant submitted that there is sufficient material against the present accused in order to proceed for framing charge against him and no case is made out for discharge on material alleged by him.

10] In the charge-sheet, role alleged by the prosecution against the present accused is that the deceased was injured by shooting in head by accused no.2 with accused no.1 and others, and the present accused, in whose name the licence for the gun stands, misused the weapon by handing it over to accused no.2 in order to be used by accused nos. 1 and 2 and attempted to destroy the evidence of blood of deceased on the spot alongwith accused no.5-Ajit Kisan More.

11] Ld. Advocate for accused relied on the statements in the FIR of complainant being wife of the deceased and two eye witnesses who were present with her regarding no whisper of the name of present accused. As per the prosecution case, the complainant and said two eye witnesses took the deceased after receiving bullet injury to hospital. During the course of investigation, the role of present accused is revealed regarding licence of pistol in his name, and that at his direction, the blood on the spot was wiped out.

12] Perusal of the charge-sheet and material with it shows that there is evidence against the present accused in the form of

pistol which is licensed to him, though used by accused no.2 in firing at the deceased brought at the spot on the call of accused no.1, accompanying the accused nos. 4 to 6. Pistol is seized from accused no.1 being son of present accused on his memorandum recorded before panchas. The present accused through accused no.5, washed out the blood of the deceased on spot. Witness Ajay Mansing Bhosale has stated that he worked as a labour on the field of accused no.1, and on 27.06.2024 at 11.45 p.m., after hearing noise on the bungalow of accused no.1, he went there, where the present accused asked him to call accused Ajit More in order to wash out the petrol spilled in front of the house. He stated to have called accused no.5 accordingly.

13] Ld. Advocate for accused relied on the case of ***Suresh Budharmal Kalani Vs. State of Maharashtra [(1998) 7 SCC 337]***, wherein, Hon'ble Apex Court held that confession of discharged accused is not admissible against co-accused. Further, Ld. Advocate for accused additionally relied on the case of ***Monish H. Bhalla Vs. Satya Prakash Bahl [2005 ALL MR (Cri) 188]*** on the value of confession of co-accused. In the instant case, apart from statement of accused Ajit More regarding washing the blood on spot, there is evidence of Ajay Mansing Bhosale also and other evidence collected by police.

14] Ld. Advocate for accused relied on the case of ***P. Krishna Mohan Reddy Vs. State of Andhra Pradesh [2025 SCC Online SC 1157]***, in which, the matter for consideration before Hon'ble Supreme Court was for anticipatory bail and the considerations for deciding application under Section 227 of Cr.P.C. are different, and further, would not apply to the facts of the present case, where there is sufficient evidence against the accused.

Similarly, in the case of ***Tarlochan Singh @ Rana Vs. State of Punjab [2022 SCC Online SC 473]***, the matter arose out of appeal against the judgment and order of Hon'ble High Court before Hon'ble Supreme Court, where evidence was led and the appeal came to be allowed setting aside the conviction under Sections 29 and 30 of Arms Act.

15] Further reliance is placed by Ld. Advocate in the case of ***Karnataka EMTA Coal Mines Ltd. Vs. CBI [2024 SCC Online SC 2250]***, in which, the Hon'ble Supreme Court held that at the stage of Section 227 of Cr.P.C., the Special Judge CBI had to sift the evidence to find out sufficient ground for proceeding against the appellants, and that the Judge is not a mere the post office to frame the charge at the behest of prosecution. In the instant case, the material in the charge-sheet and evidence is taken into consideration herein while deciding the application of accused.

16] Ld. Advocate for accused further relied on the case of ***Subramanya Vs. State of Karnataka [2023 ALL SCR (Cri) 171]*** relating to discovery of weapon in the matter in a statutory criminal appeal at the instance of convict. In case of ***Kondiba Gunjal Vs. The Union of India [DLD (Cri)-2024-3633]*** relied on for accused, at the stage of deciding bail application under NDPS Act, the Hon'ble Bombay High Court considered the value of confessional statement given under Section 25 of the Evidence Act. In the instant case, the case is at the stage of deciding discharge application filed under Section 227 of Cr.P.C. by the accused, in which, apart from the evidence of discovery, there is other evidence against the accused, as discussed in the order.

17] Thus, after considering the contents in the charge-sheet and material placed on record, it *prima facie* appears at this

stage that though the present accused was not named in FIR, there is evidence against him that his role has been surfaced during course of investigation, in a case of murder by gun shot, of which, the licence stood in his name and used by one of his accused son. There is also evidence collected against the accused regarding destroying the evidence on the spot where blood of the deceased was lying on the ground, apart from the statement of co-accused. In the Spot Panchanama, samples of the blood and sand on the tar road are obtained. The evidence collected is sent for chemical analysis, and report is awaited.

18] Therefore, in view of the discussion made as above, at this stage of the matter, no case exists to hold that the charge brought against the accused is groundless. Thus, looking to the role alleged against the accused in the offence and evidence collected against him and filed with charge-sheet, no case is made out by the accused to discharge him from the case invoking Section 227 of Cr.P.C. as sought by him. Hence, the following order:

ORDER

Application is hereby rejected.

Date :- 07.08.2025

(V. C. Barde)
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 : V. C. Barde
Additional Sessions Judge,
Baramati, Dist. Pune.

Date of Order : 07.08.2025

Order signed by
Presiding Officer : 07.08.2025

Order uploaded on : 11.08.2025