

Sessions Case 119/2025
(Old Sessions case no. 13/2020)
State Vs. Latif Pathan and ors.

ORDER BELOW EXH.48
(Passed on this 9th March, 2026)

By this application, the accused no. 2 Noor Mohammad Mehboob Pathan is seeking discharge in the present case for alleged offences under sections 302, 452, 34 of IPC.

The case of the prosecution is as under:

2] On 24/08/2019 at around 6.00 a.m. the informant woke up from his sleep after hearing a sound of someone kicking on the back door of his house. When he went to check the same, he found that accused no. 2, Noor Mohammad Mehboob Pathan (applicant) was standing there. Thereafter, the informant heard the shouts of his sister-in-law and hence proceeded towards her room. At that time, the accused no. 2 tried to hold the informant, but he snapped at his hand and went inside the room. After entering the room, he saw that accused no. 1 Latif Mohammad Pathan was holding an iron rod with which he had assaulted the deceased on her head. The deceased Nikat was lying at his feet in a pool of blood. He saw that the kids in the house had gathered in the corner of the room due to fear. The accused no. 3 Peer Mohammad Mehboob Pathan was standing next to accused no.1 Latif Pathan. The informant held Latif Pathan and raised shouts for help. Latif Pathan pushed him due to which the informant suffered an head injury. Due to the shouts of the informant, all the three accused ran away from the spot. The deceased Nikat was taken to the hospital, where after examination, she was

declared dead before admission. Hence, the offence came to be registered.

3] Heard the Ld. Advocate Shri. Abhinav Nalawade alongwith Advocate Shri. Rohit Rahing for the applicant. Heard the Ld. A.P.P. and perused reply dated 07/03/2026.

4] The Ld. Advocate for applicant has submitted that there is no case against the applicant. He submitted that there is no overt act attributed to the present applicant/accused no. 2 Noor Mohammad Mehboob Pathan. He further submitted that the applicant has not used any weapon. He further submitted that the conduct of the applicant has to be seen. He submitted that he was arrested on the same day from their house which goes to show that they did not abscond after the offence. He further submitted that there is no motive for the applicant to commit the said offence. He further submitted that there are no prior disputes between the applicant and the deceased. He further submitted that accused no. 1 is of unsound mind and hence, there is no offence committed by him. Therefore, when there is no commission of offence by accused no.1, there cannot be any offences alleged against the present applicant. He further submitted that the present applicant had gone to the house of the informant as he also heard shouts from that house. He further submitted that the present applicant had taken the deceased to the hospital in his vehicle. He submitted that there is absolutely no material against him in the entire charge-sheet to frame charges against him.

5] Per contra, the Ld. A.P.P. submitted that at this stage, the defence of the accused cannot be tested. He submitted that at the

stage of framing of charge only prima facie material has to be seen. He further submitted that there are specific allegations against the applicant in the FIR. He further submitted that there are witness statements which show that the applicant had run away from the spot after incident. He lastly submitted that there is prima facie case against the accused/applicant and hence prosecution may be granted an opportunity to lead evidence to prove the case.

6] Upon considering the rival submissions, the following points arise for my consideration:

Sr.No.	Points	Findings
1.	Whether there is prima facie material in the charge-sheet to proceed against the applicant/accused no. 2?	Yes.
2.	What order?	Application is rejected.

7] In this case, the Hon'ble High Court vide order dated 26/02/2026 had directed this Court to provide an effective opportunity of hearing to the prosecution and the applicants in accordance with law and thereafter pass an order on framing of charge. In view of the said order, the earlier charge framed by this Court vide order dated 31/01/2026 was quashed and set aside by the Hon'ble High Court. On 07/03/2026, the present applicant/ accused filed this discharge application.

Prima facie material:

8] On perusal of the charge-sheet, the following material is revealed against the applicant/accused no. 2:

First Information Report:

9] As per the FIR, this applicant/ accused was present in the house of the deceased Nikat at 6.00 a.m. in the morning. Further, the FIR reveals that after hearing the screams of the deceased, when the informant tried to go towards her room, the present applicant/accused no. 2 tried to hold the informant. After avoiding the accused no. 2, the informant went inside the room and saw that the deceased was lying in a pool of blood on the floor, whereas accused Latif Pathan(accused no. 1) holding an iron rod and accused no. 3 Peer Mohammad were standing next to the deceased. When the informant raised shouts for help, all three accused ran away from the spot.

10] The statement of Ashraf Anwar Shaikh shows that there are disputes between the informant's family and the accused over house no. 529. His statement further shows that the family members of accused no. 1 used to abuse the deceased and also harass her for which an N.C. on 15/12/2018 was already filed. The statement of Latifa Anwar Shaikh shows that there were prior quarrels between the deceased and Latif Pathan for which complaints were filed with the police station. The statement of Irshad Shaikh shows that he is the neighbour of the informant. On the date of incident, on hearing shouts from the house of the informant, he proceeded there. He saw all the three accused running away from there. The statement of child witness Akdus Shaikh (son of the deceased) shows that all the three accused had come to his house at the time of incident. The accused no. 3 Peer Mohammad pulled the bed-sheet from the deceased and accused no. 2 Noor Pathan (present applicant) said that 'येहीच है, मार

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इसको". Thereafter, the accused no. 1 Latif Pathan hit the deceased Nikat on her head with an iron rod.

Medical:

11] The advance death certificate shows that the deceased suffered cardio-pulmonary arrest due to hemorrhage shock due to head injury. Therefore, the medical evidence also prima facie supports the case of the prosecution at this stage.

12] From the above facts, the presence of the accused/applicant on the spot at the time of commission of offence is very much apparent. The FIR prima facie shows that he tried to hold the informant while he was proceeding to check on the deceased Nikat. The witness statements show that all the three accused had run away from the spot after the offence. The statements of two witnesses namely Ashraf Anwar Shaikh and Latifa Anwar Shaikh show that there was prior enmity between the accused no. 1, his family members and the deceased. The weapon was recovered from outside the house of the informant, which according to the prosecution was dropped by the accused no. 1 while fleeing from the spot alongwith other accused. The statement of child witness Akdus also shows the presence and instigation of the applicant to commit the said crime. Therefore, at this stage, it cannot be said that there is no prima facie material to proceed against the applicant/ accused no. 2.

13] The Ld. Advocate for accused no. 2 has contended that accused no. 1 was suffering from mental illness and hence, no offence can be attributed to any other accused. Such plea has been raised for the first time after six years of filing charge-sheet. Even otherwise, the

plea of insanity of accused no. 1 will have to be tested in the trial and cannot be adjudicated at this preliminary stage. The presence of the applicant/ accused no. 2 at such odd time of 6.00 a.m. in the morning is sufficient to have grave suspicion about his involvement in the offence. At this stage, the defence of the accused no. 2 neither can be tested nor considered. The Ld. Advocate for accused has relied upon the case of **Union of India Vs. Prafull kumar Samal and another (1979) AIR (SC) 366**, wherein it has been held by the Hon'ble Apex Court that the trial Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused. It is further held therein that 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. There are no two ways about the abovesaid settled law on the point of discharge.

14] The Hon'ble Supreme Court in the case of **P. Vijayan Vs. State of Kerala and Ors. AIR 2010 SUPREME COURT 663** observed that -

"21) As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not

there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

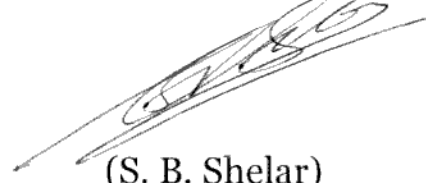
22) In the case on hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed under Section 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence under Section 302 read with Section 34 IPC and because of the same, he dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said conclusion."

15] Applying the settled law as mentioned hereinabove, in the present case, the presence and involvement of the accused as revealed from the FIR and statements of witnesses gives rise to grave suspicion against him and shows his prima facie involvement in the offence. Therefore, there is sufficient material to proceed against the accused for the alleged offences and hence the application for discharge filed by applicant/accused no. 2 deserves to be rejected. Hence, the following order-

ORDER

Application Exh.48 is rejected.

Junnar, Pune
Dt. : 09/03/2026



(S. B. Shelar)
Additional Sessions Judge, Junnar
Tal. Junnar, Dist. Pune.