

MHRG170005832023



IN THE COURT OF DISTRICT JUDGE -1 AND ADDITIONAL SESSIONS  
JUDGE PANVEL-RAIGAD, AT : PANVEL  
ORDER BELOW EXHIBIT 118, 120 AND 129 IN  
SPECIAL (MCOCA) CASE NO.58/2023  
(23/04/2025)

The application at Exh.118 is moved by accused No.1, application at Exh.120 is moved by accused No.10 whereas application at Ex.129 is moved by accused No.9. Today all these applications are seeking discharge u/sec.227 of Cr.P.C.

2] Special Prosecutor for prosecution has filed say at Exh.121, 122.

3] The matter was on yesterday's board. On request of Ld. Advocate for accused No.1 and 10 it was adjourned till today 11.00 a.m. Now it is 12.10 p.m. Ld.Advocate for accused No.1 and 10 is absent.

4] The application at Exh.129 moved on behalf of accused No. 9 today, is also for discharge and I had directed Ld.Advocate for accused no.9 to argue his application. The said Ld.Advocate has left Court and is not present before Court. In such circumstances these applications are decided as the present matter is already expedited by Hon'ble Parent High Court.

5] Ld.Special Prosecutor Shri Mulye is present through video conferencing. He is heard.

6] In application at Exh.118 and 120 accused No.1 and 10 are seeking discharge on ground that, there is no whisper against them in charge-sheet. There is no material for activity of criminal intimidation, kidnapping, extortion, causing hurt etc. It is submitted that, in absence of allegations of use of weapon or any recovery of weapon, no prima facie case is made out. Further it is submitted that, there is one specific allegation i.e. from 09/11/2021 accused No.1 had paid Rs.35,000/- to one absconding accused Nilesh Deshmukh. In this regard it is submitted that, said amount paid from 2018 and it was towards use of road as complainant's property was situated in compound of Nilesh Deshmukh. In respect of allegations of extractions of stones and selling them to Sai Construction, it is submitted that, applicant/accused No.1 has firm Jagruti Enterprises and Gururaj Infra who are doing lawful business with Sai Construction.

7] In the discharge application of accused No.10 it is submitted that, allegations are that, money was transferred to Jagruti Enterprises of which this accused is partner alongwith her husband/accused No.1. It is submitted that, on perusal of documents, the transactions between Sai Enterprises and Jagruti Enterprises are legal. This accused submits that she is dragged in offence as she is sister of accused No.5.

8] Ld.Spl Prosecutor Shri Mulye points out order of Hon'ble Parent High Court in ABA No.1500/2023 more particularly para (5). I have gone through this order of Hon'ble Parent High Court. There is prima facie conclusion reached by Hon'ble Parent High Court with regard to the allegations against applicant/accused.

9] Ld.Spl.Prosecutor and even accused No.1 and 10 have placed reliance on decision of Union of India Vs. Prafulla Kumar Samal and another (1979) 3 SCC 4. Hon'ble Apex Court in this decision has laid down the law regarding discharge u/sec.227 of Cr.P.C. by a Special Judge. I would like to reproduce law laid down by Hon'ble Apex Court as under ;

*“ In exercising jurisdiction u/sec. 227, Special Judge which under the Code is a senior and experienced Court cannot act merely as a post office or mouth piece of prosecution, but also to consider the broad probabilities of the case, the total effect of evidence and documents produced before Court, any basis infirmities appearing in case and so on. This however, does not mean that, the Judge should make a roving enquiry into the probes and cons of matter and weighs evidence as if he was conducting a trial. While considering question of framing of charge under this section, he has the undoubted power to sift and weigh evidence for the limited purpose of finding out whether or not a prima facie case against accused has been made out.*

*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. Whether material placed before Court disclose grave suspicion against accused*

*which has not been properly explained, the Court will be fully justified in framing of charge and proceeding the trial. By and large however, if two views are equally possible and the Judge is satisfied that, evidence produced before him while giving rise to some suspicion but not grave suspicion against accused he will be fully within his right to discharge accused”.*

10] Thus law laid down by Hon'ble Apex Court gives a test to determine prima facie case. While ascertaining prima facie case, I am not expected to do a roving enquiry and the evidence and its evidentiary value which is to be considered at the time of trial is entirely different. While considering it at the time of deciding a discharge application, the evidence has to be weighed differently and a suspicion is sufficient to reject the application.

11] As stated above Hon'ble Parent High Court in ABA No. 1500/2023, after considering the material, observed that, accused No.10 who is alleged to be a member of a gang, had allegedly taken possession of stone quarry business of informant. The further observations are that gang members sold extracted stone, deposited amount received from sale in partnership firm bearing name Jagruti Enterprises.

12] In charge-sheet, apart from aforesaid material considered by Hon'ble Parent High Court I find CDR and SDR record being placed. In charge-sheet there is material showing transfer of money.

13] In respect of accused No.1 in charge-sheet there is evidence of receipt of amount of Rs.2,14,06,918/- in bank account of Gururaj Infra and Jagruti Enterprises. With regard to this accused in charge-sheet there is material of CDR and SDR.

14] In respect of accused No.9 who has moved today his discharge application, the application itself makes it clear that there is prima facie material against this accused. In the grounds seeking discharge, it is mentioned that, in FIR there is no whisper about informant being getting scared. Then there is a ground in clause (J) wherein it is mentioned that, there is TIP of accused No.9 and informant had identified. However, TIP was not conducted by following necessary guidelines. In clause (L) it is mentioned that, accused confess the crime but there is no whisper of present crime in confessional statement. The said statement is retracted.

15] As stated above the application itself mentions the material against accused No.9. Whether TIP was carried out by following mandatory guidelines or otherwise, is an defence of accused which he has to bring on record by cross-examining of prosecution witnesses or by his defence witnesses. A confessional statement under MCOC Act is admissible. If it is case of accused that he had retracted, he has to prove this fact at the time of trial. Both these grounds are not grounds to seek discharge. The law laid down by Hon'ble Apex Court in case of Union of India Vs. Prafulla Kumar Samal, is applied to present application of accused No.9 then,

accused No.9 has failed to establish that, there is no prima facie case against him instead his application itself reflects existence of material against him in charge-sheet.

16] For aforesaid reasons, the applications moved by accused No.1, 10 and 9 are liable to be dismissed. Before parting with final order, I have to mention that, as Hon'ble Parent High Court has expedited the present case, I am insisting accused persons for framing of charge. However, accused and their advocates who are representing them are bent upon to file unnecessary applications on record. This observation is intentionally made by me to make it clear that, accused persons are delaying commencement of trial. Today all accused are not present as a MCOG Act case in Thane Special Court is also listed. Hence, present matter is adjourned for charge tomorrow. With these observations I pass following order.

**ORDER**

1. The applications at Exh.118, 120, 129 are hereby rejected.
2. Adjourned till 24/04/2025.
3. Copy of order be placed below each exhibit.

Panvel  
Date :-23/04/2025

( Jairaj D.Wadne )  
Special MCOCA Judge,  
Panvel-Raigad

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

Name of the stenographer	:	S.J.Sheth
Name of the Court	:	Additional Sessions Judge, Panvel Raigad
Date of dictation(direct)	:	23/04/2025
Order signed by the P.O.on	:	23/04/2025
Order uploaded on	:	24/04/2025