

CNRNO.MHSI010004632025



Order below Exh 16 in Session Case No. 33/2025
(State Vs Lalit Mahadeo Devulkar and others)

This application is filed by the accused No. 1 Lalit Mahadeo Devulkar for discharge vide Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2] Accused No. 1, along with other accused, is alleged to have committed offences punishable under Sections 103(1), 109, 189(2), 189(4), 190, 191(2), 191(3), 118(1), 351(3), 352, and 324(2) of the Bharatiya Nyaya Sanhita, 2023.

3] I have perused the grounds given in application Exh 16. The Ld ADPP has filed his say Exh 19 along with the police say report Exh 19-A. I have perused the grounds of the prosecution for rejection of the discharge application.

4] Mr Kulkarni, Ld advocate for the accused No. 1, has made his submission based on the lines of grounds given in the application Exh 16. The sum and substance of application Exh 16 as well as the argument of Mr Kulkarni is like this: The presence of Accused No. 1 is not established from the charge-sheet papers. There is an unexplained delay of 23 hours in lodging the FIR despite the availability of a police station in close proximity. In the memorandum panchanama, Accused No. 2 did not mention the name of Accused No. 1 while narrating the names of other accused persons. Several witness statements also refer only to five

accused, yet at the stage of filing the charge-sheet, the Investigating Officer implicated Accused No. 1, thereby increasing the total number of accused to six. It is further pointed out that Accused No. 1 had consistently opposed illegal sand extraction and had previously led movements against such activities. Consequently, the informant bore animosity towards Accused No. 1, as he was acting in the interest of environmental protection and against the vested interests of the informant and his associates.

5] Mr Rane, Ld ADPP also submits on the lines of the say Exh 19 and 19-A. The sum and substances of his submission is like this: The offence in question is of a grave and serious nature, involving intentional murder. Accused No. 1, Lalit Mahadeo Devulkar, is specifically named in the FIR, and there are at least four eyewitnesses who have stated that they saw him at the time of the commission of the crime. Although some of the witnesses did not initially know the name of Accused No. 1, they have subsequently identified him, particularly witness Lakhan Setan Sinha. Accused No. 1 was also identified in the Test Identification Parade.

6] Learned Additional Public Prosecutor, Mr. Rane, submits that at this stage it would be too premature to discharge Accused No. 1.

7] On this background my observations are as follows.

8] If allegations are patently absurd, inherently improbable, or do not constitute any offence, discharge is

justified. The Court cannot conduct a roving enquiry or appreciate evidence as in the trial. All material submitted by the prosecution is prima facie presumed true, at this stage; contradictions or weaknesses are matters for trial. The Court has only to consider whether the material placed by the prosecution, if taken at face value and accepted in its entirety, discloses the commission of the offence alleged. If a prima facie case is made out, the accused must face trial. The defence of false implication or insufficiency of evidence is a matter to be tested during trial and not at this preliminary stage. These are the principles governing the 'discharge' of an accused. Present application shall be tested on these principles.

9] Though the full name of the accused does not appear in the FIR, his name does find mention therein, and he has been duly identified in the Test Identification Parade by witness Lakhan Sakham Sinh. While Accused No. 2, in his memorandum, has not referred to Accused No. 1, the possibility of screening him cannot be ruled out. I have carefully perused the statements of witnesses incorporated in the police report filed under Section 193 of the BNSS, and I find, prima facie, that this is not a case where Accused No. 1 can be granted a clean chit at the threshold. Even if certain statements do not specifically mention the name of the accused, Learned Additional Public Prosecutor Mr. Rane has emphasized that the witnesses were able to identify Accused No. 1 based on his physical description.

10] The offence alleged is of a serious nature, and there exists evidentiary material against Accused No. 1. The plea of false implication is a defence which can be taken at the trial. The

accused will have full opportunity to defend himself during the course of the proceedings. If discharge is granted despite the existence of prima facie material, it would cause serious prejudice to the prosecution. On the other hand, if the accused is not discharged, he will still have the benefit of various safeguards, including the right of cross-examination of prosecution witnesses, his examination under Section 351 of the BNSS, and the opportunity to enter defence evidence, including examining himself and producing witnesses to establish his plea of alibi. Considering the material available before me, I am of the view that this is not a fit case for discharge of Accused No. 1.

11] In a case involving the grave charge of murder where there is prima facie evidence to show involvement of the accused, it would be unsafe to discharge the accused at the threshold. At the stage of discharge, the Court is only required to see whether a prima facie case is made out from the material placed on record, and not to conduct a meticulous evaluation of the evidence. Premature discharge of an accused in such serious offences may result in miscarriage of justice, as the truth can only be tested through a full-fledged trial where the prosecution evidence is subjected to cross-examination and the defence is afforded due opportunity as per the due process of the law. So far as the plea of alibi is considered, it may be commented, except in rare cases where incontrovertible defence material is produced (e.g., documents proving alibi conclusively), the Court can not evaluate defence at the discharge stage.

12] Hence, I hold that the accused No. 1 is not entitled to be discharged.

ORDER

1. Application Exh 16 is rejected.
2. In the circumstances, no order as to costs.
3. Next date shall be 28th November, 2025 for next stage.

Date: 29.08.2025

(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg at Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) Shital Krushna Dhake v. Krushna Dhake, MANU/MH0285/2018.