

IN THE CITY CIVIL COURT AT AHMEDABAD

SESSIONS CASE NO.266 OF 2022

Complainant (s) : State of Gujarat

V/s

Accused (s): Dilipsingh Bhupatsinh Parmar and others.

Appearance:

Mr. D. P. Padhiyar : Learned APP for State.

Mr. S. K. Saiyed : Learned Advocate for accused No.5.

ORDER BELOW EXHIBIT:10

1. Learned Advocate for accused No.1 has filed a discharge application at Exhibit:10.
2. Briefly stating the case of prosecution as per FIR dated 12.02.2021 is that on 11.02.2001 the son of complainant Dipaksinh Badarji Gopalji Parmar, was kidnapped from Dharmanath Prabhu Society, Nava Naroda. That the son of the complainant namely Jigneshsinh aged 21 years was coming on his motorcycle along with one Divya Chhatrasinh Parmar as a pillion rider at that time one Dilipsinh Bhupatsinh Parmar came in Eeco Car bearing Reg.No.GJ-18-BK-8873, and caught hold of Jignesh and one Chhatrasinh Bhupatsinh Parmar came on Activa who slapped Jignesh and took him in Eeco Car. Thereafter, Ajitsinh and Vibhaben came and sat inside the car. In this way all the four accused had kidnapped the son of the complainant Jignesh. In these circumstances an FIR was lodged with Krushnanagar Police Station against all the four accused.
3. While re-adverting the contents of FIR learned Advocate for

accused No.5 has contended that the accused no.5 is innocent and falsely implicated in the present case even he was not named in the FIR and no overt act has been attributed to him. That the accused no.5 was not present on the place of occurrence even he was not spotted in the footage of the CCTV. That the accused no.5 was arraigned on the basis of the statement of the co-accused recorded by the police, which was not admissible as per Section 25 of the Indian Evidence Act. That the accused no.5 is residing in the house of accused no.2 and only depending on the said fact the police had arrested him. That as per the panchnama dated 15.02.2021 no evidence against the accused no.5 for destroying the evidence. That no muddamal has been recovered from the accused and there is not a single evidence against him. As such on all these counts it has been prayed that accused No.5 may be discharged.

4. So far the other accused in the present case are concerned no such prayer has been made on their behalf nor any application for their discharge has been filed.
5. On the other hand learned APP has vehemently contended that there is *prima facie* case against all the accused and as such charges are liable to be framed. Apart from that learned Advocate for the complainant has filed written arguments at Exhibit:13, against the discharge application,

wherein, he has argued that during the course of investigation the role of the accused no.5 was unfolded who along with other four accused with common intention planned the kidnapping of the son of the complainant which proves their common intention to commit an offence, prior meeting of minds and pre-planned the kidnapping. That the accused no.5 had thrown the motorcycle of the son of the complainant bearing Reg.No.GJ-18-BD-3960, in the Narmada Canal, from the Railway Bridge of Village - Medra, which was discovered on 17.02.2021, as envisaged under Section 27 of the Evidence Act. That as per the Section 133 of the Evidence Act the facts discovered in the statement of the co-accused is tenable at law. Hence, he has prayed for rejection of the discharge application.

6. Considering the arguments advanced by both the learned Advocates, looking to the present application it is filed under Section 227 of the Code of Criminal Procedure to discharge the accused no.5 from the present proceedings. It is required to reproduce herewith Section 227 of the Code:-

"227. 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. Now looking to the contents of the application it is contended that the present applicant is innocent person, his name is not mentioned in the FIR as well as complaint. He has not played any role in commission of the offence only on the basis of the statement of the co-accused he has been arraigned as accused no.5 in the present case. Moreover, looking to the panchnama dated 17.02.2021 the muddamal motorcycle was recovered but as per the contents of this application it is stated that police has done the proceeding but how many staff remained present and why they came on the place have not been mentioned in the panchnama so the whole proceeding carried out by them is creating doubt. Moreover, no role of the applicant shown in the CCTV footage. Considering this fact it is required to see all the charge-sheet papers and other papers placed before the Court. It transpires that role of the present applicant is that he has thrown the motorcycle of the deceased in Narmada Canal on say of the accused nos.1 and 2 so the motorcycle which was recovered from the Narmada Canal and for that panchnama was drawn. It was drawn as per the place shown by the accused. Now looking to this fact against the present applicant has been coming out during the investigation hence his name was

not mentioned in the FIR or complaint. So only not to mention the name in the FIR and complaint it cannot be said that he has not played any role in commission of the offence so looking to the panchnama dated 23.04.2021 and 17.02.2021 the name of the present applicant had been came on record. So as per the arguments of the applicant he is residing with the accused no.2 and has been wrongly implicated in the present case but no evidence has been produced on record that there is any grudge between present applicant and accused no.2 so looking to the whole papers it transpire that the applicant has abetted in the commission of offence. Moreover, at the time of the deciding the application of discharge it is required to see Section 227 and Section 228 of the Code. The purpose of Sections 227 and 228 of the Code is to ensure that Court should be satisfied that the accusation made against the accused is not frivolous and that there is some material for proceeding against him. Section 227 is beneficiary to save the accused from prolong harassment which is a necessary concomitant of a protected trial.

8. Moreover, there should be a sufficient ground for proceeding and it can be seen from the papers of the investigation so at the stage of Section 227 the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceedings within its fold

against the accused. The sufficient ground would take nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame charge against him so looking to the provision of Section 227 of the Code, prima facie it transpires that the present applicant has played role in the commission of offence and he is involved in the same. So there is no reason to discharge the present applicant. Hence, following order ensues:

ORDER

1. The application at Exhibit:10, is rejected.

Pronounced in the open Court today on this **17th** Day of **JANUARY, 2023.**

Date : 17/01/2023
Place : Ahmedabad.

(TARUNA KISHORKUMAR RANA)

Additional Sessions Court,
Court no.15,
City Civil-Sessions Court,
Ahmedabad.

CODE No.GJ-00478

Ankit