

Sessions Case No. 546 of 2024
Present: Sri. Ajayendra Nath Bhattacharya
Additional Sessions Judge, 1st Court, Contai
JO Code: WB00819

Order No: 07
Date: 03-06-2025

Today is fixed for passing order in respect of an application u/S. 227 CrPC, as preferred by one Zakia Purkait, an accused person of this case, praying for her discharge from the case.

Both the accused persons on court bail are present by filing attendance. Ld. Additional PP, Contai is also present. The informant is also present along with her Ld. Advocate.

The record is accordingly taken up for passing order.

Perused the application in question and considered the same in the light of the submissions made by all the sides and the materials available in the case record as well as the case diary.

The Ld. Advocate for the accused person namely Zakia Purkait had asserted that the present case has been instituted by the police on the basis of a written information lodged by the informant and after investigation of the case, the police had submitted charge sheet against accused person namely Zakia Purkait alleging the commission of an offence by her which is punishable u/Ss. 417/506/120B IPC. But on a careful perusal of the materials on record, it is found that there is no materials to frame charge against the said accused Zakia Purkait for commission of any offence punishable under the law of the land. It is submitted that the materials on record goes to show that there was no materials to reflect that there was any involvement of the said accused person in the alleged offence and all the allegations of the informant is leveled against the other accused person of this case. As such, the Ld. Advocate for the said accused person namely Zakia Purkait prays for her discharge from the case.

Strong objection is taken by the Ld. Additional PP, Contai, who submits that the said accused namely Zakia Purkait is involved in the alleged offence as she had entered into an conspiracy with her son, the other accused person of this case, to cheat the informant by inducing her to establish physical relationship with the other accused person on a false promise of marriage. It is submitted that the said accused namely Zakia Purkait had given assurance to the informant to accept her as the

daughter-in-law in her house and acting on such assurance the informant had established physical relationship with the other accused.

The Ld. Advocate for the informant also adopted the submission of the Ld. Additional PP, Contai and submitted that the said accused namely Zakia Purkait has encouraged the other accused person to cheat the informant by establishing physical relationship with her on a false promise of marriage.

On perusal of the written information of the case, it is found that the informant had alleged that after she had developed a love affair with the other accused person, he had taken her to the said accused namely Zakia Purkait and she had assured her to accept her as her daughter-in-law. It is also alleged that the said accused namely Zakia Purkait had helped the informant to take an accommodation on rent near her college and had thereby facilitated the other accused person to have a place where he could meet the informant and have physical relationship with her. It is further allegation of the informant that when the other accused person was avoiding to marry her, she had reported the same to the said accused namely Zakia Purkait but she had remained quite and could not give any satisfactory answer to the informant. However, on a careful perusal of the statement of the informant as recorded by the Ld. Judicial Magistrate in terms of S. 164 CrPC, it is found that there is practically no allegation made against the said accused namely Zakia Purkait. The only assertion made by the informant in her statement u/S. 164 CrPC in respect of the said accused namely Zakia Purkait is that the other accused had taken her home and had introduced her to the said accused namely Zakia Purkait.

Now, in the case of **Bhawna Rai v. Ghanashyam and others** as reported in **2020 (1) AICLR 32 (SC)**, it has been observed that at the time of framing of the charge, only prima facie case is to be seen; whether case is beyond reasonable doubts, is not to be seen at this stage. The term 'prima facie case' has been elaborated by the Hon'ble Apex Court in the case of **Mauvin Godinho V. State of Goa** as reported in **(2018) 2 CCrLR (SC) 5**, wherein it has been observed that a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the Court to believe the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. In the case of **M.E. Shivalingamurthy V. CBI, Bengaluru** as reported in **2020 (2) AICLR 322 (SC)**, it has been held that the principle established is to take materials produced by prosecution, both in the form of oral statements and documentary materials, and act upon it without it been subject to questioning through cross examination and everything assumed in favour of prosecution, if a scenario emerges where no offence, as alleged, is made out against accused, it, undoubtedly, would enure its benefit of accused warranting Trial Court to discharge the accused. On the other hand, the

Hon'ble Calcutta High Court in the case of **Vikram @ Bikram Chatterjee V. State of West Bengal** as reported in **(2019) 4 CCrLR (Cal) 157** observed that in case for application for discharge, Court to evaluate material and documents on record to find out those facts emerging there from taken at their face value, whether disclosing evidence offence alleged. At this stage, the Court is not required to go deep into probative value of materials on record. Standard of test and judgement which to be applied before conviction is not required to be applied while at stage u/s 227 CrPC. In the case of **H. G. Grover v. State of Rajasthan** as reported in **2023 (1) AICLR 110 (Raj)**, it has been held by the Hon'ble Rajasthan High Court that if it is the consideration of judge, post careful weighing of record of case and documents submitted therewith and after hearing submissions of prosecution as well as accused on count, that there is lack of adequacy in grounds on basis of which proceedings can move forward against the accused, the judge shall discharge and record reasons for said discharge. Process of framing of charge is an exercise that requires solemn consideration on the point of forming a tentative opinion whether there are ingredients and facts which are enough to constitute offence for which charge is being framed against the accused or not. In a very recent decision in the case of **Ram Prakash Chadha v. State of Uttar Pradesh** as reported in **2025 (1) AICLR 207 (SC)**, the Hon'ble Apex Court has observed that if there is no legal evidence, then framing of charge would be groundless and compelling accused to face trial is contrary to procedure offending Art. 21 of the Constitution. Expression 'legal evidence' has to be construed only as evidence disclosing *prima facie* case.

In view of the above noted illuminating judicial pronouncements and considering the materials on record and particularly the statement of the informant as recorded in terms of S. 164 CrPC along with the other materials in the case record as well as the case diary, this Court is of the considered opinion that there is no materials to prima facie hold that charge can be framed against the said accused person namely Zakia Purkait for commission of any offence punishable under the law of the land and there is no legal evidence against her in this case.

In view of the above discussion, this Court is of the considered opinion that there is sufficient merit in the prayer of discharge made by the said accused Zakia Purkait and the same calls for a positive response.

Hence, it is

ORDERED

that the application u/S 227 CrPC as preferred by accused Zakia Purkait is hereby allowed on contest but without any order as to costs and she is hereby discharged from this case in terms of S. 227 CrPC.

The bail bond furnished by the said accused Zakia Purkait shall be treated as the bail bond furnished in terms of S. 437A CrPC and shall remain in force for a period of 90 days from the date of this order.

To **10-07-2025** for consideration of charge against the remaining accused.

Dictated and Corrected By:

Sd/-
Additional Sessions Judge,
1st Court, Contai.

Sd/-
Additional Sessions Judge,
1st Court, Contai,
JO Code: WB00819.