

**A.F.R**

**Neutral Citation No. - 2024:AHC:147986**

**Reserved on:- 05.09.2024**

**Delivered on:- 11.09.2024**

**Court No. - 74**

**1. Case :- APPLICATION U/S 482 No. - 8645 of 2021**

**Applicant :- Viresh Kumar @ Viresh Singh**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Rajiv Lochan Shukla,Uma Datta Tripathi**

**Counsel for Opposite Party :- Anurag Pathak,G.A.,Shashi Kant  
Shukla**

**And**

**2. Case :- APPLICATION U/S 482 No. - 6045 of 2020**

**Applicant :- Viresh Kumar @ Viresh Singh**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- In Person,Rajiv Lochan Shukla**

**Counsel for Opposite Party :- G.A.,Rohit Nandan Pandey,Shashi  
Dhar Pandey**

**With**

**3. Case :- APPLICATION U/S 482 No. - 16035 of 2021**

**Applicant :- Neeraj Singh**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Anurag Pathak,Shashi Kant Shukla**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Saurabh Shyam Shamsbery,J.**

1. Heard Mr. Viresh Kumar, in person (Applicant in Application at Serial Nos. 1 & 2 and opposite party no. 2 in Application at Serial No. 3), Mr. Anurag Pathak, learned counsel for (Complainant in Application at Serial Nos. 1 & 2 and

Applicant in Application at Serial No. 3) and learned A.G.A for State.

2. The applicant (Viresh Kumar alias Viresh Singh), before this Court is husband of deceased, whose dead body was found, when allegedly applicant returned back after 2 days, from a room of his house, locked from inside. The door was forced open. It was found that door of balcony was also open and fan was running and deceased was found sitting on a sofa having her one leg on centre table.

3. During preparation of inquest report, statement of witness (Ravi Kumar a medicine delivery boy) to the inquest report was recorded that on 17.04.2017 he was asked to supply medicines to applicant's place by the applicant and on same day he supplied also.

4. Postmortem of dead body was conducted on 20.4.2017 and it was opined that death was occurred about 2 to 3 days prior. Cause and manner of death could not be ascertained, therefore viscera was preserved for chemical analysis.

5. In aforesaid circumstances, the complainant i.e. father of deceased lodged an FIR against the applicant and three co-accused persons that they have committed murder of his daughter. Relevant part of the complaint is being reproduced hereinafter:-

*" नकल तहरीर हिन्दी वादी सेवा में श्रीमान थानाध्यक्ष महोदय सेक्टर-7 इन्दरापुरम गाजियाबाद महोदय निवेदन है कि प्रार्थी नीरज सिंह पुत्र रामवीर सिंह नि० 50 पुरुषोत्तम बाग दयाल बाग आगरा मैंने अपनी बहिन की शादी मुनीशा रानी पत्नी वीरेश सिंह नि० नगला बली जिला फिरोजाबाद (नजदीक अवागढ़) के साथ शादी हुई थी हाल में गाजियाबाद में निवास करता है शादी को आज 8 साल हो गयी है मेरी बहन मुनीशा के कोई सन्तान नहीं है इस कारण उसकी पति वीरेश और उसका भाई राकेश और भान्जा जो कि गाजियाबाद में ही निवास करता है आरती को बहन बताकर अपने साथ रखता था यह लोग मेरी बहिन को परेशान करते थे हम लोगों*

ने कई बार समझाया लेकिन वो नहीं माने मेरी बहन को और ज्यादा परेशान करने लगे और कहते थे कि हम तुझे मार देंगे और आरती के साथ शादी कर लूँगा यह बात हमारी बहन ने हमें बताई थी क्योंकि आरती से वीरेश से नाजायज सम्बन्ध थे महोदय उक्त चारों लोग वीरेश, राकेश, सन्जू और आरती ने मिलकर मेरी बहन की हत्या कर दी और घर से भाग गये सूचना पर मैं आया इन चारों के खिलाफ हत्या का मुकदमा करने की कृपा करें प्रार्थी एस०डी० अंग्रेजी नीरज सिंह पुत्र श्री राजवीर सिंह नि० 50 पुरुषोत्तम बाग दयाल बाग आगरा मो० 7060205542 दिनांक 20.04.2017 नोट मैं एच०सी० 265 मोहर सिंह प्रमाणित करता हूँ कि रो० आम कायमी मेरे द्वारा किया गया तथा नकल तहरीर मुताबिक असल कम्प्यूटर पर सीसी 404 राजीव के द्वारा अंकित करायी गयी। "

6. In the Viscera report, dated 09.05.17, organo-chloro insecticide poison was found in stomach, intestine, liver, kidney and spleen of deceased. The Investigating Officer, conducted investigation and statements of witnesses were recorded. All witnesses have stated that applicant has illicit relationship with a co-accused and they have committed cruelty for demand of dowry and caused death of deceased in a planned manner .

7. In reply to a query of the Investigating Officer, the Vidhi Vigyan Prayogshala, Ghaziabad, submitted a reply dated 25.8.2017 that organo-chloro insecticide is available in the market as pesticides. The Investigating Officer there after filed a charge sheet dated 18.9.2017, only under Section 306 I.P.C., against present applicant only and further investigation was kept pending against co-accused 'Aarti'. For reference brief facts of the case as mentioned in the charge-sheet are reproduced here in after:-

"श्रीमानजी मुकदमा उपरोक्त वादी की तहरीर के आधार पर अभि०गण वीरेश कुमार, आरती, राकेश, संजू के विरुद्ध धारा 302 भा०द०वि० पंजीकृत कराया गया तथा वादी की बहन मृतका मुनीशा का पोस्टमार्टम कराया गया पोस्टमार्टम में डाक्टर द्वारा कोई मृत्यु का कारण न पाये जाने के कारण विशरा सुरक्षित रखा गया था बिशरा जाँच रिपोर्ट में कीटनाशक पदार्थ का होना पाये जाने के कारण विवेचना में धारा 328 भा०द०वि० की बढोतरी की गयी थी दौराने विवेचना बयान वादी बयान गवाहान निरीक्षण घटनास्थल व अभि० राकेश व सन्जू की मोबाईल लोकेशन व गवाहान के आधार पर नामजदगी गलत पायी गयी तथा मृतका मुनीशा के घर में अकेले होने व घर के मुख्य दरवाजे की कुन्डी अन्दर से बन्द होने पर FSL टीम द्वारा दरवाजे को बाहर से खींचकर तोडते हुए खोलकर अन्दर प्रवेश किये जाने तथा नामजद अभि० वीरेश कुमार व आरती को

दिनांक 17.04.17 को घर से जाने के बाद मृतका को गवाह रवि कुमार के द्वारा जिन्दा देखा जाना आदि तमाम साक्ष्य के आधार पर अभियुक्तगण के विरुद्ध धारा 302 व 328 भा०द०वि० के स्थान पर धारा 306 भा०द०वि० का होना पाया गया पर्याप्त साक्ष्य के आधार पर अभियुक्त वीरेश कुमार पुत्र शंकर सिंह निवासी नंगला बली थाना एका जिला फिरोजाबाद हाल पता 872 द्वितीय तल सैक्टर 1 वसुन्धरा थाना इन्दिरापुरम गाजियाबाद का चालान धारा 306 भा०द०वि० में जरिये आरोप पत्र माननीय न्यायालय किया जाता है मद्य से अनुरोध है कि आरोप पत्र स्वीकार करते हुये सबूत तलब कर दण्डित करने की कृपा करें तथा शेष अभियुक्ता आरती के विरुद्ध विवेचना प्रचलित है। "

8. The learned Trial Court took cognizance of the offence and summoned the applicant. In the aforesaid circumstances, the applicant filed a discharge application on 3.10.2019 disclosing various documents including expert reports and their opinions. The application was filed mainly on a ground that his wife had died under normal circumstances. She has suffered myocardial infraction. So far as presence of organo-chloro insecticide was concerned, it could be due to exposure to such areas, where it was normally used as pesticides.

9. The application for discharge, filed under section 227 Cr.P.C., was considered and rejected by Additional Sessions Judge, Ghaziabad. Relevant part of same is mentioned hereinafter:-

" सुना तथा पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से विदित होता है कि वादी मुकदमा नीरज सिंह की ओर से थाना हाजा पर इस आशय से प्रथम सूचना रिपोर्ट दर्ज करायी गयी कि उसकी बहन मुनीशा रानी की शादी वीरेश सिंह के साथ हुयी थी। शादी को करीब 8 वर्ष हो गये है। उसकी बहन मुनीशा के कोई संतान नहीं है। इस कारण उसका पति वीरेश और उसका भाई राकेश और भांजा सन्जू जोकि गाजियाबाद मे ही निवास करते है और आरती को बहन बताकर अपने साथ रखता था और यह लोग उसकी बहन को परेशान करते थे। वादी ने उन्हें कई बार समझाया, लेकिन वह नहीं माने और बहन को ज्यादा परेशान करने लगे और कहते थे कि हम तुझे मार देगे और आरती के साथ शादी कर लूंगा। यह बात वादी की बहन ने उसे बतायी थी, क्योंकि आरती से वीरेश के नाजायज सम्बन्ध थे। उक्त तीनों ने वादी की बहन की हत्या कर दी और घर से भाग गये। उक्त कथनों के आधार पर अभियुक्तगण वीरेश सिंह, राकेश, संजू व आरती के विरुद्ध अन्तर्गत धारा 302 भा०द० सं० में प्रथम सूचना रिपोर्ट दर्ज की गयी।

विवेचक के द्वारा मृतका के पिता रामवीर सिंह का बयान अन्तर्गत धारा 161 द०प्र०सं० अंकित किया गया तो उक्त गवाह ने अपने बयानों में अभियुक्त बीरेश व सह अभियुक्तगण के द्वारा मृतका को दहेज के लिये प्रताड़ित करना, परेशान करना एवं दहेज में दस लाख रुपये की मांग फलैट / मकान खरीदने के लिये करना और आरती नाम की लड़की के साथ अभियुक्त के अवैध सम्बन्ध होने का कथन किया गया है और अभियुक्त के द्वारा अतिरिक्त दहेज मांगने के कारण वर्ष 2012-13 में स्वयं के सेवानिवृत्त होने पर अभियुक्त को पांच लाख रुपये देने का कथन किया है। तत्पश्चात भी दहेज की पूर्ति न होने पर मृतका की मृत्यु कारित करना कहा गया है। मृतका की माता व वादी मुकदमा के द्वारा अपने बयान धारा 161 द०प्र०सं० में गवाह रामवीर सिंह के बयानों का समर्थन किया है। गवाह शेर सिंह के द्वारा अपने बयान धारा 161 द०प्र०सं० में अभियुक्त के द्वारा मृतका को दहेज के लिये प्रताड़ित करना, दहेज में दस लाख रुपये की मांग करना और दिनांक 19-04-2017 को अचानक मृतका की मृत्यु की सूचना मिलने का कथन किया गया है। गवाह नरेश के द्वारा भी उपरोक्त गवाहों के बयानों का समर्थन करते हुए मृतका को अभियुक्त के द्वारा दहेज के लिये प्रताड़ित किया जाना, मारपीट किया जाना एवं दहेज की पूर्ति न होने पर उसकी हत्या किये जाने का कथन किया गया है। गवाह सफीक अहमद एफ०एस०एल० प्रभारी के द्वारा अपने बयान धारा 161 द०प्र०सं० में सीढियों से फ्लोर घर तक खून व पानी जैसा मिला हुआ पदार्थ पड़ा होने का कथन किया है। पोस्टमार्टम करने वाले डाक्टर के द्वारा अपने बयान धारा 161 द०प्र०सं० में पोस्टमार्टम करने में मृत्यु का सही कारण न मिलना व बिसरा सुरक्षित रखे जाने का कथन किया गया है। विवेचक के द्वारा घटना स्थल का मौका मुआयना करके नक्शा नजरी तैयार किया गया और बाद विवेचना अभियुक्त वीरेश सिंह के विरुद्ध अन्तर्गत धारा 306 भा०द०सं० का पर्याप्त साक्ष्य पाते हुए आरोपपत्र न्यायालय प्रेषित किया गया।

अभियुक्त के द्वारा धारा 227 द०प्र०सं० के अन्तर्गत उन्मोचन प्रार्थनापत्र प्रस्तुत करते हुए स्वयं के विरुद्ध कोई अपराध न गठित होने के कारण उन्मोचित किये जाने की याचना की गयी।

धारा 227 द०प्र०सं० में यह वर्णित किया गया है कि

"यदि मामले के अभिलेख और उसके साथ दी गयी दस्तावेजों पर विचार कर लेने पर, और इस निमित्त अभियुक्त और अभियोजन के निवेदन की सुनवाई कर लेने के पश्चात न्यायाधीश यह समझता है कि अभियुक्त के विरुद्ध कोई कार्यवाही करने के लिये पर्याप्त आधार नहीं है तो वह अभियुक्त को उन्मोचित कर देगा और ऐसा करने के अपने कारणों को लेखबद्ध करेगा।"

इस प्रकार धारा 227 के उपरोक्त प्रावधानों के अवलोकन से यह स्पष्ट है कि विवेचना में अभियुक्त के विरुद्ध एकत्र की गयी साक्ष्य एवं उसके साथ दिये गये दस्तावेजों पर न्यायालय को विचार करना है कि क्या अभियुक्त के विरुद्ध कार्यवाही किये जाने का पर्याप्त आधार नहीं है। अर्थात् यहां पर अभियुक्त की दोषमुक्ति/दोषसिद्ध को नहीं देखा जाना है, मात्र कार्यवाही किये जाने के साक्ष्य पर विचार करना है।

अभियुक्त के द्वारा यह कथन किया गया है कि घटना के समय वह अपने भाई के मुकदमें के सिलसिले में जनपद एटा गया था, इस सम्बन्ध में छाया प्रति शपथपत्र भी प्रस्तुत की गयी है। यह स्वीकृत है कि मृतका की मृत्यु

अभियुक्त के घर पर अर्थात् अभियुक्त के साथ रहने के दौरान हुयी हैं। अभियुक्त घटना स्थल पर मौजूद था या अन्यत्र जगह उपस्थित था, यह तथ्य साक्ष्य से साबित होना है और अन्यत्र उपस्थिति का तर्क भी अभियुक्त आरोप विरचन के स्वर पर नहीं उठा सकता। इस तर्क को अभियुक्त बचाव साक्ष्य के दौरान उठा सकता है अथवा बचाव पक्ष में साक्ष्य पेश कर सकता है।

प्रस्तुत मामले में अभियुक्त के विरुद्ध धारा 306 भा०द०सं० के अन्तर्गत आरोपपत्र प्रेषित किया गया है। धारा 306 भा०द०सं० के अनुसार किसी व्यक्ति को आत्महत्या किये जाने के लिये दुष्प्रेरित करना वर्णित किया गया है।

दुष्प्रेरण के विषय में भारतीय दण्ड संहिता के अध्याय-5 में धारा 107 से 120 तक प्रावधानित किया गया है और दुष्प्रेरण के लिये यह आवश्यक नहीं है कि दुष्प्रेरित व्यक्ति घटना स्थल पर ही उपस्थित हो।

इस प्रकार अभियुक्त की घटना स्थल से अन्यत्र उपस्थिति का तर्क इस स्तर पर बलहीन है।

जहां तक अभियुक्त के द्वारा चिकित्सीय आख्या के आधार पर मृतका की प्राकृतिक मृत्यु होने का कथन किया गया है और इस सम्बन्ध में Science Dossier व अन्य वैज्ञानिक किताबों की छाया प्रति प्रस्तुत की गयी है और यह स्पष्ट करने का प्रयास किया गया है कि मृतका की मृत्यु ऐसे किसी पदार्थ से नहीं हुयी है जो उसे बाहर से दिया गया हो। अभियुक्त के ये सभी तर्क बचाव साक्ष्य के दौरान ही देखे जाने हैं। इस स्तर पर अभियुक्त को उक्त तर्क से कोई लाभ नहीं मिलता दिखायी देता है।

जहां तक अभियुक्त के इस तर्क का प्रश्न है कि मृतका की मृत्यु MI (Myocardial Infarction) के कारण हुयी है और इस सम्बन्ध में एफ०एस०एल० लखनऊ की आख्या कागज सं० 47 की छाया प्रति प्रस्तुत की गयी है। उक्त एफ०एस०एल० लखनऊ की आख्या कागज सं० 47 के अवलोकन से स्पष्ट है कि उक्त आख्या में यह वर्णित किया है कि *No color change observed exclude MI (Myocardial Infarction)* इस प्रकार उपरोक्त एफ०एस०एल० लखनऊ की आख्या में *MI (Myocardial Infarction)* के द्वारा मृतका की मृत्यु होना अभिकथित नहीं है। ऐसी दशा में अभियुक्ता का उपरोक्त तर्क बलहीन है।

इस प्रकार उपरोक्त विवेचना एवं पत्रावली पर उपलब्ध साक्ष्य से यह स्पष्ट होता है कि वादी मुकदमा, मृतका के माता पिता के बयान धारा 161 द०प्र०सं० व अन्य तथ्य के गवाहान शेर सिंह, नरेश सिंह के बयान धारा 161 द०प्र०सं० से अभियुक्त के द्वारा मृतका से दहेज मांगना, उसे प्रताड़ित करना, दहेज में पांच लाख रुपये दिया जाना और अचानक दिनांक 19-04-2017 को मृतका की मृत्यु की सूचना मिलना, इस तथ्य की ओर से इशारा करता है कि मृतका को तंग, परेशान किया गया व दहेज के लिये प्रताड़ित किया गया है। पोस्टमार्टम करने वाले डाक्टर के द्वारा पोस्टमार्टम के दौरान मृतका की मृत्यु का कोई स्पष्ट कारण न मिलना एवं उसका बिसरा सुरक्षित रखना, मृतका की मृत्यु प्राकृतिक मृत्यु की ओर इशारा न करके अप्राकृतिक मृत्यु होना अभिकथित करता है। जैसा कि एफ०एस०एल० गाजियाबाद की आख्या में भी अंकित हैं कि मृतका के शरीर में आरगेनोक्लोरो इन्सैक्टीसाईड विष पाया गया है। जहां तक अभियुक्त के द्वारा वैज्ञानिक तथ्यों के विश्लेषण के तर्कों का प्रश्न है, यह आरोप

विरचन के बिन्दु पर महत्वपूर्ण नहीं होता है और ऐसे तर्क को अभियुक्त अपने बचाव पक्ष की साक्ष्य के दौरान उठा सकता है।

इस प्रकार उपरोक्त तथ्यों एवं परिस्थितियों के आधार पर अभियुक्त के विरुद्ध प्रथम दृष्टया आरोप विरचित किये जाने का पर्याप्त आधार है। तदनुसार अभियुक्त की ओर से प्रस्तुत प्रार्थनापत्र दिनांकित 03-10-2019 व अतिरिक्त प्रार्थनापत्र दिनांकित 02-12-2019 निरस्त किये जाने योग्य है।

### **आदेश**

अभियुक्त की ओर से प्रस्तुत उन्मोचन प्रार्थनापत्र दिनांकित 03-10-2019 व अतिरिक्त प्रार्थनापत्र दिनांकित 02-12-2019 निरस्त किये जाते हैं। अभियुक्त के विरुद्ध आरोप विरचित किये जाने हेतु पत्रावली दिनांक 10-02-2020 को पेश हो। अभियुक्त नियत तिथि पर व्यक्तिगत रूप से उपस्थित हो।"

10. The applicant, appearing in person, has reiterated submissions mentioned in discharge application that his wife died under natural circumstances. There are reports on record that she died due to myocardial infarction and that there was no evidence that she consumed poisonous substance given by him. Applicant-in-person has referred a Report dated 25.10.2017 (Forensic Science Laboratory, U.P.) and a Report dated 26.08.2019 of State Medico Legal Cell, Lucknow). Both reports are subsequent to filing of charge-sheet. He further submitted that no evidence was collected in regard to offence of abatement of suicide and has placed reliance on judgement passed by Supreme Court in the cases of **K.V. Prakash Babu Vs. State of Karnataka 2016 (12) SCALE 280** and **Wazir Chand Vs. State of Haryana AIR 1989 Supreme Court 378** and a judgement passed by **High Court of Madhya Pradesh at Indore in Misc. Criminal Case No. 10385 of 2021.**

11. The aforesaid submissions are vehemently opposed by learned A.G.A who has supported the impugned order, on basis of material available, that there was more than a prima-facie case against the applicant that he has committed an offence of

abatement of suicide, and that there was no legal error in order whereby discharge application was rejected.

12. Learned counsel appearing on behalf of complainant submitted that it was a case of murder and investigation was not conducted fairly and has filed an Application U/S 482 No. 16035 of 2021, which is connected with present matter, in which he has prayed that the charges be modified from Section 306 I.P.C. to 302 I.P.C, however, he fairly submitted that no such objection was filed during the course of hearing of discharge application or at the time of framing of charge as well as that in terms of section 216 Cr.P.C., the charge could be altered anytime before the judgement is passed, on basis of material available

13. Heard counsel for the parties and perused the record.

14. The applicant before this Court is husband of deceased whose dead body was found from a room of his house, locked from inside, in a sitting posture. According to postmortem report death was caused about 1 to 2 days prior and cause of death could not be ascertained, therefore, viscera was preserved and according to the viscera report organo-cholor insecticide was found.

15. There are subsequent reports in regard to Nitro BT Powder Test, whether heart of deceased has suffered myocardial infarction or not. The discharge application of the applicant was rejected by a reasoned impugned order, as all arguments raised before the Court were considered and rejected. The applicant-in-person, has argued that cause of death was only due to myocardial infarction, there was no evidence that victim has taken any poisonous substance and presence of organo-choloro insecticide would not be sufficient to presume that she has taken



insecticide before death. In case death was natural then no offence of abatement of suicide was made out. In support of his submissions he has placed reliance on some reports taken from the websites as well as above referred judgements.

16. Presently the Court is considering the case only at the stage of discharge application. Law in regard to consideration of discharge application is being considered by the Supreme Court in the case of **Vishnu Kumar Shukla and another vs State of UP 2013 INSC 1026** and relevant part thereof is mentioned hereinafter:-

*“19. In Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.’*

*20. In State of Tamil Nadu v. N Suresh Rajan, (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; Union of India v. Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v. Dilip N Chordia, (1989) 1 SCC 715; Niranjana Singh Karam Singh Punjabi v. Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v. State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v. State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with Prafulla K Samal (supra), where, after considering Ramesh Singh (supra), K P Raghavan v. M H Abbas, AIR 1967 SC 740 and Almohan Das v. State of West Bengal, (1969) 2 SCR 520, it was laid down as under:*

*‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
- (3) 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.
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(emphasis supplied)

**21.** In *Niranjan Singh Karam Singh Punjabi (supra)*, this Court was alive to reality, stating that ‘... it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.’ If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in *Sajjan Kumar v. Central Bureau of Investigation*, (2010) 9 SCC 368. The Court, in *Dinesh Tiwari (supra)* had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is ‘strong suspicion’, reference to *Dipakbhai Jagdishchandra Patel (supra)* is warranted, where it was explained that it is ‘... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.’

**22.** In a recent judgment viz. *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 INSC 894, 2023 SCC OnLine SC 1294. this Court held:

*‘7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.*

*8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.*

*9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.*

*10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. ...*

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.’

*(emphasis supplied)”*

17. I have also perused the literature supplied by the applicant in discharge application, which is part of present proceedings also, that insecticides, if consumed in any manner, may be a reason for myocardial infraction. A theory is put up by applicant that presence of insecticide found in the viscera report could be due to exposure of surrounding places, but at this stage such argument could not be accepted since there is no material before this Court that the deceased was exposed to any such places where there was extensive use of insecticides.

18. According to the viscera report organo-chloro insecticide was found in stomach, intestine, liver, kidney and spleen of deceased which could be found if there was intake of such pesticide. The report dated 25.10.2017 states that ‘No colour change observed exclude MI (Myocardial Infarction)’. The subsequent report dated 26.08.2019 is from State Medico Legal

Cell which is self contrary as well, as it has not perused above report dated 25.10.2017. It also states that 'No colour change Heart attack is excluded by this pattern', otherwise also it would be subject of trial only. It would not be safe to rely solely on these reports at the stage of Discharge as it would be contrary to **Vishnu Kumar Shukla (Supra)**. The applicant-in-person, is not able to convince the Court that his wife died under natural circumstances, due to myocardial infarction and not due to intake of insecticides. Therefore, the Court is of the considered opinion that death of wife of the applicant was not natural.

19. The next question for consideration is that whether allegation of Section 306 I.P.C. is made out or not. In this regard Court takes note of circumstances under which dead body was found. The Court also takes note that on 17.4.2017, on applicant's directions, some medicine was handed over to his wife. The Court also take note of the statements recorded during investigation that it was a consistent case of complainant and his family members that the applicant has illicit relationship with one co-accused 'Arti'. Since the applicant got married with deceased, he extended demand of dowry and put deceased under such circumstances that she was left with no other option but to commit suicide.

20. At this stage the Court also takes note of judgements placed by the applicant-in-person. So far as Section 306 I.P.C. is concerned, judgements are mainly after the stage of trial whereas, in present case the trial has still not commenced.

21. At this stage it could not be denied that there was proximity to positive action of the applicant. The Court also takes note of judgements passed by the Supreme Court in **Central**

**Bureau of Investigation vs Aryan Singh and others, 2023 SCC Online SC 379 and Ram Prakash Chadha Vs. The State of U.P. 2024 INSC 522** in regard to invoking of inherent powers and relevant paras of the same are reproduced respectively hereinafter:-

Relevant paras of **Central Bureau of Investigation Vs. Aryan Singh (Supra)**:-

*“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against*

*the accused for which the accused is required to be tried or not”.*

*11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.”*

Relevant paras of **Ram Prakash Chadha (Supra)**:-

*“19. In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227, Cr. P.C., and entering into the scope of power under Section 232, Cr. P.C., cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in *Om Parkash Sharma v. CBI* [\(2000\) 5 SCC 679](#). Taking note of the language of Section 227, Cr. P.C., is*

*in negative terminology and that the language in Section 232, Cr. P.C., is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227, Cr. P.C., to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232, Cr. P.C., even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232, Cr. P.C., available only after taking the evidence for the prosecution and examining the accused.*

**20.** *Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in Kaushalya Devi v. State of MP [2003 SCC OnLine MP 672](#). It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression 'legal evidence' has to be construed only as*



*evidence disclosing prima facie case, 'the record of the case and the documents submitted therewith'.*

**21.** *The stage of Section 227, Cr. P.C., is equally crucial and determinative to both the prosecution and the accused, we will dilate the issue further. In this context, certain other aspects also require consideration. It cannot be said that Section 227, Cr. P.C., is couched in negative terminology without a purpose. Charge sheet is a misnomer for the final report filed under Section 173 (2), Cr. P.C., which is not a negative report and one that carries an accusation against the accused concerned of having committed the offence (s) mentioned therein.*

**22.** *In cases, where it appears that the said offence(s) is one triable exclusively by the Court of Session, the Magistrate shall have to commit the case to the Court of Session concerned following the prescribed procedures under Cr. P.C. In such cases, though it carries an accusation as aforementioned still legislature thought it appropriate to provide an inviolable right as a precious safeguard for the accused, a pre-battle protection under Section 227, Cr. P.C. Though, this provision is couched in negative it obligated the court concerned to unfailingly consider the record of the case and document submitted therewith and also to hear the submissions of the accused and the prosecution in that behalf to arrive at a conclusion as to whether or not sufficient ground for proceeding against the accused is available thereunder. Certainly, if the answer of such consideration is in the negative, the court is bound to discharge the accused and to record reasons therefor. The corollary is that the question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about*

*the prima facie case revealing from “the record of the case and the documents submitted therewith” against the accused concerned. In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if ‘the record of the case and the documents submitted therewith’ discloses ground for proceeding against him. When that be so, in a case where an application is filed for discharge under Section 227, Cr. P.C., it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. We are not oblivious of the fact that normally, the Court is to record his reasons only for discharging an accused at the stage of Section 227, Cr. P.C. However, when an application for discharge is filed under Section 227, Cr. P.C., the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding prima facie case, as it will enable the superior Court to examine the challenge against the order of rejection.”*

22. In the aforesaid circumstances, the Court is of considered opinion that at this stage it could not be held that wife of

applicant died in natural circumstances, rather, on basis of material available, there is more than a prima-facie case against the applicant that deceased died under unnatural circumstances, due to intake of a poisonous substance. For sake of argument, if it is accepted that cause of death was due to Myocardial Infarction, still on basis of research reports available on record, it could not be ruled out that immediate cause of it was intake of poisonous substance found in different parts of dead body.

23. The circumstances under which her dead body was found as well as conduct of the applicant, just in the proximity of the occurrence, that he left for other station and returned back after two days as well as evidence collected during investigation, there are more than prima-facie evidences against the applicant as referred in **Central Bureau of Investigation Vs. Aryan singh and others (Supra)**. At this stage following observation of **Vishnu Kumar Shukla (Supra)** being relevant are repeated that *“at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”*

24. In the aforesaid circumstances I do not find that the Trial Court has committed any error in rejecting the discharge application. The reasons assigned are sustainable legally. **Accordingly, Application U/S 482 No. 6045 of 2020 is rejected.**

25. The application U/S 482 No. 8645 of 2021 is being filed by the applicant challenging framing of charge which is only a consequential order, since the Court has already rejected the challenge to rejection of discharge application, therefore, the present **Application U/S 482 No. 8645 of 2021 is also rejected.**

26. So far as **Application U/S 482 No. 16035 of 2021** is concerned, it is being filed by complainant to alter charge from Section 306 I.P.C to Sections 302 and 328 I.P.C., however as already referred above, no objection was raised by the complainant at the stage of framing of charge or earlier during the discharge application, therefore, at this stage the prayer cannot be considered, however, in terms of Section 216 Cr.P.C., learned Trial Court would be at liberty to alter the charge on basis of material available on records. The **Application U/S 482 No. 16035 of 2021** is accordingly disposed of.

**Order Date :- 11.09.2024.**  
Saurabh

( Saurabh Shyam Shamsbery,J.)