

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.933 of 2022**

Pradeep Yadav Petitioner
Versus
1.The State of Jharkhand
2.X Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Vimal Kirti Singh, Advocate
Mr. Ujjal Choudhary, Advocate
Mr. Raunak Sahay, Advocate
Mr. Manjusha Priya, Advocate
Mr. Lalit Yadav, Advocate
For the State : Mr. Binit Chandra, A.C. to A.A.G.-III
For the O.P. No.2 : Ms. Savita Kumari, Advocate
Mr. Birat Kumar, Advocate

C.A.V. on 17.08.2023

Pronounced on 01.09.2023

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Opposite Party No.2.
2. The present criminal revision has been preferred against the order dated 2nd April, 2022 passed by the learned Additional Sessions Judge-III-cum-Spl. Judge, Dumka in S.T. Case No.127 of 2021, arising out of Deoghar (Mahila) P.S. Case No.13 of 2019 registered under Sections 376, 511, 354-A, 354-B, 354-D, 379, 506, 509 and 34 of the I.P.C., whereby the discharge petition filed by the petitioner under Section 227 Cr.P.C. has been rejected.
3. Learned counsel for the petitioner has submitted that the learned court below has completely erred in dismissing the discharge application of the petitioner by passing a very cryptic order without appreciating the statement of all the independent witnesses, who had not corroborated the allegations made by the

prosecutrix in the complaint. It is further submitted that the learned court below has completely ignored the statement of witness Ajay Kumar Singh and Dinesh Kumar Singh, who had stated that the petitioner never visited the hotel on the night of 20th April, 2019. The impugned order is based on perverse finding. It is also submitted that there was delay of 13 days in lodging the F.I.R. which is very crucial factor for disposing of the discharge application. The court below has given finding that the location of the informant and the petitioner was almost the same because as per cyber police report the location of the prosecutrix's mobile phone on 20th April, 2019 at 8.30 to 9.10 p.m. was in Jyoti Nagar (Karnibag) and between 9.34 to 9.46 p.m. it was in Chandni Chowk (Sarraf Road) which is 5 to 6 kilometer away from the Hotel Shivshristi. As per prosecution case, the alleged occurrence took place between 9.20 to 9.45 p.m, therefore, it was quite impossible that the alleged offence took place against the prosecutrix in Shivshristi Hotel. The court below has not considered the entire evidence to make out the case for proceeding against the accused. After occurrence, the subsequent conduct of the prosecutrix was also not taken into consideration which was to enable the court below to reach on the proper conclusion in disposing the discharge application. The petitioner has been implicated in this case on account of political vendetta. Learned counsel for the petitioner in support of his submission relied upon following case law :

- i.** Soma Chakravarty vs. State through C.B.I. [(2007) 5 SCC 403].
- ii.** P. Vijayan vs. State of Kerala and Another [(2010) 2 SCC 398].
- iii.** Union of India vs. Prafulla Kumar Samal and Another [(1979) 3 SCC 4].
- iv.** Dilawar Balu Kurane vs. State of Maharashtra [(2002) 2 SCC 135].
- v.** State of Orissa vs. Debender Nath Padhi [AIR 2005 SC 359 SC].
- vi.** Dipakbhai Jagdishchandra Patel vs. State of Gujarat [(2019) 16 SCC 547].
- vii.** State of Punjab vs. Davinder Pal Singh Bhullar and Ors. [(2011) 14 SCC 770]
- viii.** Raja and Others vs. State of Karnataka [(2016) 10 SCC 506].

4. Per contra, the learned counsel for the Opposite Party No.2 and learned A.P.P. appearing on behalf of the State opposed the contentions made by the learned counsel for the petitioner and contended that the impugned order passed by the learned court below is based on the allegations made in the F.I.R. and also the evidence collected by the I.O. during investigation. It is further submitted that there is no perversity in the finding recorded by the learned court below while declining to allow the discharge application of the petitioner. It is also further submitted that so far as the delay in lodging the F.I.R. is concerned, the same is well explained from the statement of the victim herself reason being the petitioner was on influential post i.e., General Secretary of Jharkhand Vikash Morcha Party and the victim was Central Spokesperson of the said party. Though on the very date of occurrence she made the complaint to the President of said party, namely, Mr. Babu Lal Marandi who also did not take any action

against the petitioner and all the police official and administration were managed by the petitioner. The prosecutrix was continuously threatened and criminally intimidated in case she lodged the F.I.R. with the police station concerned. Even after lodging of the F.I.R., the prosecutrix and the prosecution witnesses were also criminally intimidated. The prosecution witnesses during investigation had given the application before the Superintendent of Police, Deoghar that they were pressurized by the petitioner to withdraw the statement and not to give evidence against him. So far as the conduct of the prosecutrix is concerned, the same was not unnatural as she was very much perturbed from the incident and she was in dilemma what to do since the President of JVM Party was not supporting her. It was the very reason she also resigned from the post of Central Spokesman of JVM Party. It is further submitted that there is more than sufficient evidence against the petitioner to proceed against him with the trial. Learned counsel for the Opposite Party No.2 in support of his argument has relied upon following case law :

- i.** Tarun Jit Tejpal vs. The State of Goa & Anr. [2019 (4) East Cr C 208 (SC)].
- ii.** Captain Manjit Singh Viridi (Retd.) vs. Hussain Mohammed Shattaf and Others.

- 5.** I have heard the learned counsel for the parties and perused the materials available on record.
- 6.** It is the settled law that while framing charge, the Court has to take into consideration the allegations made in the F.I.R. and also

the evidence collected by the I.O. i.e., oral or documentary during the investigation. If from the allegations made in the F.I.R. and the evidence collected during investigation, there are sufficient ground to proceed, the Court should decline to allow the discharge application. If from the cumulative evidence i.e., oral and documentary collected during the investigation and the allegations made in the F.I.R., the Court is of the definite opinion that there is no ground to proceed against the trial, the application for the discharge may be allowed.

7. Herein the prosecution version and the evidence collected by the I.O. during investigation is reproduced which are as follows :

7.1 The informant/victim gave the written information with the police station concerned with these allegations that she was practicing as an advocate in the High Court of Jharkhand and was the Central Spokesperson of Jharkhand Viskash Morcha Party. On 20th April, 2019, she left her residence to attend the program of party at Mohanpur (Bhagwanpur), Deoghar, wherein Babulal Jee, Hemant Soren and Pradeep Yadav all were on dias. After end of party rally, she stayed at the house of her aunt in Mohanpur. At around 6:30 pm, a call from mobile no. 7903295383 of Sri Pradeep Yadav Jee (General Secretary-cum-M.L.A. of party) came on her phone no. 8789560011. It was asked by Pradeep sir to come at Shiv Shrishti Palace, Deoghar by 8:00 O'clock to attend a meeting. He told that after making discussion with her about some works related to parliamentary area, he will introduce her with team

members. As per his direction, she along with her driver Shashikant left Mohanpur at around 8:00 o'clock and reached Shiv Shrishti Palace, Karni Bagh, Deoghar at 8:30 O'clock. After reaching there, when she did not see Pradeep sir there, then she made a phone call to him at around 8:35 O'clock and asked him, 'sir neither you nor party workers are present here'. Then he replied that they had come to attend a program in neighbourhood and he asked to get him talked in reception. On his direction, she gave phone to a girl sitting in reception. After completion of discussion, she was asked by the Receptionist to make entry in a register and she was asked to produce her I.D. and to wait for Pradeep sir in Room No. 202. She went in Room No.202 of hotel and began to wait for Sri Pradeep Yadav. At around 9:20 pm, Pradeep Yadav entered into room alone. She asked him where other workers were and he told that all workers were on the ground floor. Hearing his words, after few minutes she told him to go to the ground floor and she stood to step out for ground floor. He told her that he had to explain something to her. Please sit and hear me for two minutes. On his request, the victim sat there and he told that I am going to win this election by a huge margin and you all will get its benefit and suddenly he caught the victim hand and began to pull. Looking this, she was shocked. Despite protest, he was not releasing her. The victim screamed loudly, sir what he was doing but he put another hand on her shoulder to touch at other parts of her body. Same time he also began to pull cloth here

and there. The accused began to misbehave with the victim. Looking at this, the victim was unable to understand what to do. Thereafter using un-parliamentary language, he put his hand on her mouth and pushed her on the bed and he bent towards her. Thereafter, the victim kicked accused with full force and he fell down at the corner. The victim stood up and screamed loudly and asked him to immediately go outside the room otherwise she would call all the persons here and lodge a complaint in the police station and she started screaming. Thereafter threatening the victim, the accused said be silent otherwise she would be killed and thrown somewhere. The accused further told that if she discussed it anywhere then he would expel her from the party. Saying this, he took her purse from the table and went out from the room. It was around 9:45 pm when he took out Rs. 2,00,000/- kept with her make-up articles from her purse and fled. Pradeep Yadav, M.L.A. tried to completely outrage her modesty. Thereafter, he made continuous call and pressurized her to come out from the room. She was too much scared out of this incidence and was unable to understand what to do. She closed the room from inside and began to weep and talked with her friends. Before she think anything, there was frequent call of Pradeep and he was threatening her to come out from the room. She told him under fear that she would not say anything to anyone but at present she cannot come out from the room in the night. Thereafter, she continued to weep for the whole night and sent a message about

the entire incidence at Whatsapp No.7091833445 of Sri Babu Lal Marandi Sir (Central President, J.V.M.) at 5:34 am. On 21.04.2019 she made a call on Phone No.8674922223 and narrated about the abhorrent act of Pradeep to the Sir, but Babu Lal Sir maintained silence in such a difficult situation and he did not come forward to help her. Babu Lal remained silent despite too many calls and messages. She was too much scared in such situation. After incidence, Pradeep Yadav continued to send message and threatened her. He sent several people at the door of room of the hotel and adopted different strategies to deviate her. He threatened to take life of her family members and tried to scare her and deputed several people near hotel to torture her. At 5:30 am on 21.04.2019, somehow she came out from the room and reached the S.P. Office with her driver. Thereafter, four-five persons came there and asked her to flee from there otherwise she would get thrown in a pond. Thereafter, she was scared and came in hotel and closed herself in the room. She again requested Babu Lal Sir for help but he did not respond. Thereafter, somehow she came to Deoghar in the morning of 23.04.2019. When she did not get help from anywhere then she went to the Court in Ranchi and took opinion from her acquaintances but Pradeep continued to torture her by phone calls and messages. After too much harassment, she came to Deoghar and lodged this complaint against Pradeep Yadav.

7.2 On this written information, Deoghar (Mahila) P.S. Case No.13

of 2019 was registered against Pradeep Yadav, the M.L.A., Management of Shiv Shristi Palace Hotel and others for the offence under Sections 376, 511, 354(A), 354(B), 354(D), 379, 506, 509, 354/34 of the Indian Penal Code.

8. The re-statement of victim-informant was recorded in paragraph 5 of the case-diary in which she corroborated the prosecution story. The statement of the victim was also recorded under Section 164 Cr.P.C. in paragraph 74 of the case-diary in which she stated that program of party was scheduled at Mohanpur, Deoghar. She had reached to attend the same. After program she went to the house of her aunt at 06:30 p.m. and she received the phone call from MLA Pradeep Yadav, who asked her to come at the hotel Shiv Shristi Palace Deoghar for meeting so he could introduce her with the other team members and assigned work to her. She reached to the hotel at 08:30 p.m. but did not find Pradeep Sir. However, Pradeep Ji instructed the receptionist and asked her to wait in Room No.202 of the Hotel. At 09:20 p.m., Pradeep Ji came there alone to her room and he told that others were waiting at the downstairs. Thereafter he engaged her in some conversation and suddenly held her hand. She objected this act but he insisted and put his another hand on her shoulder and tried to touch her and also pulled her clothes. She was wearing Kurta and Trouser. He also pushed her towards the bed, put his hand on her mouth and tried to bent on her but she kicked him with full force due to which he

fell down in the corner. Then she shouted that she would complain against him. He abused her using word 'Sali you will be ousted from the party'. He also took her purse containing therein Rs.2 lacs and walked out of the room. She locked the room from inside but he kept on calling her and asked her to get out of the room of the hotel. She also made call to her friend Shobha who also works in High Court and told in regard to the incident in brief. She also made call to her friend Rakesh Kumar Pandey who is posted at Ranchi in police department and he gave her the phone of Superintendent of Police, Deoghar. Whole night she was inside the room then at 5:30 a.m. on 21st April, 2019 she send message to Mr. Babu Lal Marandi on Whatsapp and also called him but he told that "*ham dekhenge*". She also went to the S.P. Office at 05:30 p.m. on 21st April, 2019 but he was told there that S.P. Sir was not there. In the meantime, she also got call from Pradeep Ji and his associates. They threatened not to disclose the incident to anyone while she was there in the hotel she was informed that two persons, namely, Mr. Nageshwer Singh and Mr. Dinesh Mandal were coming to meet her. Both of them came and threatened her not disclose this fact to anyone against Pradeep Ji. On 23rd April, 2019 she left the hotel finally at 05:30 a.m.

9. In paragraph 8 of the case-diary, the statement of Amar Kumar Rai was recorded and he stated that on 20th April, 2019 at 8 p.m., he came on his duty and receptionist Pragati was to assign the duty to him. At the same time, **a lady came to the**

Hotel Shivsrishti along with luggage and she made the phone call to someone and that person talked with Pragati and Pragati allotted Room No.202 to her. Thereafter he asked that lady to call at No.9 for restaurant and 101 for any other need to the receptionist.

- 10. In paragraph 9 of the case-diary, the statement of Ajay Mandal was recorded. This witness was the guard of Hotel Shivshrishti.** He stated that on 20th April, 2019 at 8:00 p.m. his duty was from 08:00 p.m. to 08:00 a.m. In between 8:30 to 9 o' clock of night, a lady came by the car along with driver and she asked him in regard to the reception. He told her that reception was at the second floor of the hotel. After 10 to 15 minutes, her luggage was taken and **just after half or quarter past 1 hour, Pradeep Yadav came by the white colour Scorpio car. He identified him along with his two bodyguards. Pradeep Yadav alone went to the hotel and after half an hour, he came quietly and left there with his car.**
- 11. In paragraph 21 of the case-diary the statement of receptionist Pragati was recorded** and she stated that on 20th April, 2019 at 08:30 she was on duty. **The guard brought a lady along with luggage and that lady told herself to be X. She asked her to talk over the phone with someone and that person introduced himself Pradeep Yadav, who asked her to give room to her. Thereafter, the Room No.202 was allotted to her and she left the hotel at 9 to**

9:15 p.m. and handed over the charge of reception to one Amar Kumar Rai. At 10:30 in the night Amar Kumar Rai told her over the phone that Madam who was in Room No.202 was making demand of CCTV footage and he told that the facility of CCTV footage was not in the hotel. He also told that X was perturbed and was also angry .

On 23rd April, 2019 at 05:00 a.m. X asked for check out and to clear the bills and she made the payment of Rs.10,000/-. Guard Ajay Mandal had told her that on 20th April, 2019 between 9:30 to 10:00 p.m. Pradeep Yadav came to the hotel and after sometime he left the hotel.

12. Paragraph 21 of the case-diary is the record of cyber police station Deoghar in regard to Call Detail Report from which it appears that the mobile no.8789560011 was in the name of the Vidyashankar Prasad and on the True caller the name of Radhika @ X was shown. The mobile no.7903295383 was in the name of Nandkishore Yadav while on True caller the name of M.L.A. Pradeep Yadav was shown. On these mobile numbers the talk were held about 15 times on 20th April, 2019. The call came at 18:21 hours from mobile no.7903295383 over the mobile no.8789560011. The tower location of 8789560011 was of Mohanpur and the tower location of mobile no.7903295383 was at Caster Town Kunda, Deoghar. **The tower location of mobile no.8789560011 from 20.21 to 21.10 hours was of Jyoti Nagar, Karnibagh and from 21.34 to 21.46 hours was**

Chandni Chowk, Saraf Road, Deoghar Town. At 21:47 the location was Jyoti Nagar Karnibagh, Deoghar. At 21:32 the tower location was Jyoti Nagar Karnibagh, Deoghar. It is also further mentioned in this paragraph that since 20th April, 2019 to 21st April, 2019 on both these numbers there were 21 phone calls and one SMS. Thereafter at 22:03 to 05:23 Rakesh Kumar Pandey and X both talked. One mobile no.87895XXXXX was in the name of Himanshu Ranjan and on True caller the name of Subha Kumari was showing and the phone call was made on 19th April, 2019 around 29 times. The talks were held and one SMS was there.

13. The statement of Rakesh Kumar Pandey was recorded in paragraph 80 of the case-diary. This witness was constable and was also the State Vice President of Jharkhand Police Mens' Association. He **stated that on 20th April, 2019 around 10:00 to 10:30 at night, he received the phone call from X, who told in regard to molesting her by Pradip Yadav and she was also weeping. He also told her that S.P. Sir would help her. He also gave the phone number of S.P. sir and the victim told her that Pradeep Yadav was standing out of the room and threatening her.** She also told that Pradeep Yadav had criminally intimidated her. She further told him that she also made phone call to Pradeep Yadav and also told him that he would tell in regard to the occurrence to S.P. sir. On 3rd May, 2019, X told him that she had lodged the F.I.R.

against Pradeep Yadav with the police station concerned.

- 14.** In **paragraph 105 of the case-diary, the statement of Shashikant, the driver of car of victim was recorded** and he stated on 20th April, 2019 he went from Bokaro to Deoghar with X madam to attend a program where she attended the program along with Hemant Soren and Babulal Marandi and after having food by madam at her relative, she went to Shivshristi Hotel and he was in the car.
- 15.** In **paragraph 109 and 110, the statements of Dinesh Kumar, District General Secretary of JVM Party and Nageshwar Singh, District President of JVM Party respectively were recorded.** They have stated that on 20th April, 2019 they reached to Shiv Shrishti Palace at 15 to 15:30 hours and called X madam for the press conference and it was told by X madam that the same was cancelled and thereafter they left from there.
- 16.** In **paragraph 128 of the case-diary** there are **screen shots of Whatsapp chats and voice call made from phone no.79032XXXXX.**
- 17.** In **paragraph 129 of the case-diary** is the **conversation in pendrive between Pradeep Yadav and X and also the scree shots of the whatsapp voice call.**
- 18.** In **paragraph 143 is the statement of Bodyguard Ajay Kumar Singh and in paragraph 144 is the statement of Dhobey Marandi, Bodyguard** in which they have stated that

Pradeep Yadav was engaged in some other program at the time of alleged occurrence.

- 19.** In **paragraph 154** of the case is the application given by the victim making demand from the S.P. for providing security.
- 20.** In **paragraph 157** is the application given by Ajay Mandal making complain in regard to threatening given by Pradeep Yadav.
- 21.** In **paragraph 159** is the **videography along with statement of Ajay Mandal of which C.D. was also annexed with the case-diary.**
- 22.** In **paragraph 187 of the case diary is the statement of Subha** in which she stated that **she received the phone call on 20th April, 2019 from her friend X but she did not tell her in regard to any occurrence.**
- 23.** From the allegations made in the F.I.R. which was lodged by the victim herself which is corroborated by her in her statement under Section 164 Cr.P.C. This prosecution story is also corroborated with the statement of receptionist Pragati Raj and also receptionist Amar Kumar Rai who both admitted that on 20th April, 2019 at 08:30 when a lady who was telling herself to be X came to the hotel Shivsrishti Palace and she talked over phone with some person and that person introduced himself to be Pradeep and at the behest of that person Room No.202 was allotted to the informant/victim.
- 24.** Ajay Mandal, who is the guard of hotel Shivshristi Palace had stated that on 20th April, 2019 in the night, the said Pradeep

Yadav came to the hotel with his Scorpio car along with his bodyguards and he went alone in the hotel and came back after half an hour and thereafter left the hotel. **Therefore, the presence of Pradeep Yadav at the time of occurrence at hotel Shivshristi Palace is well corroborated with the statement of Ajay Mandal, Security Guard in paragraph 9 of the case diary.** The victim had stated that on the very day of occurrence she also made phone call to her friend Subha and Rakesh Kumar Pandey, who is police constable. **In paragraph 80 of the case-diary, Rakesh Pandey stated that in between 10 to 10:30 of night, a phone call came on 20th April, 2020 and X told that Pradeep Yadav had molested her and she was weeping.** This Rakesh Kumar Pandey was police constable and also the State Vice President of Jharkhand Police Mens' Association and he gave the phone number of Superintendent of Police, Deoghar to X and also talked with Pradeep Yadav in this regard. Further, the statement of victim under Section 164 Cr.P.C. is also corroborated in regard to the occurrence with the statement of this witness. Subha Kumari, the friend of the victim admitted that on the very date of occurrence in the night phone call of X came to her but she stated that nothing was told her in regard to the occurrence. The call details of the victim and Subha Kumari also corroborates that the talk was made by the victim with these two persons.

25. The statement of driver of victim is that on the day of occurrence,

the victim had went to hotel Shivshristi Palace, though he showed his unawareness in regard to any occurrence.

- 26.** The victim in her statement under Section 164 Cr.P.C. had stated that **after occurrence the two persons, namely, Dinesh Kumar and Nageshwar Singh, both officer bearers of JVM party came to the hotel and criminally intimidated her not to disclose in regard to the occurrence to the police and threatened her for the dire consequences. The statement of Dinesh Kumar and Nageshwar Singh were recorded in paragraphs 109 and 110 of the case-diary respectively. Both admitted that on 22nd April, 2019 they had gone to the hotel but for the purpose of meeting.** The statement of victim is corroborated to this extent that both these persons had gone to the hotel after the occurrence where they had criminally intimidated the victim, though in their statement they denied the same.
- 27.** In **paragraph 128 of the case-diary,** there are several whatsapp message and whatsapp voice call on the mobile phone of the victim by the mobile phone of Pradeep Yadav, the accused and **these messages also corroborate in regard to the occurrence.**
- 28.** In **paragraph 129 of the case diary is the conversation between Pradeep Yadav and victim which also corroborates that the occurrence had taken place. The screenshots of the messages and the whatsapp voice calls**

corroborate this occurrence that from 20th to 23rd April, 2019, total 25 times calls were made by Pradeep Yadav on the mobile phone of victim, maximum were the missed call and there are several whatsapp messages in regard to the threatening made.

29. So far as the statements of two bodyguards of accused i.e., Ajay Kumar Singh and Dhobey Marandi are concerned, their statements in regard to that at the time of occurrence Pradeep Yadav was not there has no bearing reason being that this F.I.R. was lodged with the allegations that in this occurrence the management of hotel and other persons were also involved. **The victim had also stated that she had also made complain to Babulal Marandi by way of whatsapp message and whatsapp call and he did not gave the positive response to help her.**

30. So far as the **delay in lodging the F.I.R. is concerned, the same is well explained that the victim was continuously criminally intimidated by the accused Pradeep Yadav and his men.** Even after lodging F.I.R., the victim had given complaint to the Superintendent of Police, Deoghar in regard to her security. Not only this, the witness Ajay Mandal (guard of hotel Shivshristi Palace) also gave the complaint to S.P., Deoghar that Pradeep Yadav was threatening him not to give evidence against him and this statement of Ajay Mandal was also recorded by way of videography and the cassette of the same is also made part of the case-diary.

31. Learned counsel for the petitioner has submitted that during investigation, the conduct of the victim after the occurrence in attending so many programs and keeping silent shows that the occurrence did not take place.

This contention of the learned counsel petitioner is not tenable taking into account the statements of the victim and other witnesses as stated hereinabove.

32. Lastly, learned counsel for the petitioner also submitted that the tower location of mobile phone of the victim at the time of occurrence, when the presence of the accused is shown at hotel Shivshristi Palace, was shown at the distance of 5 to 6 kilometers which demolishes the prosecution story.

This contention of the learned counsel for the petitioner is also not tenable reason being that the tower location cannot be decisive that no occurrence took place keeping in view more than the ample evidence as discussed hereinabove.

33. So far as the tower location is concerned, the same is question of trial and its evidentiary value shall be decided at the time of trial.

34. Keeping in view the allegations made in the F.I.R., the evidence collected by the I.O. which has been discussed hereinabove and the case law relied upon by the learned counsel for the petitioner are not found to help in discharging the petitioner from the allegations levelled against him.

35. The Hon'ble Apex court in the case of ***Palwinder Singh vs. Balwinder Singh & Ors.*** reported in ***(2008) 14 SCC 504*** at

paragraph 13 has held as under :

"13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in *State of Orissa v. Debendra Nath Padhi* wherein it was held as under:

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra* case [*Satish Mehra v. Delhi Admn.* holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

36. The Hon'ble Apex Court in the case of ***CBI v. Mukesh Pravinchandra Shroff*** reported in ***(2009) 16 SCC 429*** at paragraph 2 has held as under :

"2. By the impugned order, the Special Court has discharged the accused Raghunath Lekhraj Wadhwa, Jitendra Ratilal Shroff and Mukesh Pravinchandra Shroff from Special Case No. 4 of 1997. From a bare perusal of the impugned order, it would appear that the Special Court has virtually passed an order of acquittal in the garb of an order of discharge. It is well settled that at the stage of framing of the charge, what is required to be seen is as to whether there are sufficient grounds to proceed against the accused. In our view, the Special Court was not justified in discharging the aforesaid accused persons."

37. The Hon'ble Apex Court in the case of ***Vikram Johar vs State of Uttar Pradesh*** reported in ***AIR 2019 SC 2109*** at paragraph 19

has held as under :

"19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence."

38. The Hon'ble Apex Court in the case of *P. Vijayan vs. State of Kerala and Another* reported in *2010(2) SCC 398* at paragraphs 11 and 25 has held as under :

"11. 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 proceeding against the accused. In other words, the sufficiency of ground would take within its fold the 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 a charge against him.

25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure."

39. The Hon'ble Apex Court in the case of *Tarun Jit Tejpal vs. The State of Goa & Anr.* reported in *2019(4) East Cr C 208 (SC)* at paragraphs 9.1 to 9.5 has held as under :

"9.1 In the case of N. Suresh Rajan (Supra) this Court had an occasion to consider in detail the scope of the

proceedings at the stage of framing of the charge under Section 227/228 CrPC. After considering earlier decisions of this Court on the point thereafter in paragraph 29 to 31 this Court has observed and held as under:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat vs. State of U.P. [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra vs. State (NCT of Delhi) [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (Sheoraj Singh Ahlawat case [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52], SCC p. 482 , para 15)

"15. 11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged

would justify the framing of charge against the accused in respect of the commission of that offence. (Onkar Nath case [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507], SCC p. 565, para 11)"

(emphasis in original)

31. Now reverting to the decisions of this Court in Sajjan Kumar [Sajjan Kumar vs. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and Dilawar Balu Kurane [Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak vs. A.R. Antulay [(1986) 2 SCC 716 : 1986 SCC (Cri) 256]. The same reads as follows: (SCC pp. 755-56, para 43)

"43. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of prima facie case has to be applied. In spite of the difference in the

language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

9.2 In the subsequent decision in the case of S. Selvi (Supra) this Court has summarised the principles while framing of the charge at the stage of Section 227/228 of the CrPC. This Court has observed and held in paragraph 6 and 7 as under:

"6. It is well settled by this Court in a catena of judgments including Union of India vs. Prafulla Kumar Samal [Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], Dilawar Balu Kurane vs. State of Maharashtra [Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], Sajjan Kumar vs. CBI [Sajjan Kumar vs. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], State vs. A. Arun Kumar [State vs. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], Sonu Gupta vs. Deepak Gupta [Sonu Gupta vs. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], State of Orissa vs. Debendra Nath Padhi [State of Orissa vs. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], Niranjana Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya [Niranjana Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs vs. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs vs. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights to discharge the accused. The Judge 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 statements 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 materials as if he was

conducting a trial.

7. In Sajjan Kumar vs. CBI [Sajjan Kumar vs. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21).

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face 8/31/23, 3:08 PM Tarun Jit Tejpal VS State Of Goa about:blank 8/10 value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or

acquittal."

9.3 In the case of Mauvin Godinho (Supra) this Court had an occasion to consider how to determine prima facie case while framing the charge under Section 227/228 of the CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 of the CrPC there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

9.4 At this stage the decision of this Court in the case of Stree Atyachar Virodhi Parishad (Supra) is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Section 227/228 of the CrPC. In paragraphs 11 to 14 observations of this Court in the aforesaid decision are as under :

"11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

"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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In State of Bihar vs. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257] , Untwalia, J., while explaining the scope of the said sections observed: [SCR p. 259 : SCC pp. 41-42 : SCC (Cri) pp. 535-36, para 4]

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously Judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is

not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

13. In Union of India vs. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] , Fazal Ali, J., summarised some of the principles: [SCR pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, para 10]

"(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 had 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."

14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257]. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It

provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

9.5 Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 of the CrPC, we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for."

40. In view of the allegations made in the F.I.R., the cumulative evidence collected by the I.O. during investigation i.e., oral as well as documentary and the settled propositions of law as laid down by the Hon'ble Apex Court as referred hereinabove, there are sufficient grounds to proceed trial against the accused. As such, the impugned order dated 2nd April, 2022 passed by the court below rejecting the discharge application needs no interference.

41. Accordingly, this criminal revision is, hereby, dismissed and the

impugned order passed by the learned court below is hereby affirmed.

42. The interim protection granted to the petitioner vide order dated 16th March, 2023 stands vacated.

43. Let a copy of this order be communicated to the court concerned through 'FAX'.

(Subhash Chand, J.)

Rohit/AFR