IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

CRIMINAL REVISION No. 4878 of 2025

VIVEK @VICKY

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Subodh Choudhary, learned counsel for the petitioner.

Shri Rajendra Singh Suryavanshi, learned GA for the respondent/State.

HEAR ON : 29.10.2025

POSTED ON : 11.11.2025

ORDER

This Criminal Revision under Section 438 of the BNSS, 2023 is preferred challenging the legality of framing of charges of Head No.2 and 4 i.e. under Section 109(1) and 351(3) of the BNSS, 2023 vide order dated 21.08.2025 passed in S.T.No.34/2025 arising out of Crime No.232/2025 registered at Police Station Nagda, District Ujjain.

2. The charges have been framed regarding incident dated 22.05.2025 at 01:45 am occurred in front of Police Station Nagda, near Shiv Mandir, Nagda, Ujjain in which Rahul sustained injury by knife.

3. The trial Court framed the charges under Section 296, 109(1), 115(2) and 315(3) of the BNS, 2023 and this revision petition has been preferred challenging the charges i.e. Head No.2 and 4 only on the ground that vide report dated 11.06.2025 (Annexure-P/1) Dr. Ajay Kabra, the doctor of Indubhai Parekh Memorial Hospital, Birlagram, Nagda has opined that

sharp incised wounds found at left arm size 7 x 2 cm. was neither a deep wound nor dangerous to life and second wound was also sharp incised wound and without treatment no chance of death. The wounds were not on vital part of the body.

4. It is further argued that it is a clear case of misuse of law as well as process of law. The F.I.R. has been registered in the influence of complainant without seeking query from doctor in connection with Section 109(1) of the BNS, 2023. The trial Court committed error in not considering the fact that no case under Section 109(1) of the BNS, 2023 is made out as the injury sustained was not dangerous to life.

Heard.

5. Learned counsel for the State has opposed the revision petition.

6. Perused the material filed with the revision petition as well as the case diary made available by the prosecution.

7. Before dealing with the rival contentions, it is appropriate to refer to the scope of exercise of power under section 227 of the Cr.P.C or presently section 250 of the BNSS, 2023. The Apex Court in **P.Vijayan vs. State of Kerala and another - (2010) 2 SCC 398,** made an in-depth consideration regarding the scope of power under section 227 Cr.P.C and held thus:

> "10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

"227. Discharge. — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

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."

8. In **Sajjan Kumar vs. Central Bureau of Investigation -(2010) 9 SCC 368,(2010) 9 SCC 368,** the Apex Court has laid down certain guiding principles for discharge as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(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 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. The position of law enunciated in the said decisions reveals that while invoking the power under section 227 of the Cr.P.C, the judge concerned has to consider only the record of the case and the document produced along with the same. If on such consideration, the Court formed an opinion that there is no sufficient ground to proceed against the accused concerned, he shall be discharged after recording the reasons therefor. It is also evident from the precedence on the aforesaid question that while exercising the said power, the Court could sift the materials produced along with the final report only for the purpose of considering the question whether there is ground to proceed against the accused concerned.

10. The further limitation that at the stage of framing of charge or considering the discharge application, the impermissibility of mini trial as laid down in State of **Rajasthan vs. Ashok Kumar Kashyap - 2021 SCC OnLine SC 314** is being referred as under:

> "At the stage of framing of the charge and /or considering the discharge application, the mini trial is not permissible."

11. In CBI vs. Aryan Singh -2023 SCC Online SC 379 also, the

same position of law has been reiterated. The relevant paragraph from the said judgment is extracted herein below:

> "Para 10 ....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.
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> 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."

12. For appreciating the points raised in this criminal revision on the strength of opinion regarding nature of injury, this Court is reproducing section 307 of the IPC as under:

> 307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned. Attempts by life convicts.—When any person

offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

13. The first part of Section 307 of IPC deals with a situation, where no injury is caused and second part of Section 307 of IPC deals with a situation where hurt is caused.

14. From the plain reading of Section 307 of IPC, it is clear that presence of injury is not sine qua non for making out an offence under Section 307 of IPC. If any act is done with an intention or knowledge that, if assailant by that act causes death, then the assailant would be guilty of murder, then such act would certainly be punishable under Section 307 of IPC.

15. Thus, the nature of injuries is not a decisive factor to determine as to whether the act of the assailant would be an act punishable under Section 307 of IPC or not.

16. Thus, the following two ingredients are necessary to make out an offence under Section 307 of IPC :

(a) Knowledge or intention that by his act, if murder is caused then he would be guilty of murder ;

(b) Does any act towards commission of that offence.

17. Now come to the fact of this case. As per the statement of victim Rahul, the revision petitioner Vivek @ Vicky extended the threat to kill,

thereafter, assaulted him by knife targetting neck of Rahul. The assault was intercepted with the left arm by Rahul and left arm sustained two incised wounds and the MLC of Rahul mentions that there was continuous bleeding from the wound and there was possibility of cut to deep vessel and referred to District Hospital, Ujjain but Rahul was taken to Indubhai Parekh Memorial Hospital, Birlagram, Nagda, Ujjain where he was under treatment till 02.06.2025 and Annexure-P/1 relied by the revision petitioner also mentions that the second incised wound at left forearm deep with tear of muscles and fat plain with excessive bleeding with open cut veins and muscular arteries approximately size 10x3x3 cm.

18. Testing the framing of charges on the standard of "grave suspicion" and position of law that the nature of injuries is not a decisive factor to determine as to whether the act of the assailant would be an act punishable under Section 307 of IPC or not. The impugned order does not suffers from any illegality in framing the charge of 2nd and 4th head. Mention in the hospital record that despite advise of discharge he remained in the hospital does not affect the framing of charges. Hence, this criminal revision has no substance and is hereby dismissed.

(GAJENDRA SINGH)
JUDGE

VS