IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 1732 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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DEEP RAJENDRAKUMAR SHAH
Versus
STATE OF GUJARAT

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Appearance:
MR SIKANDER SAIYED(3458) for the Applicant(s) No. 1
MR H K PATEL APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE R. T. VACHHANI**

Date : 03/10/2025

ORAL JUDGMENT

By way of filing the captioned revision application under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS, 2023), the petitioner seeks to challenge order dated 24.10.2024 passed below Exhibit-20 in ACB Special Case No.2 of 2024 by the Court of learned Special Judge (ACB) and Principle Session Judge, Junagadh whereby the said application filed under Section 239 of the Code of Criminal Procedure (for short seeking to discharge from the alleged charges came to be rejected.

FACTUAL MATRIX:

2. The case of the petitioner as emerging from the FIR are that on 19.01.2024, when original complainant was on duty, he received a letter dated 19.01.2024 from one Mr.Kartik Bhanderi that his account was freeze by Cyber Crime Cell Junagadh and when he requested to defreeze his account to accused no.1 and 3 as named in the FIR, they refused get his account defreeze and demanded Rs.25 Lacs in lieu of getting the account defreeze and thus complaint was registered followed by the inquiry. It is further alleged in the FIR that said Mr.Kartik Bhanderi tried to get defreeze his bank account and therefore, he called Cyber Crime Cell, Junagadh in the first week of January, 2024 who in turn was informed by the concerned officer that he was required to visit Junagadh. It is also alleged that said Mr.Kartik Bhanderi came to Junagadh from Bangalore on 14.01.2024 and visited office of Cyber Crime Cell on 16.01.2024 and met accused no. 3 as per FIR. It is further alleged that accused no. 3 met Mr.Kartik Bhanderi and informed him that there are transaction in Crores of Rupees from your account and he has to inform about the same to E.D. It is alleged that said Mr.Kartik Bhanderi also informed accused no. 3 that he is ready to give Rs.4.00 to Rs.5.00 Lakhs to defreeze his account; but accused no. 3 denied and thereafter accused no. 3 informed Mr.Kartik Bhanderi that accused No.1 is here and he wants to meet him. Accused No.1 asked Mr.Kartik Bhanderi to follow the instructions given by accused no. 3. It is further alleged that accused no. 1 has demanded Rs.25 lakhs to defreeze his account; but Mr.Bhanderi denied and sent a letter to the superior authority and upon which inquiry stood started by the complainant.

2.2 It is also alleged in the FIR that preliminary inquiry was going on and statements were also recorded of different persons and accused no.3 informed that on 17.11.2023, accused no.1 called him and informed him that he has sent 3 Excel Sheets on his WhatsApp, which includes the details of different Bank Accounts which is given by the present petitioner to him and he followed the instructions given by the accused no.1. It is also alleged that after inquiry the complainant came to conclusion that present accused no.1 and 3 misused their post and freeze total 335 accounts as per the secret information given by the applicant and on the basis of aforesaid allegations, the FIR in question was registered with the B-Division Police Station for the offences punishable under Sections 167, 465, 467, 471, 385, 389, 114 and 120-B of the Indian Penal Code and under Sections 7 and 12 of the Prevention of Corruption Act, 1988.

2.3 The investigation culminated by submission of charge-sheet came to be filed for the offences punishable under Sections 385, 389, 114 and 120-B of the Indian Penal Code and under Sections 7 and 12 of the Prevention of Corruption Act. where the present petitioner alongwith co-accused came to be arrayed as accused in the Special ACB Case No.2 of 2024.

3. In the above factual background, the petitioner–org. accused preferred an application under Section 239 of the Code seeking to discharge from the array of the accused, the learned Special Judge, alleged offence which after hearing the learned advocates appearing for the respective parties, rejected the said application. Hence, this revision.

SUBMISSIONS OF THE PETITIONER:-

4. Learned Advocate appearing for the petitioner Mr.Kansara has submitted that the impugned order passed by the learned Court below is grossly illegal and without considering the material placed before the Court. He has further submitted that the learned Court below has erred in holding that *prima facie* there are sufficient material / evidence available on record of the case to proceed further with the trial against the petitioner and thereby committed error in refusing to discharge the petitioner from the alleged charges. He has further submitted that the learned Court below appears to have gone into the aspect of gravity of evidence on record, ignoring the aspect of sufficient of material to prosecute the petitioner, which was the basic requirement and therefore, he would submit that the impugned order may be quashed and set aside.

4.1 Learned advocate for the petitioner while referring to the grounds agitated in the memo of revision application would submit that neither any document nor any material in the form of statement of the independent witnesses to show the *prima facie* involvement of the petitioner is placed with the final report to show the involvement of the petitioner insofar as the offence punishable under Section 12 of the Prevention of Corruption Act which defines abatement in the commission offence.

4.2 Learned advocate for the petitioner has further submitted that if the final report with the documents / statement placed therewith is examined, no *prima facie* case against the petitioner is made out to attract the ingredients of the alleged offences and therefore, the applicant is required

to be discharged while allowing the application filed under Section 239 of the Code. Learned advocate for the petitioner has further submitted that the material placed with the final report in the form of charge-sheet does not reveal the involvement of the petitioner in the alleged offence and therefore, he would submit that if the petitioner would put to trial, it would be nothing but unnecessary harassment to the petitioner who otherwise is not involved in the alleged offence.

4.3 Learned advocate for the petitioner would submit that if the FIR and the final report in the form of charge-sheet is read together, *prima facie*, nowhere the direct involvement of the petitioner is found. It is submitted that present petitioner has nothing to do with the main perpetrators and therefore, the charges as to the applicant being the part of conspiracy hatched amongst the co-accused and also getting prepared the Excel Sheet containing the details of number of accounts, etc., and on having sense the same was destroyed, appears to be no substance and refused to have abated the main perpetrators in the commission of the crime in question as alleged by the prosecution.

4.4 Learned advocate for the petitioner – org. accused has referred to the relevant provisions of the IPC and the Prevention of Corruption Act with which the petitioner has been alleged to have been charged and submitted that none of the charges as alleged against the petitioner is *prima facie* found to have any substance to connect the accused with the crime in question and therefore, in absence of any *prima facie* material, the petitioner may not be put to trial and he may be discharged from the alleged charges.

4.5 It is further submitted by learned advocate for the petitioner – accused that reliance placed upon by the accused on several decisions have not been dealt with by the learned Court below while rejecting the discharge application.

4.6 By making the above submissions, learned advocate for the petitioner would submit to allow this petition and to discharge the petitioner – accused from the array of the accused.

SUBMISSIONS OF THE RESPONDENT:

5. On the other hand, learned APP Mr.H K Patel appearing for the respondent – State would submit that considering the allegations and charges levelled against the petitioner – org. accused, the petitioner may be put to trial as the Investigating Agency after found *prima facie* material against the petitioner – org. accused filed the charge-sheet and same has been culminated into registration of the Special Case.

5.1 Learned APP while taking this Court through the reasoning assigned by the learned Court below, as also the statements of the several witnesses recorded during the course of investigation has submitted that it speaks volume as to the involvement of the petitioner-accused. While referring to the statement of witness - Shreyaben d/o Subhashbhai Tiwari who has stated that she was serving in the Call Center viz., Friendship Club of the petitioner–accused and at the instance of the petitioner – accused, she had prepared the information of the bank accounts of 619 Bookies in the Excel Sheet and forwarded it to the petitioner–accused

and thereafter in presence of the petitioner–accused, the said mobile phone was destroyed at Bandra, Mumbai by throwing it into he sea.

5.2 Learned APP Mr.Patel has further submitted that entire investigation carried out by the IO shows sufficient material to establish the *prima facie* involvement of the petitioner - accused in the crime in question and on the basis thereof, the final report was submitted before the learned Court below. He would submit that material placed alongwith the final report is sufficient for framing of the charge and to conduct the trial against the petitioner - accused.

5.3 By making the above submissions, he would submit to dismiss the present revision application.

6. Heard the learned advocates appearing for the respective parties and examined the material placed on record.

REASONS IN NUTSHELL:

7. At the outset, if the allegations made against the petitioner – org. accused is to be examined, it would appear that initially the complaint was lodged on receipt of the letter dated 19/01/2024 from one Mr.Kartik Bhanderi complaining that his account have been freeze by the Cyber Crime Cell, Junagadh and on his request to defreeze the account, the co-accused named in the FIR demanded amount in lieu thereof which resulted into the registration of the FIR. It also appears that after thorough inquiry being initiated and as per the statements and averments and allegations made by said Mr.Kartik Bhanderi, accusing the involvement

of the co-accused who otherwise has been given a clean-chit. Not only that, said Mr.Kartik Bhandri called to Cyber Crime Cell, Junagadh to defreeze his Bank account and he was informed to visit Junagadh Cyber Crime Cell and consequently, he visited and met accused No.3 and tried to convince his non-involvement as to the question transactions. However, he was threatened to be implicated into the serious offence and also would be arrested in the proceedings initiated with the ED which left with no option but to succumb to the demands of the co-accused by showing his readiness to give the gratification to the tune of Rs.4.00 to Rs.5.00 Lacs to get the account defreeze of said Mr.Bhanderi, who refused to succumb such demand which constrained him to sent a letter to the Superior authority which resulted into the conducting the preliminary inquiry followed by the statements having been recorded of all concerned where-from it appears that involvement of the present applicant is solely on the basis of the information shared in the form of Excel Sheets through his WhatsApp Chatting, which includes the details of different Bank Accounts shared with the main perpetrators which runs in number of accounts as per the secrete information shared by the present applicant and on the basis of aforesaid allegations, the FIR in question came to be registered and on the basis of the look-out notice, the present applicant came to be arrested.

8. Thus, from the narration of the above facts, as also the statements recorded during the course of investigation, as also referred too by the learned Court below while rejecting the discharge application, it appears that on the basis of the chatting on WhatsApp and screenshots shared as to the entries run in 300 to 400 numbers by the petitioner-accused

wherein the details as to the name of the Bank, IFHC Code, Name of the Account Holder, Account Details, name of the Sites and contact numbers were provided and after accumulating the said details in the Excel Sheet at the instance of the applicant, it was shared with the main perpetrators at the hands of the present petitioner–accused. It would also appear from the statements recorded by the Investigating Agency that after providing and sharing the aforesaid information to the main perpetrators, the petitioner – accused had destroyed the mobile phone while deleting the chatting took place between them. It further appears from the statements recorded of Ms.Shreyaben d/o Subhashbhai Tiwari, Mahnedra Mulshanker Soni, Rajan Ravindrabhai Dave, Mr.Ramanbhai Prahladbhai Patel, Mr.Kiranbhai Govindbhai Dabgar who are shown as witness in the charge-sheet and their statement pinches the involvement of the accused in the offence in question.

9. The above material would reveal that *prima facie* there appears to be ample material at least to put the petitioner–accused to trial and therefore, considering the said aspect, the learned Court below seems to have rightly rejected the discharge application. Furthermore, present petitioner–accused is not only involved in the offence in question; but as per the police report, he is found to have involved in three other different offices registered with different Police Station, which shows the antecedents aspect on the part of the petitioner – accused.

LEGAL PROPOSITION OF THE CASE ON HAND:

10. As number of contentions and lapses claims to have been occurred in the investigation, the challenge in the form of infirmities in the

investigation extending the benefits to the suspect, so also the non-involvement of the applicant etc., have been raised, which apparently has no nexus to weigh at the stage of framing of the charge. However, since much emphasize has been laid at the hand of the applicant, while referring to the statements forming part of the investigation, the same are required to be dealt with the judiciously.

11. More so, while dealing with the application filed under Section 227 and 239 of the Code which pertains to discharge, the scope to exercise such jurisdiction is very limited; wherein the Court has only to confine its reasoning in consonance with the material placed for consideration as to find out whether the case for trial has been made or not in such proceedings and the Court is not expected to hold a mini trial by evaluating the entire set of evidence. At the time of framing of the charge, the Court has only to consider the probative value of the evidence on record and is not expected to go into the merits of the case rather roots of the case while evaluating the same.

12. In context to the aforesaid legal aspect, the detailed application amalgamated in the number of contentions while weighing the value of the evidence on record; with the plausible defence set for by the applicant by way of filing the application, which runs in number of pages is a self-explanatory of the fact that the entire case requires to be appreciated judiciously; instead of expecting from the Court to conduct the mini trial, at the stage of deciding the application seeking discharge from the array of the accused, which otherwise is not permissible under the law as there are catena of decisions which restrains the Court to adhere to the very

purpose and object behind provisions of Section 239 of the Code.

13. At this stage, it would be apt to refer to the decision of the Hon'ble Apex Court in case of ***State Through Deputy Superintendent Of Police Versus R.Soundirarasu Etc. [2023 (6) SCC 768]***, where the Hon'ble Apex Court has in detailed discussed the issue in relation to Section 239 of the Code of Criminal Procedure has held as under:

> ***"60.*** *Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : V.C. Shukla v. State through CBI, AIR 1980 SC 962).*
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> ***61.*** *Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.*
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> ***62.*** *The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:-*
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> *"The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all."*
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> ***63.*** *In short, it means that if no prima facie case regarding the commission of*

any offence is made out, it would amount to a charge being groundless.

64. *In Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra, AIR 1972 SC 545, this Court has stated about the ambit of Section 251(A)(2) of the CrPC 1898, which is in pari materia with the wordings used in Section 239 of the CrPC as follows:-*

"It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in S. 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution."

In para 15, this Court has stated as:-

"Under sub-sec. (2), if upon consideration of all the documents referred to in S. 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub- sec. (3), according to which, if after hearing the arguments and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges."

65. *Thus the word 'groundless', as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.*

66. *This Court has again dealt with this aspect of the matter in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, AIR 1980 SC 52. This Court has stated in the said case as:-*

"At this stage, even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

67. *The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words "a very strong suspicion" used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be*

founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.

68. *Section 239 has to be read along with Section 240 of the CrPC. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations), he may frame charge in accordance with Section 240 of the CrPC. But if he finds that the charge (the allegations or imputations) made against the accused does not make out a prima facie case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 of the CrPC, the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed, in a case where the Magistrate takes cognizance of an offence without taking note of Section 468 of the CrPC, the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.*

69. *The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.*

70. *The provisions of discharge under Section 239 of the CrPC fell for consideration of this Court in K. Ramakrishna and others v. State of Bihar and another, (2000) 8 SCC 547, and it was held that the questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows:-*

4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charge. Such an endeavour may be justified during trial but not during the initial stage.

71. *In the case of State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath, (2019) 7 SCC 515, this Court observed and held in paragraph 25 as under:-*

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

29. At this stage, probative value of the materials has tobe 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 law does not permit a mini trial at this stage.

72. *The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.*

73. *This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be groundless.*

> ***74.*** *The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever."*

Thus, the Hon'ble Apex Court has held that the obligation to discharge the accused under Section 239 of the Code arises when the Court concerned considers the charge against accused to be "***groundless***" and no detailed evaluation of materials or meticulous consideration of possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage and only consideration at the stage of filing application seeking discharge under Section 239 of the Code is as to whether the allegation/charge is "***groundless***" or not and exercise at this stage is to be confined to considering police report and documents to decide whether allegations against accused can be said to be groundless. Here, In the present case, considering the police report in the form of charge-sheet, it *pirma facie* reveals that no such material is found to be "***groundless***" to discharge the petitioner from the alleged offence. Nothing sort of any material seems to have been shown by the petitioner – accused from material to show "***groundless***" charge alleged against him.

14. It is pertinent to note that very purpose and object of discharge as enumerated in provisions of Section 239 of the Code wherein the "***mini trial***" at the stage of framing of charge is not permissible; nor the Court is expected to go into the merits of the case. The Court is only to confined

as to whether a *prima facie* case is made out or not. As the word enumerated "groundless" requires a careful and objective consideration of the question whether a charge against the accused is "***groundless***" or whether there is a ground for presuming that he has committed an offence. Thus, the sum and substance of the word "***groundless***" means there must be no grounds for presuming that the accused has committed an offence. However, by invoking the provisions of Section 239 of the Code, pertains to discharge, which otherwise may very from case to case, is being used as an instrument rather a shield to stall the smooth proceedings of the trial and thereby to create an obstructions so that the trial could not met with its legitimate fate in time, which is not permissible in the eye of law.

15. In ***State Of Rajasthan Versus Ashok Kumar Kashyap [2021 (11) SCC 191]***, the Hon'ble Apex Court has held that High Court was required to consider whether a *prima facie* case has been made out or not and whether accused is required to be further tried or not at the stage of framing of charge and/or considering discharge application, "***mini trial***" is not permissible. The relevant observations made in paragraph 9 to 11 reads thus:

> *"9. While considering the legality of the impugned judgment and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.*
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> *9.1 In the case of P.Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that 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. It is observed that in other*

words, the sufficiency of grounds 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. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, 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.

9.2 In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

"29. ... 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."

10. We shall now apply the principles enunciated above to the present case in order to find out whether in the facts and circumstances of the case, the High Court was justified in discharging the accused for the offence under Section 7 of the PC Act.

11. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

Thus, in view of the aforesaid law laid down by the Hon'ble Apex

Court, the Court is required to see as to whether a *prima facie* case is made out or not and whether the accused is required to be put to trial or not at the stage of framing of the charge and / or while deciding discharge application and it is not permissible to hold a "***mini trial***". No defence on merits is to be considered at the time of framing the charge and / or at the stage of deciding the discharge application.

16. Insofar as the scope to exercise the revisional power is concerned, it cannot be exercised in a routine or casual manner as the High Court has no authority to appreciate the evidence by holding a "***mini trial***" as has been held by the Hon'ble Apex Court in ***State Through Deputy Superintendent Of Police (supra)*** where the Hon'ble Apex Court after considering the decision in case of Munna Devi v. State of Rajasthan & Anr., (2001) 9 SCC 631 has held in paragraph No.75 and 76 as under:

> *"75. In Munna Devi v. State of Rajasthan & Anr., (2001) 9 SCC 631, this Court held as under:-*
>
> > *"3.....The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."*
>
> *76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the*

material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

17. The learned Court below has succinctly dealt with all the aspect as agitated by the petitioner-accused while refusing the discharge application considering the factual as well as the legal position and this Court is in complete agreement with the said findings arrived at by the learned Court below denying the discharge application.

18. For the foregoing reasons and the reasons recorded by the learned Court below, this Court does not find any substance in the present revision application. Accordingly, it is dismissed. Interim-relief, if any, shall stand vacated forthwith.

(R. T. VACHHANI, J)

FURTHER ORDER

After pronouncement of the aforesaid order, learned advocate Mr.Saiyed for the petitioner requested to extend the interim relief for a further period of four weeks which has been operated since November, 2024.

Having heard the learned advocate for the petitioner and examining the order-sheet, it appears that no such interim relief is operated and the interim arrangement is ordered to be made. Hence, the request for extending the interim relief is rejected.

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 03/10/2025 13:59:02