



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.288 OF 2026**

1. Mr. Uday Prabhu Desai,
S/o late Mr. Datram Prabhu Desai,
Aged 62 years, Indian National,
R/o Bhaidwada Corgao,
Pernem, Goa. ..Petitioner No.1

2. Mr. Ugam Prabhu Desai,
S/o Mr. Uday Prabhu Desai,
Aged 23 years, Indian National,
Rio Bhaidwada Corgao,
Pernem, Goa. ..Petitioner No.2.

Versus

State of Goa,
As represented by the Officer Incharge/
Police Inspector, Pernem Police Station,
Pernem, Goa. ..Respondent

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Mr. Salil Saudagar, Advocate for Petitioners.
Mr. Nikhil Vaze, Addition Public Prosecutor with Mr. Pranav Vaze,
Advocate for State.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 17th AUGUST, 2026.
PRONOUNCED ON : 21st AUGUST, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is heard finally at admission stage.
2. The petitioners impugn Roznama order dated 26.06.2026 passed by Additional Sessions Judge at Merces in Sessions Case (Ors) No.34/2026, thereby refusing to hear petitioners before ordering framing of charge against them.

3. On 09.05.2025, on complaint of Mrs. Kalpita Kalpesh Kalshavkar FIR No.26/2025 came to be registered against petitioners for offences punishable under Sections 221, 132, 74, 75, 79, 115(2), 351(1), 303(2) r/w 3(5) of Bharatiya Nyaya Sanhit, 2023 (hereinafter referred to as 'BNS, 2023'), particularly on accusation of obstructing Panchayat Member in performance of her duty and coupled with assault, sexual harassment and theft of mobile phone. On completion of investigation, final report came to be filed under Section 193 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter referred to as 'BNSS, 2023') against petitioners before Judicial Magistrate First Class at Pernem, who committed matter to Sessions Court, which came to be registered as Sessions Case (Ors) No.34/2026.

4. On 01.04.2026 petitioners appeared before Sessions Judge and furnished surety. Accordingly, matter was posted for arguments before charge. On 26.06.2026, Sessions Judge passed impugned Roznama order stating that in view of Section 250(1) BNSS, 2023 petitioners/accused failed to file application for discharge within 60 days from date of commitment, therefore, they cannot be given an opportunity to argue under Section 249 of BNSS, 2023. Accordingly, fixed matter for explaining charges to accused.

5. Mr. Salil Saudagar, learned Advocate appearing for petitioners would submit that right of accused to have audience before framing of

charge is not contingent upon filing of formal application under Section 250(1) of BNSS. The liberty given to accused under Section 250(1) to file application for discharge within period of 60 days from date of commitment of case under Section 232 cannot be treated as mandatory requirement to exercise right of hearing under Sub-clause (2) of Section 250 of BNSS, 2023. Therefore, Trial Court was not justified in passing impugned order. In support of his contentions he relies upon observations of Supreme Court in case of *Anand Rai Vs. State of Madhya Pradesh and Ors.*¹, observations of this Court in case of *Ambadas Kashirao Kharad Vs. State of Maharashtra*², *Surender Kumar and Ors. Vs. Police Inspector, Mandrem Police Station and Anr.*³, and observations of High Court of Karnataka in case of *Shri Subbaiah K. B. Vs. State of Karnataka (Criminal Petition No.2237/2026* decided on **06.04.2026**).

6. In case of *Anand Rai* (supra) Supreme Court examined scheme under Sections 227 and 228 of Criminal Procedure Code and corresponding Sections in BNSS, 2023 and observed that in both enactments governing standards are framed in materially same language. At the stage of discharge, Court is required to consider whether there is any sufficient ground for proceeding against accused in Sessions Case, or whether charge is groundless in Magistrate warrant cases. The charges are to be framed only if Court forms an opinion that

¹ AIR 2026 SC 1069.

² 2007 (1) Bom. C.R. (Cri.) 881.

³ 2026 SCC OnLine Bom 3538.

there is ground for presuming that accused has committed an offence. These formulations, which have long anchored exercise of judicial discretion under Code of Criminal Procedure, are carried forward in substance in corresponding provisions of BNSS, 2023 without any textual indication that level on scrutiny is intended to be either heightened or diluted. What the BNSS does is to change procedural setting within which this discretion is exercised. The jurisprudence developed under Code of Criminal Procedure on the scope and limits of consideration at stage of discharge and framing of charge continues to hold field under BNSS, 2023. In substance, the power remains the same, only the manner of its exercise has been more tightly structured.

7. The Chapter XIX of BNSS, 2023 deals with trial before a Court of Sessions. Section 249 contemplates that prosecutor shall open his case by describing charge brought against accused and stating by what evidence he proposes to prove guilt of accused. Section 250 of BNSS, 2023 which corresponds to Section 227 of the Code of Criminal Procedure stipulates that accused may prefer an application for discharge within period of 60 days from date of commitment of case. Sub-clause (2) of Section 250 states that if, upon consideration of record of case and documents submitted therewith, and after hearing submissions of accused and prosecution in this behalf, Judge considers that there is not sufficient ground for proceeding against accused, he shall discharge accused and record his reasons for so doing. Section

251 of BNSS, 2023 stipulates that after such consideration and hearing as aforesaid, Judge is of opinion that there is ground for presuming that accused has committed an offence, he shall frame in writing charge against accused within period of 60 days from date of first hearing.

8. The cumulative and harmonious reading of scheme under Sections 249 to 251 of BNSS, 2023 suggests that there is hardly any departure from procedure that was contemplated under Sections 226, 227 and 228 of the Code of Criminal Procedure. The legislatures have simply inserted timeline for discharge of corresponding obligation by prosecutor, accused and Court. While accused is given liberty by using word 'may' prefer for filing application for discharge within 60 days from date of commencement of case, obligation upon Court to grant opportunity of hearing to accused as well as prosecution before framing charge continues to exist without any fetter on right of accused to demonstrate that there is no triable case against him and seek discharge. The filing or non-filing of application for discharge within period of 60 days would not affect petitioner's right of audience before framing of charge.

9. It is well settled that, session trial case has to begin with opening of case by prosecution. The Sessions Court is bound to scrutinize evidence which is to be lead by prosecution to prove charge brought against accused and if there is no case against accused, discharge him.

Therefore, it is mandatory on the part of learned Judge to apply his judicial mind and form his *prima facie* opinion, if any offence is made out against accused on the basis of material relied upon by prosecution.

10. In light of aforesaid discussion, this Court finds that only because petitioners failed to file discharge application within period of 60 days in terms of Sub-clause (1) of Section 250 of BNSS, 2023, petitioners' right to participate in hearing before framing charge cannot be curtailed in any manner. The Trial Court is under statutory obligation to hear accused and permit them to demonstrate that material relied by prosecution is not sufficient to frame charge against them as proposed by prosecution or ingredients of such charges cannot be made out from material tendered in service alongwith charge-sheet.

11. In result, Writ Petition is allowed in terms of prayer Clause (A), which reads thus:

“This Hon'ble Court be pleased to quash and set aside the Impugned Order dated 26/06/2026 passed by the Learned Ad-hoc District Judge -I and Additional Sessions Judge, at Mercus in Sessions Case (Ors) No.34/2026, consequently directing the Learned Ad-hoc District Judge-I and Additional Sessions Judge, Mercus to hear the Petitioners before framing charges against the Petitioners in the above matter.”

12. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE