

IN THE COURT OF [REDACTED]
JUDICIAL MAGISTRATE FIRST CLASS (MAHILA COURT)
SHAHDARA DISTRICT, KARKARDOOMA COURTS, DELHI

Cr. Case No. [REDACTED]

FIR No. 198/2023

PS: [REDACTED]

U/s 498A/406/354/34 IPC & Sections 3/4 Dowry Prohibition Act, 1961

03.10.2026

Present: Ld. APP for the State..

Accused No. 4 [REDACTED] in person with Ld. Counsel.

1. By this order, I shall dispose of the application under Section 239 Cr.P.C. read with Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") filed on behalf of accused no. 4 [REDACTED]

[REDACTED] (hereinafter "the applicant" or "A-4") seeking his discharge, along with the written submissions dated 07.09.2026 filed in support thereof. Copy of the application was supplied to the State as well as the complainant. No written reply has been filed and has addressed oral arguments. Arguments were heard on behalf of accused, complainant and the state.

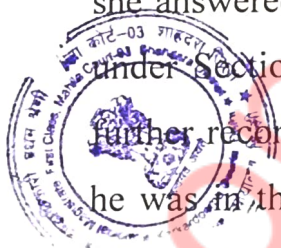
2. It is not in dispute that out of the offences for which the charge-sheet has been filed, the applicant has been charge-sheeted only for the offence punishable under Section 354 IPC. The present order is accordingly confined to the question whether a charge under Section 354 IPC is liable to be framed against the applicant.

BRIEF FACTS OF THE PROSECUTION CASE

3. The complainant (whose identity is withheld and who is referred to herein as "the complainant" or 'K', as in the proceedings under Section 183 BNSS) married accused no. 1 [REDACTED] on 10.05.2018 at an Arya

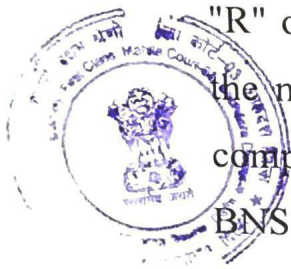
Samaj Mandir, against the wishes of her family. The applicant is the elder brother of accused no. 1. The complainant made a written complaint before the CAW Cell, Nand Nagri, in the year 2022 alleging demands of dowry and cruelty at the hands of her husband and in-laws. On the said complaint, the present FIR came to be registered on 10.03.2023 under Sections 498A/406/34 IPC and Sections 3/4 of the Dowry Prohibition Act.

4. Insofar as the applicant is concerned, the allegation in the complaint is that on 17.06.2018, when the complainant refused to accede to the demands of her in-laws, she was beaten, and the applicant, under the pretext of making her quiet, touched her inappropriately and placed his hand on her private part with bad intention; and further that whenever he found an opportunity, he would enter her room without reason and attempt to touch her.
5. During investigation, the supplementary statement of the complainant and the statements of her parents were recorded under Section 180 BNSS, the statement of the complainant was recorded under Section 183 BNSS, and a notice under Section 94 BNSS was served upon the complainant, which she answered in writing. The final report records that after the statement under Section 183 BNSS, Section 354 IPC was added. The final report further records the stand of the applicant that the allegation is false, that he was in the employment of the Railways in Punjab and was on night duty on 17.06.2018, and that he produced his duty chart before the IO in which 17.06.2018 is marked "R". Upon completion of investigation, the charge-sheet was filed, cognizance was taken and copies were supplied to the accused persons.



SUBMISSIONS ON BEHALF OF THE APPLICANT

6. Ld. Counsel for the applicant has submitted that the complaint is the outcome of the matrimonial discord between the complainant and the younger brother of the applicant, and that the applicant has been roped in merely because he is the elder brother of the husband. It is submitted that the only allegation against the applicant relates to 17.06.2018, on which date the applicant was employed with the Northern Railway as a Gateman at Level Crossing C [REDACTED] 68 near [REDACTED] railway station, [REDACTED] stated to be about 450 km from the place of the alleged incident. Reliance is placed on the reply dated 10.12.2024 received under the RTI Act from the office of [REDACTED] Northern Railway, and it is contended that the entry "R" on 17.06.2018 denotes rest between the day shift of 16.06.2018 and the night shift commencing at 19:00 hours on 17.06.2018, whereas the complainant, in reply to Question No. 4 of the notice under Section 94 BNSS, has placed the incident at about 8:00 PM.



7. It is further submitted that the complainant has not named the applicant in her statement under Section 183 BNSS; that her supplementary statement under Section 180 BNSS is entirely silent about the incident of 17.06.2018; that cross-FIRs bearing Nos. 363/2020 and 364/2020 were registered between the two families in April 2020 but no such allegation was raised then; that the IO did not verify the official record placed before him; and that the pendency of the case has adversely affected the applicant's service, his probation having been kept on hold. Reliance has been placed upon *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4; *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135; *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749; *G. Sagar*

Suri v. State of U.P., (2000) 2 SCC 636; and *Rahul v. State of Uttar Pradesh*, 2026 INSC 825 : 2026 LiveLaw (SC) 786.

SUBMISSIONS ON BEHALF OF THE STATE

8. Per contra, the Ld. APP for the State has opposed the application and submitted that the complainant has specifically named the applicant in her complaint and in her reply to the notice under Section 94 BNSS; that her version finds support from the statement of her father; that in her statement under Section 183 BNSS she has attributed the act of touching her breast on 17.06.2018 to her "jeth"; and that the plea of alibi is a matter of defence which can only be established by leading evidence at trial and cannot be looked into at the stage of charge. It is prayed that the application be dismissed.
9. I have heard the Ld. APP for the State and Ld. Counsel for the applicant and have carefully perused the charge-sheet and the documents annexed therewith, as well as the written submissions.

THE LEGAL POSITION

10. Section 262(2) BNSS (corresponding to Section 239 Cr.P.C.) provides that if, upon considering the police report and the documents sent with it under Section 193 BNSS and making such examination, if any, of the accused as the Magistrate thinks necessary, and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.
11. The principles governing the stage of charge are well settled. In *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4, the Hon'ble Supreme Court held that the Judge 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; that where the materials disclose grave suspicion which has not been properly explained, the Court will be fully justified in framing a charge; and that if two views are equally possible and the Judge is satisfied that the evidence produced gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. The Judge is not a mere post office or mouthpiece of the prosecution and must consider the broad probabilities of the case and the total effect of the material on record. These principles have been reiterated in *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135, *Sajjan Kumar v. CBI*, (2010) 9 SCC 368 and *P. Vijayan v. State of Kerala*, (2010) 2 SCC 398. At the same time, the Court is not to conduct a mini trial or weigh the evidence to determine guilt (*State of Tamil Nadu v. N. Suresh Rajan*, (2014) 12 SCC 709).



12. Ordinarily, the accused is not entitled to produce material in his defence at the stage of framing of charge (*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568), and the burden of establishing a plea of alibi rests on the accused and is ordinarily discharged at trial (*Rajendra Singh v. State of U.P.*, (2007) 7 SCC 378). However, the Hon'ble Supreme Court in *Nitya Dharmananda v. Gopal Sheelum Reddy*, (2018) 2 SCC 93 held that where material of sterling quality has been withheld by the investigator, the Court is not debarred from considering it at the stage of charge. More recently, in *Rahul v. State of Uttar Pradesh*, 2026 INSC 825 : 2026 LiveLaw (SC) 786, the Hon'ble Supreme Court, applying the test in *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330, held that the rule that alibi is to be proved at trial is not inflexible, and that official records maintained in the ordinary course of duty, placed on record from the earliest stage of investigation and never impugned by the prosecution,

partake of the character of unimpeachable material which calls for consideration even at the threshold. The Court is conscious that [REDACTED] was rendered in exercise of inherent jurisdiction and on a service record which conclusively established the absence of the accused; its ratio is applied herein only to the limited extent of the weight to be attached to undisputed official records.

13. The Court is also mindful that in matrimonial disputes, the Hon'ble Supreme Court has repeatedly cautioned against the implication of relatives of the husband on the basis of general and omnibus allegations without specific instances (*Kahkashan Kausar v. State of Bihar*, (2022) 6 SCC 599). Equally, an allegation of a sexual offence against a woman cannot be brushed aside merely because it arises in a matrimonial context, and such allegations must be examined with sensitivity. The task of the Court is, therefore, to see whether the material, taken as a whole and at its face value, gives rise to a grave suspicion against the applicant.
14. The essential ingredients of Section 354 IPC are (i) that the accused assaulted or used criminal force on a woman; and (ii) that he did so intending to outrage, or knowing it to be likely that he would thereby outrage, her modesty (*Raju Pandurang Mahale v. State of Maharashtra*, (2004) 4 SCC 371).

ANALYSIS

15. Read in isolation, the allegation contained in the complaint against the applicant, if accepted, would disclose the ingredients of Section 354 IPC. The question, however, is whether the material collected by the prosecution, read as a whole, gives rise to a grave suspicion that it was the applicant who committed the alleged act. Having considered the record, I find that it does not, for the following reasons:

(a) **A solitary incident; the remaining allegation is omnibus.** The only incident alleged against the applicant with any particulars is that of 17.06.2018. The further allegation that he would enter the complainant's room and try to touch her "whenever he got the chance" is bereft of any date, time or particulars and has not been reiterated in any subsequent statement of the complainant.

(b) **Unexplained delay.** The alleged incident is of 17.06.2018. By her own account, the complainant continued to reside in the matrimonial home thereafter and separated only later. The allegation surfaced for the first time in the complaint made before the CAW Cell in 2022, i.e. about four years later, and the FIR was registered in March 2023.



The explanation offered by the complainant in her supplementary statement, namely that she did not approach the police as she wished to save her marriage, is general in nature and pertains to the alleged dowry demands and beatings. Delay by itself is not fatal to a prosecution for a sexual offence, but it assumes significance when considered with the circumstances noted below.

(c) **The litigation of 2020.** FIR No. 363/2020, PS Harsh Vihar, was registered on 22.04.2020 on the statement of the complainant's brother in respect of an incident of 21.04.2020, naming the applicant as the principal assailant, the complainant herself being one of the persons medically examined. The families were thus in open and bitter litigation as early as April 2020, and the applicant was specifically arrayed as an accused therein. Yet no allegation of any sexual misconduct by the applicant in 2018 was raised at that stage. This circumstance also establishes a prior animosity between the applicant and the complainant's family.

- (d) **The supplementary statement under Section 180 BNSS is silent.** The supplementary statement of the complainant, recorded on 20.10.2024 expressly to place on record matters she had omitted in her complaint, gives a detailed chronological account of the events of 2018: the marriage on 10.05.2018, the taunts that began after 02.06.2018, the specific demands attributed to each in-law, the beating on 03.06.2018 and her visit to her parents about twenty days after the marriage. The applicant is named in this statement only in respect of the incident of 21.04.2020. The statement is completely silent about any act of the applicant on 17.06.2018. This omission, in a statement recorded eleven days after her statement under Section 183 BNSS and specifically meant to supplement her version, is material.
- (e) **The statement under Section 183 BNSS does not identify the applicant.** In her statement recorded before the Ld. Magistrate on 09.10.2024, which the final report itself treats as the basis for adding Section 354 IPC, the complainant stated that on 17.06.2018, during a quarrel, her "jeth" (husband's elder brother) touched her breast. She did not name the applicant. According to her own complaint and the statement of her father, the complainant has as many as five brothers-in-law, namely [REDACTED] and [REDACTED] all of whom are stated to have resided in the same family house. The solemn version recorded before the Magistrate thus does not, by itself, connect the applicant with the alleged act.
- (f) **Identification with a time appears only in 2025.** The applicant is named, and the incident is placed at about 8:00 PM, only in the complainant's handwritten answer to Question No. 4 of the notice

under Section 94 BNSS dated 01.08.2025, i.e. more than seven years after the alleged occurrence.

(g) **The statements of the complainant's parents are derivative.** The father of the complainant does not claim to be an eyewitness. By his own account, the family was estranged from the complainant after her marriage against their wishes, and what he states regarding the incident of 17.06.2018 is what was narrated to him. A derivative account cannot supply the specificity which is absent in the complainant's own statements.

(h) **The undisputed official record and the absence of verification.** The reply dated 10.12.2024 from the office of SSE/P.Way/MEX, Northern Railway, forwarded through the ADEN/Jalandhar Cantt. on 10.12.2024 and the CPIO/Sr. DEN/Firozpur on 11.12.2024, i.e. before the filing of the charge-sheet, shows that the applicant was serving as a gatekeeper at Level Crossing A-68 under the SSE/P.Way/MEX throughout 2018, and that in June 2018 he was marked "P" (present) on 16.06.2018 and 18.06.2018 and "R" (rest) on 17.06.2018. This is an official record maintained by a public authority in the ordinary course of business. The final report itself refers to the applicant's plea and to the duty chart produced by him, yet it does not reflect any verification from the Railways as to the applicant's whereabouts or shift timings on 17.06.2018. The genuineness of the record has not been disputed by the prosecution.

16. The Court is conscious that the entry "R" against 17.06.2018, by itself, does not establish the shift timings contended by the applicant, and no finding on the plea of alibi is being returned in this order. This is not a case like [REDACTED] (supra), where the defence material, standing alone, conclusively demolished the prosecution case. The conclusion of this

Court rests primarily on the prosecution's own material: a solitary allegation raised about four years after the event; not raised in the 2020 litigation in which the applicant was specifically arrayed; wholly omitted from the complainant's detailed supplementary statement; not attributed to the applicant by name in her statement before the Magistrate despite there being five brothers-in-law; and connected to the applicant with a time only in 2025. The undisputed official record showing that the applicant was in regular government service at a distant posting in Punjab, and was on duty on the days immediately preceding and following the alleged date, which the IO was put to notice of but did not verify, further dilutes whatever suspicion arises from the complaint.

17. The contention of the Ld. APP that defence material cannot be looked into at this stage does not advance the case of the prosecution, since the Court has not relied upon the railway record as proof of alibi, and since the plea and the duty chart were placed before the IO during investigation and are referred to in the final report itself. The contention that the complainant has named the applicant in her complaint and in her reply to the notice under Section 94 BNSS has been duly considered; however, those versions cannot be read in isolation from her statement under Section 183 BNSS and her supplementary statement under Section 180 BNSS, which are also part of the prosecution's own record and which, as noted above, do not support them.

18. Considering the total effect of the material on record and the broad probabilities of the case, two views are reasonably possible, and the material at best gives rise to some suspicion, but not grave suspicion, against the applicant. To put the applicant to trial on such material would serve no useful purpose. In view of the law laid down in *Prafulla Kumar Samal* (supra), *Dilawar Balu Kurane* (supra) and *P. Vijayan* (supra), the

charge against the applicant under Section 354 IPC is found to be groundless within the meaning of Section 262 BNSS.

ORDER

19. Accordingly, the application is **allowed**. Accused no. 4 [REDACTED]
S/o [REDACTED] is hereby **discharged** of the offence punishable under Section 354 IPC in the present case.
20. His bail bond stands cancelled and his surety stands discharged.
21. It is clarified that the observations made herein are confined to the disposal of the present application qua accused no. 4 and shall not be construed as an expression of opinion on the merits of the case against the remaining accused persons.
22. A copy of this order be given dasti to the parties .



**Announced in the open Court
on 03.10.2026**

**JMFC (Mahila Court)
Shahdara District, Karkardooma Courts, Delhi**

याचिक इम्प्राधिकारी प्रथम श्रेणी महिला कोर्ट
Judicial Magistrate First Class, Mahila Court
द्वितीय तल शाहदरा जिला
Second Floor Shahdara District
कडकडूमा न्यायालय दिल्ली
Karkardooma Courts Delhi