



Before the Charge: Discharge Applications under the BNSS

Sessions, warrant and summons discharge mapped to the grave-suspicion standard, with templates and revision practice.

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Preface

Discharge is the last clean exit before the accused is locked into a full trial. Under the Bharatiya Nagarik Suraksha Sanhita, 2023, the architecture is familiar yet re-numbered and, in sessions and warrant cases on police report, newly timed. Counsel who still argue from CrPC muscle memory risk missing the sixty-day windows, the precise material the court may sift, and the difference between a charge that is groundless and one that merely looks weak.

This handbook is written for advocates who draft and argue discharge applications, for in-house counsel who must decide whether to press for early exit, and for law students who need the doctrine without the fog. It maps discharge across sessions trials, warrant cases and summons cases; isolates the governing standard that grave suspicion frames a charge while mere suspicion warrants discharge; and develops the grounds that actually win-absence of admissible evidence, defective or missing sanction, missing statutory ingredients, and the roped-in accused.

Doctrine alone does not win the hearing. The book therefore supplies a ready discharge-application template organised issue-wise, a chart of what material is and is not open at the charge stage, and an annexure checklist so that the paper book is complete on the first listing. A dedicated chapter treats framing and alteration of charges and the revision pathway when discharge is refused or wrongly granted.

The register is plain and practitioner-facing. Every chapter is built so that the writer can pull the authorities the retrieval queries are designed to surface, without the plan itself naming judgments. Use it as a desk guide from the day copies are supplied to the day the revision is filed.



01

Orientation: Why Discharge Still Matters under the BNSS

The last clean exit before trial

What discharge is - and what it is not

The shift from the Code of Criminal Procedure, 1973 to the Bharatiya Nagarik Suraksha Sanhita, 2023 did not abolish the charge-stage filter. Discharge remains the last clean statutory exit before the accused is put on trial. Used well, it ends the prosecution against a named accused without witnesses, without a full defence case, and without the stigma and cost of a completed trial. Used late or argued as a mini-trial, it fails.

Discharge

A pre-charge judicial order that there is not sufficient ground to proceed against the accused on the material then before the court. It terminates the case against that accused at the inquiry stage and is distinct from acquittal after trial.

Discharge is **not** acquittal. Acquittal follows a trial on the merits; discharge precedes framing of charge. The two concepts operate at different stages and carry different consequences. Discharge is also **not** quashing. Quashing is a High Court remedy against process or proceedings; discharge is an application inside the trial court on the charge-stage record. Nor is every order that uses the word "discharge" a discharge in law.

Discharge versus acquittal in warrant cases

LAWWORLD 1978 SC 0938

Discharge and acquittal are distinct. Discharge is available only after process and before charge is framed; once charge is framed the court can only acquit or convict (subject to narrow statutory exceptions). A purported mid-stream 'discharge' after charge is illegal.

Release from custody is not discharge *stricto sensu*

LAWWORLD 2019 SC 0558

Orders that merely release an accused from judicial custody are not orders of discharge. They do not wipe the prosecution and do not bar later process to face trial. Counsel must not treat custody-release language as a charge-stage win.

WARNING

Do not confuse labels

An order styled 'discharge' after charge is framed, or a custody-release note in the remand papers, is not the statutory exit this book addresses. The real discharge window is short and stage-bound.

Where discharge sits in the life of a case

In the ordinary police-report pathway, the case moves from FIR and investigation to final report, cognizance, supply of copies, and then the charge-stage hearing. Discharge lives in that narrow band: **after** the court has the police papers (or complaint record) and has heard the parties, and **before** charge is framed. Once charge is framed, plea is recorded, and evidence begins, the court cannot rewind to discharge.

No discharge after charge and evidence

LAWWORLD 2020 KAR 0121

An application under the discharge provisions is not maintainable once charges have been framed, the accused have pleaded not guilty, and trial evidence has been recorded. The court must then carry the trial to acquittal or conviction.

Suo motu mid-trial 'discharge' is illegal

LAWWORLD 2025 KAR 0336

After rejection of discharge and framing of charge, the trial court has no power to 'discharge' on a partial appraisal of evidence. The discharge stage is prior to charge; a mid-trial order in that form is manifestly illegal.

Charge-stage window (simplified)

1. Cognizance on police report or complaint
2. Supply of copies / commitment papers to the accused
3. Discharge application and hearing on the charge-stage record
4. Either discharge with reasons, or framing of charge
5. After charge: trial path only - acquit or convict

That sequencing is why discharge still matters under the BNSS. It is the last point at which the court can stop a groundless prosecution on the papers alone, without forcing the accused through examination of witnesses. Miss the stage, and the remedy set changes - revision, quashing, or defence at trial - none of which is a substitute for a clean pre-charge exit.

Pathways this book will cover

Discharge is not one undifferentiated power. The BNSS, like the CrPC before it, houses the filter in different chapters for different trial types. This book tracks four practical pathways counsel actually meet:

- **Sessions trials** - discharge before the Court of Session on the commitment record

- **Warrant cases on police report** - Magistrate discharge on the police report and accompanying documents
- **Warrant cases otherwise than on police report** - complaint warrant cases, with a wider inquiry flavour
- **Summons cases** - only a limited, carefully understood space; classic 'discharge' is largely alien here

Discharge concept alien to typical summons cases

LAWWORLD 2024 KAR 0936

In summons prosecutions (illustrated under s. 138 NI Act), the plea stage does not authorise dismissal, acquittal, or discharge. The concept of discharge belongs to warrant pathways; challenge to process in pure summons cases ordinarily lies elsewhere.

Chapter 2 maps those statutory homes and cross-walks the old CrPC numbers so legacy papers remain readable. Later chapters do not re-argue the map; they assume you know which doorway you are in.

TIP

Pick the doorway first

Before drafting grounds, name the pathway: sessions, warrant-on-police-report, warrant-otherwise, or summons. Wrong doorway language is a common reason applications read as cut-and-paste and fail.

Two clocks and one standard - high level only

Two timing rules shape modern discharge practice under the BNSS. In sessions cases, the accused is put on a **sixty-day** clock from commitment to prefer discharge. In warrant cases on police report, a parallel **sixty-day** clock runs from supply of copies. Computation, whether the period is treated as directory or mandatory in practice, and what happens if no application is filed but the court still considers discharge, are developed in Chapter 3. For orientation: file inside the window; do not assume the court will wait.

Grave suspicion standard

The charge-stage test across sessions and warrant pathways: the court may sift the material only to see whether a prima facie case or strong (grave) suspicion exists that the accused committed the offence. Mere suspicion, or two evenly balanced views with only some suspicion, warrants discharge; strong suspicion founded on material that can translate into evidence justifies framing charge.

Strong suspicion enough to proceed; no mini-trial

LAWWORLD 2006 SC 0315

At the initial stage the court does not meticulously weigh truth or probable defence, and does not apply the conviction standard. Strong suspicion that there is ground for presuming commission of the offence is enough to frame charge; the 'ground' is for putting the accused on trial.

Chapter 4 distils that test fully. Chapters 6 to 9 turn it into winning grounds - no admissible evidence, sanction defects, missing ingredients, and the roped-in accused. Drafting, annexures, charge framing, revision, and practice traps follow. This chapter's only job is orientation: discharge is still the last clean exit; know what it is, where it sits, which pathway you are on, and that the clocks and the grave-suspicion standard will control everything that follows.

Orientation checklist before you draft

- ☐ Confirm the case is still **pre-charge** - no framed charge, no commenced evidence
- ☐ Name the pathway: sessions / warrant-police-report / warrant-otherwise / summons
- ☐ Diary the sixty-day mark from commitment or supply of copies
- ☐ Separate discharge from acquittal, quashing, and custody-release orders
- ☐ Plan arguments to the grave-suspicion filter - not probability of eventual acquittal

02

The Discharge Map: Sessions, Warrant and Summons Cases

Sections 250, 262 and the summons pathway

Four pathways, one charge-stage filter

Discharge is not a free-floating remedy. It is pathway-specific. Under the BNSS the accused meets the filter at different statutory doors depending on whether the case is a sessions trial, a warrant case on a police report, a warrant case instituted otherwise than on a police report, or a summons case. The substance of the test-whether the material discloses ground to proceed-is developed later in this book. This chapter only places the doors, names who may knock, and states what the court must look at and record.

Discharge

A pre-charge (or, in complaint warrant cases, pre-charge after evidence under the complaint pathway) order releasing the accused from the case because the court finds no sufficient ground to proceed or finds the charge groundless. It is not an acquittal after trial and does not, by itself, attract the double-jeopardy bar that follows a full acquittal.

Pathway	BNSS home	Legacy CrPC	Who decides	Core trigger language
Sessions trial	Section 250	Section 227	Sessions Judge	No sufficient ground for proceeding
Warrant case on police report	Section 262	Section 239	Magistrate	Charge appears groundless
Warrant case otherwise than on police report	Complaint-warrant pathway (legacy 245)	Section 245	Magistrate	No case made out / charge groundless
Summons case	Limited; stop-proceedings analogue	Section 251 plea; Section 258 stop	Magistrate	No full discharge architecture like 250/262

TIP

Reading legacy papers

Orders, revisions and textbooks still cite CrPC Sections **227** , **239** , **245** and **251** . Map them to BNSS **250** (sessions) and **262** (warrant on police report). Treat Section **245** learning as the complaint-warrant pathway. Do not assume a summons-case "discharge application" works like a sessions application.

Sessions trials - Section 250 BNSS (legacy Section 227)

In a sessions case the discharge seat is **Section 250 BNSS** , the successor to CrPC Section 227. After commitment, the Sessions Judge considers the record of the case and the documents submitted, and hears the submissions of the accused and the prosecution. The Judge is not a spectator. He must apply his mind to the complaint material and the investigation papers and decide whether there is sufficient ground for proceeding. If not, he **shall discharge** the accused and **record reasons** .

Scope of Sessions Court's discharge power

LAWWORLD 2019 KAR 1139

At the Section 227 stage the Judge must consider the record, probabilities and totality of investigation material and weigh whether the accused must face trial, without a roving enquiry into pros and cons. If not convinced there is sufficient ground for proceeding, discharge with recorded reasons is mandatory.

Reasons under s. 227 enable superior review

LAWWORLD 1977 SC 035

The duty to record reasons for discharge exists so the High Court can test whether the order is justified on the facts and circumstances. Thin or non-speaking discharge orders invite remand.

Who may apply: the **accused** moves the application; the court remains under a duty to consider the record even when the application is poorly framed. What the court may consider is confined to the charge-stage record and hearing-detailed charts of admissible material appear in a later chapter. The sixty-day clock from commitment is statutory and is treated fully in the next chapter; do not ignore it when listing the application. On the merits standard, the text of Section 250 points to the same "sufficient ground / grave suspicion" frame developed in Chapter 4-do not expand it here.

Discharge order set aside for non-application of mind

LAWWORLD 2019 KAR 1145

In revision against discharge in a sessions case, the High Court set aside the order where the trial court had not properly applied its mind to the complaint, supporting material and Section 227 principles, and remitted for fresh consideration.

WARNING

Reasons run one way at charge stage

Reasons are mandated when **discharging**. When the court finds ground to proceed and frames charge, the statute does not require a reasoned essay refusing discharge. That asymmetry is settled for sessions and warrant pathways alike.

Warrant cases - Section 262 BNSS and the complaint pathway

Police-report warrant cases - Section 262 (legacy Section 239)

For warrant cases instituted on a **police report**, discharge sits in **Section 262 BNSS** (CrPC Section 239). The Magistrate must consider the police report and the documents furnished, give the prosecution and the accused an opportunity of being heard, and may examine the accused if required. Discharge follows only if the Magistrate then considers the **charge groundless** -that is, that there is no ground for presuming the accused committed the offence and the papers do not make out even a prima facie case.

Meaning of "groundless" under Ss. 239-240

LAWWORLD 2022 SC 0945

"Groundless" means no ground for presuming commission of the offence. The court accepts prosecution material as true, does not weigh probative value for conviction, and may frame charge on strong suspicion founded on that material. Full grave-suspicion doctrine is Chapter 4.

Comparative scope - Ss. 239 and 227

LAWWORLD 2012 KAR 076

Section 239 power is wider than Section 227: the Magistrate considers the police report and Section 173 documents, hears both sides, and may examine the accused. Refusing discharge on written arguments alone without that hearing/examination is a truncated approach.

Reasons only for discharge, not for framing charge

LAWWORLD 2000 SC 014

Under Section 239, reasons are required when the charge is found groundless and the accused is discharged. Section 240 requires no reasons merely to frame charge. The same pattern holds for Section 245 and Section 227.

Who may apply: each **accused** named after cognizance. Cognizance is of the **offence**, not a frozen list of offenders; after the final report, an accused who finds the charge groundless on the police papers may seek discharge under the Section 239/262 frame. Timing from supply of copies is the sixty-day rule treated in Chapter 3.

FIR, final report, cognizance and discharge

LAWWORLD 2021 KAR 0824

The final report is only the investigating officer's proposal. After cognizance under Section 190, the accused may seek discharge under Section 239 if, on the police report and hearing, the charge is groundless.

Warrant cases otherwise than on police report - legacy Section 245

Complaint-instituted warrant cases follow a different rhythm. After the complainant's evidence is taken (legacy CrPC Section 244), the Magistrate may discharge under legacy **Section 245** if, for **reasons recorded**, no case is made out which, if unrebutted, would warrant conviction. Separately, the Magistrate may discharge **at any previous stage** if, for recorded reasons, the charge is considered **groundless**. Counsel reading pre-BNSS files should anchor arguments to that two-limb structure.

Scope of discharge under Ss. 244-245

LAWWORLD 2001 SC 1055

Post-Section 244 evidence, discharge under Section 245 requires a recorded finding that no case is made out which unrebutted would warrant conviction; the alternative is earlier discharge if the charge is groundless, again with reasons. Revision must test the order against that statutory perspective.

Discharge vs acquittal after charge is framed

LAWWORLD 1978 SC 0938

In warrant cases, discharge is available after process and before charge. Once charge is framed, the inquiry becomes a trial; the Magistrate cannot cancel the charge and "discharge"-thereafter the outcome is acquittal or conviction (subject to narrow statutory exceptions).

Discharge under S. 245 is not acquittal

LAWWORLD 2020 KAR 1023

A discharge before the acquittal stage, even after some evidence, is not an "acquittal on trial" for Section 300 double-jeopardy purposes. Do not plead discharge as if it were a Section 300 bar.

Pathway pick-list before you draft

- ☐ Identify forum: Sessions Court or Magistrate.
- ☐ Identify institution mode: police report vs complaint.
- ☐ Sessions Section 250 BNSS (legacy 227); attach commitment record references.
- ☐ Warrant + police report Section 262 BNSS (legacy 239); build on police report and supplied documents.
- ☐ Warrant + complaint legacy 244/245 logic; state whether you invoke post-evidence "no case" or earlier "groundless".
- ☐ Pray for recorded reasons on discharge; do not demand a reasoned refusal essay if charge is framed.
- ☐ Keep timing and full suspicion standard for Chapters 3 and 4-cite the door, not the entire doctrine.

Summons cases - limited discharge space

Summons cases do not carry a Section 250/262-style discharge application as the main

engine. At the legacy **Section 251** stage the substance of the accusation is stated and the accused is asked to plead. The practical "exit" more often discussed is the power to **stop proceedings** in appropriate summons cases (legacy Section 258), which is not a full substitute for sessions or warrant discharge and does not always produce the consequences of a formal discharge.

Stopping proceedings under s. 258 is not always a discharge

LAWWORLD 2009 SC 0295

Where the accused had not been arrested or produced and no release order was passed, an order merely stopping proceedings under Section 258 did not amount to a discharge attracting the Section 300(5) bar. Discharge correlated with release is not to be assumed from a bare stop order.

Cognizance can leave a summons offence alive

LAWWORLD 1960 SC 0312

When cognizance is taken on a police report, it covers all offences constituted by the reported facts. Discharge on a warrant offence does not automatically wipe a minor summons offence arising from the same facts; that summons component may still proceed under the summons chapter.

Practice consequence: do not file a "Section 262-style" discharge in a pure summons case and expect the sessions template to fit. If the case is mixed-warrant and summons offences from one police report-map each offence to its pathway after cognizance. If the only available relief is stop-proceedings, plead that power on its own terms and do not over-claim double-jeopardy or acquittal effects.

Counsel's discharge-map workflow

1. Read the cognizance order and offence list; separate sessions-triable, warrant and summons counts.
2. Fix the BNSS door: Section 250, Section 262, complaint-warrant (legacy 245), or summons/stop-proceedings only.
3. Name the applicant-accused and the exact offences for which discharge is sought.
4. List the charge-stage record the statute allows that court to see; do not annex a defence trial brief.
5. Ask for discharge with recorded reasons; note the one-way reasons rule if charge is framed instead.
6. Diary the pathway-specific limitation period (Chapter 3) before filing.

NOTE

What this chapter did not decide

Nothing here restates the sixty-day computation rules or the full grave-suspicion test. Section 250 and Section 262 **point** to those inquiries; Chapters 3 and 4 develop them. Winning grounds-blank evidence, sanction, missing ingredients, roped-in accused-come only after the map is fixed.

03

The Sixty-Day Clock and Other Timing Rules

When the application must be preferred

The two sixty-day clocks

Under the BNSS, counsel must prefer a discharge application within a fixed window. In sessions cases, the application is to be preferred within **sixty days from the order of commitment** under Section 232 BNSS. In warrant cases instituted on a police report, the application is to be preferred within **sixty days from the supply of copies** under Section 230 BNSS. These clocks sit after cognizance and paper supply, and before framing of charge. They do not reopen pathway choice or the grave-suspicion merits test, which later chapters develop.

Order of commitment

The sessions-pathway trigger for the sixty-day discharge clock: the order by which the case is committed to the Court of Session, from which the sixty days for preferring discharge run.

Supply of copies

The warrant-pathway (police report) trigger for the sixty-day discharge clock: the date on which the accused is furnished the full set of police-report papers and accompanying documents contemplated at the charge stage, not a bare listing or oral intimation.

WARNING

Diary the correct trigger

Do not start the sessions clock from first production or cognizance, or the warrant clock from FIR or chargesheet filing alone. Commitment and actual supply of the copy set are the statutory starting points.

Computing the period

The BNSS text does not itself spell out every computation detail. Counsel therefore apply ordinary limitation and communication principles **by analogy**, not as BNSS holdings. Four pack-supported analogies are useful in practice.

1. **Exclude the trigger day.** In computing a sixty-day span, the day the award or order is signed is excluded; time requisite for a certified copy may also be excluded under familiar Limitation Act rules. See [LAWWORLD 2019 KAR 0912](#).
2. **Holiday rule.** If the sixtieth day falls on a court holiday, filing on the next working

day is treated as within time under the same general approach. See [LAWWORLD 2019 KAR 0912](#) .

3. **Communication, not silent pronouncement alone.** Where limitation runs from communication, cause-list notice of pronouncement with opportunity to obtain a copy can start the clock even before physical dispatch. See [LAWWORLD 2010 SC 0424](#) .
4. **Full paper set, not bare intimation.** Periods that require the opposite party to respond after receiving the complaint run from receipt of notice **accompanied by a copy of the complaint** , not from bare notice without the papers. See [LAWWORLD 2020 SC 0350](#) .

Applied to discharge, that last analogy matters most on the warrant pathway: the sixty days should be counted from supply of the **complete copy set** , not from a listing entry or oral statement that papers are "ready." On the sessions pathway, count from the commitment order date, excluding that day, and watch the holiday rule at the outer edge.

LAWWORLD 2019 KAR 0912

High Court of Karnataka, 2019

By analogy only: 'date of the Award' is read as communication or actual/constructive knowledge; the signing day is excluded; Section 12 time for certified copy is excluded; if the sixtieth day is a holiday, next working day is in time. Use for computation method, not as a BNSS discharge holding.

LawWorld ID: [LAWWORLD 2019 KAR 0912](#)

LAWWORLD 2020 SC 0350

Supreme Court, 2020

By analogy only: a response period tied to supply of the complaint runs from notice accompanied by the complaint copy, not bare notice. Supports treating 'supply of copies' as delivery of the full charge-stage set.

LawWorld ID: [LAWWORLD 2020 SC 0350](#)

LAWWORLD 2010 SC 0424

Supreme Court, 2010

By analogy only: once pronouncement is notified in the cause list and parties can obtain a copy, the order is deemed communicated and the sixty-day period begins. Useful when commitment or supply is disputed as to 'when known.'

LawWorld ID: [LAWWORLD 2010 SC 0424](#)

LAWWORLD 1975 SC 0229

Supreme Court, 1975

By analogy only: 'time requisite' for certified copies means time properly required, not time lost by negligence. If relying on copy delay to explain a late discharge filing, the delay must be attributable to the court process, not counsel's inaction.

LawWorld ID: [LAWWORLD 1975 SC 0229](#)

Late filing, condonation, and the court's own power

Prefer filing inside the sixty-day window. If the application is late but charge is not yet framed, courts often still entertain a pre-framing discharge plea when the delay is **explained** with dates of commitment or supply, holidays, and any copy lag. Unexplained delay weakens the application and invites the objection that the accused slept over a statutory opportunity. Do not assume a settled BNSS rule that the period is merely directory, and do not assume a fixed outer condonation cap in the BNSS text-neither proposition is established on the authorities available here.

TIP

If you are late

Lead with a short delay paragraph: trigger date, how computed, holiday or copy exclusion if any, and why the default was not negligent. Never bury timing after long merits argument.

If **no** discharge application is filed, the court is not disabled. At the charge stage the court must still consider whether the prosecution material justifies framing charge or warrants discharge. An application structures the issues and protects the record; its absence does not convert framing into a mechanical step. Counsel who miss the clock should still be ready to address discharge orally when the court takes up charge, while accepting that a written, on-time application remains best practice.

Sixty-day compliance checklist

- ☐ Identify pathway: sessions (commitment) or warrant on police report (Section 230 copies).
- ☐ Diary the trigger date from the commitment order or the supply endorsement/index.
- ☐ Exclude the trigger day; apply the holiday rule at day sixty.
- ☐ On the warrant side, confirm the **full** copy set was supplied-not bare intimation.
- ☐ File within sixty days; if late, plead a dated delay explanation before merits.
- ☐ If no application was filed, still press discharge when the court considers charge.
- ☐ Do not wait for framing and then attempt discharge as a post-charge remedy.



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04

Grave Suspicion Frames; Mere Suspicion Discharges

The governing standard at the charge stage

One test across pathways

Whatever the statutory doorway-sessions commitment or warrant-case police report-the charge-stage enquiry answers one question: is there sufficient ground to proceed? The answer is not a forecast of conviction. It is a threshold judgment on whether the prosecution papers, taken at face value, raise a **prima facie case** or **grave suspicion** that the accused committed the offence alleged. The same yardstick governs framing of charge when discharge is refused.

prima facie case

At the charge stage, a *prima facie* case exists when the material on record, if generally accepted as true, discloses the ingredients of the alleged offence and reasonably connects the accused with the crime, so that there is ground for presuming the offence might have been committed.

grave suspicion

A strong, person-specific suspicion founded on prosecution material that can be translated into evidence at trial, and that is not properly explained on the face of the record. Grave suspicion justifies framing charge; mere or residual suspicion does not.

The Supreme Court has settled that Section 227 CrPC (and its BNSS successor pathway) is not a post-office function. The Judge may sift and weigh the record and documents for the limited purpose of seeing whether a *prima facie* case or grave suspicion warrants trial. Suspicion alone, without more, is not enough; strong suspicion supported by material that discloses suspicious circumstances justifies framing charge under the companion framing provision.

Scope of discharge and standard for framing charge

Supreme Court, 2010

Confirms the Judge is not a mere post office; may sift and weigh only to see *prima facie* case or grave suspicion; bare suspicion is insufficient; strong suspicion on material justifies framing charge.

LawWorld ID: LAWWORLD 2010 SC 0159

The identical standard travels to warrant cases on police report. Where charge-sheet documents raise grave suspicion, the court is justified in framing charges and cannot

discharge at that stage. Counsel should therefore argue one doctrine, not pathway-specific inventions.

Standard for discharge under the warrant-case pathway

Supreme Court, 2014

Applies the 227/228 principles to 238/239 proceedings: materials disclosing grave suspicion justify framing charge; discharge is impermissible at that stage.

LawWorld ID: LAWWORLD 2014 SC 1212

What the court may sift-and what it must not try

The power to sift is real but narrow. The court examines whether the facts, taken at face value, disclose the ingredients of the alleged offences. It considers broad probabilities, the total effect of the material, documents, and basic infirmities apparent on the record. It does **not** weigh probative value, choose between competing inferences as at trial, or test the prosecution story against a probable defence.

Test for discharge and framing of charge

Supreme Court, 2019

Court may sift and weigh only to see if a prima facie case is made out; grave suspicion not properly explained justifies charge; probative value and probable defence are off-limits; no roving enquiry into pros and cons.

LawWorld ID: LAWWORLD 2019 SC 1275

Strong suspicion and limits of scrutiny

Supreme Court, 2001

Truth, veracity, effect of evidence, and probable defence are not to be meticulously judged; strong suspicion founded on material, leading to a presumption that the accused committed an offence, is enough to frame charge.

LawWorld ID: LAWWORLD 2001 SC 0323

WARNING

No mini-trial

Discharge argument collapses the moment it invites the court to disbelieve witnesses, reconcile contradictions, or prefer a defence narrative. Those are trial functions. A roving enquiry or credibility contest at this stage is legal error-and a gift to the prosecution on revision.

Prosecution material is ordinarily accepted as true for this limited exercise. The court asks only whether, on that material, it can form an opinion that the accused **might** have committed the offence-whether there is ground for presuming commission. Whether the offence was in fact committed is for trial.

Standard for framing of charges

Supreme Court, 2007

At framing, the court sees whether the accused might have committed the offence; probative value cannot be gone into; prosecution material is accepted as true; judicial mind must be

satisfied that commission was possible.

LawWorld ID: LAWWORLD 2007 SC 0549

Equally, the court is not a rubber stamp. It must apply judicial mind to the record, not merely mirror the chargesheet. Broad probabilities, weight of the prima facie material, documents, and basic infirmities all fall within the permitted sieve-without sliding into a full evaluation of worth or credibility.

Prima facie case and grave suspicion

Supreme Court, 2022

Probative value is off-limits, yet the court must apply judicial mind and is not to merely mirror the prosecution story; it considers broad probabilities, prima facie evidence, documents, and basic infirmities.

LawWorld ID: LAWWORLD 2022 SC 0854

Scope of scrutiny at framing of charge

Supreme Court, 2000

Court should not evaluate worth or credibility of evidence; the limited exercise is whether prosecution materials offered as evidence are sufficient to proceed; framing itself implies a prima facie opinion.

LawWorld ID: LAWWORLD 2000 SC 1137

Grave suspicion frames; mere suspicion discharges

*The decisive fork is quality of suspicion. If the materials disclose **grave suspicion** against the accused which is not properly explained, the court is justified in framing charge and proceeding to trial. If two views are equally possible and the evidence raises only **some suspicion** -not grave suspicion-the accused may be discharged. That binary is the working rule in sessions and warrant pathways alike.*

Framing of charge - test under Sections 227 and 228 CrPC

High Court of Karnataka, 2019

Restates the classic formulation: undoubted power to sift and weigh only for a prima facie case; grave suspicion not properly explained frame charge; two equally possible views and only some suspicion discharge.

LawWorld ID: LAWWORLD 2019 KAR 084

Section 227 CrPC - test for discharge and scope of scrutiny

High Court of Karnataka, 2019

Court is not a mere post office; must sift prosecution material; grave suspicion not properly explained justifies charge; two equally possible views with only some suspicion permit discharge; no roving trial-style enquiry.

LawWorld ID: LAWWORLD 2019 KAR 1145

*Strong suspicion sufficient to put the accused on trial must be **founded on material that can be translated into evidence**. Abstract motive, bare naming, or circumstantial wisps that even if unrebutted create only suspicion of motive will not do. The test is*

whether the evidentiary material, if generally accepted, would reasonably connect the accused with the crime. Where trial would be an exercise in futility, it should be brought to a quick end.

Discharge under Section 227 CrPC - scope at charge stage

High Court of Karnataka, 2019

Sift-and-weigh power is limited to prima facie existence; no mini-trial; grave suspicion not properly explained charge; two views and only some suspicion discharge; strong suspicion must rest on material capable of becoming evidence.

LawWorld ID: LAWWORLD 2019 KAR 1015

Principles for discharge and framing of charge

High Court of Karnataka, 2019

Test is whether material, if generally accepted, reasonably connects the accused with the crime; futility of trial supports discharge; grave suspicion not properly explained supports charge; mere suspicion of motive is inadequate.

LawWorld ID: LAWWORLD 2019 KAR 1127

If the material raises a ground for presuming that the offence might have been committed and discloses a grave suspicion against the accused which is not properly explained, framing of charge is justified; only when the material gives rise to mere suspicion, the accused may be discharged.

- High Court of Karnataka, restating the charge-stage rule

Revision against rejection of discharge

High Court of Karnataka, 2012

At framing, evaluate material only to see if, taken at face value, it discloses ingredients; no probative-value enquiry; grave suspicion not properly explained justifies charge; mere suspicion warrants discharge.

LawWorld ID: LAWWORLD 2012 KAR 0812

TIP

How to frame the oral submission

Lead with the binary: Your Honour, the papers raise only mere suspicion / two innocent readings are equally open; they do not cross into grave suspicion founded on translatable material. Then point to the face of the record-not to defence affidavits or trial probabilities. Keep the court inside the permitted sieve.

Practitioner checklist at the charge stage

Before turning to admissible-material charts and issue-wise winning grounds in later chapters, lock the standard into every application and oral note. The court that applies the wrong test-or the counsel who invites it to-creates reversible error or wastes the sixty-day window.

Charge-stage standard - do and don't

- ☐ **Do** ask whether material taken at face value discloses ingredients and a

person-specific link.

- ☐ **Do** argue absence of grave suspicion, or that two views are equally open with only some suspicion.
- ☐ **Do** insist suspicion be founded on material capable of becoming evidence at trial.
- ☐ **Do** flag basic infirmities and total effect apparent on the prosecution record itself.
- ☐ **Do** require the court to apply judicial mind-not act as a post office for the chargesheet.
- ☐ **Don't** invite assessment of witness credibility or probative value.
- ☐ **Don't** run a mini-trial or roving enquiry into pros and cons.
- ☐ **Don't** plead or annex a full probable defence for weighing at this stage.
- ☐ **Don't** equate residual doubt or bare motive with grave suspicion.
- ☐ **Don't** argue likelihood of eventual acquittal as the discharge test.

Mental map when the discharge file opens

1. Identify the pathway (sessions / warrant on police report) already mapped in Chapter 2-same test applies.
2. Take prosecution papers at face value; list facts that allegedly touch this accused.
3. Ask: do those facts, if accepted, make out each ingredient and a reasonable connection?
4. Classify the output: grave suspicion not explained expect charge; mere suspicion or two equal views press discharge.
5. Stop before credibility, defence evidence, or probability of conviction-preserve those for trial.
6. Record the binary and the material basis in the application so reasons can track the correct test.

High Courts applying these principles stress the same limits in revision against rejection of discharge: evaluate only whether face-value material discloses ingredients and grave suspicion; refuse mini-trials. **Karnataka High Court authority** on the warrant-case discharge pathway repeats that the Judge may sift only for a prima facie case, must not conduct a mini-trial, and frames charge where grave suspicion remains unexplained. Keep that vocabulary consistent from application through revision.

Strong suspicion test and the need for a reasoned sift

Supreme Court, 2011

If strong suspicion or prima facie evidence exists, the court cannot decline to proceed; the Judge must sift whether facts from the record constitute the offence, and that exercise should be reflected in the order-bald insufficiency findings without engaging material will not stand.

LawWorld ID: LAWWORLD 2011 SC 021

NOTE

What this chapter does not decide

This chapter states the governing standard only. It does not yet sort which documents the court may open, nor develop winning grounds such as no admissible evidence, sanction defects, missing ingredients, or the roped-in accused. Those applications of the same test follow in the chapters ahead.

05

What the Court May Look At: Chart of Admissible Material

Police report, accompanying documents, and the limits of sifting

The charge-stage record under Sections 193 and 230 BNSS

Discharge is decided on a closed file. In a case instituted on a police report, the court looks at the report forwarded under **Section 193 BNSS** and the statements and documents that travel with it and are supplied to the accused under **Section 230 BNSS**. That bundle-often still called the charge-sheet papers in practice-is the charge-stage record. Counsel who argue from material outside it invite error; counsel who ignore what is inside it waste the only window the statute gives.

Charge-stage record

The police report under Section 193 BNSS together with the statements, documents, and other papers forwarded with it and furnished to the accused under Section 230 BNSS (and the parallel supply in sessions commitment), forming the sole ordinary universe of material for discharge and framing of charge.

The Supreme Court has long held that, at framing of charge in a police-report case, attention is confined to the documents referred to under the police-report provision. Courts below erred when they relied on letters whose authenticity was untested and which did not form part of that set, and used them to discharge the accused- **the 1995 ruling on the Section 173 CrPC universe**. The same discipline applies under the BNSS renumbering: if a paper is not in the Section 193/230 set, it is not ordinarily before the court for discharge.

Scope of materials at framing of charge

LAWWORLD 1995 SC 0523

In a police-report case the court at charge stage must confine itself to the documents referred to under the police-report provision (legacy Section 173 CrPC). Reliance on extraneous letters, authenticity untested, to discharge was held erroneous. Anchors the BNSS Section 193/230 closed-record rule.

What the prosecution has chosen to rely on is therefore decisive. Statements recorded in investigation, seizure memos, medical and forensic reports, sanction orders if any, and electronic records that form part of the forwarded papers are all open. The court may sift and weigh that material for the limited purpose already fixed in the previous chapter-whether a *prima facie* case or grave suspicion exists-without turning the hearing into a trial on credibility or probability.

Open and shut: the admissible-material chart

Category	Status at discharge	Practitioner note
Police report (s.193 BNSS)	Open	Core narrative and list of accused; read with annexures, not in isolation
s.230 supply - statements, documents, electronic records relied on	Open	Index the copies actually furnished; missing supply is a process point, not a freestanding defence brief
Sanction / statutory preconditions on the file	Open	Patent defects can be urged from the face of the record (developed in later chapters)
Limited examination of the accused (where statute allows)	Open (narrow)	Answers clarifying the prosecution papers; not a vehicle for defence evidence
Defence affidavits, alibi proofs, private expert opinions	Ordinarily shut out	Do not expand the record by annexing a defence paper book
B-reports / final reports in other crimes; untested private letters	Ordinarily shut out	Considering such defence-placed material vitiates the order
Documents sought by accused under legacy s.91 / equivalent at threshold	Ordinarily shut out	Necessity judged by stage; defence production not the charge-stage enquiry
Disputed facts needing cross-examination or competing inferences	Shut out as mini-trial	Sift-and-weigh is not a dress rehearsal of trial

High Court authority applying the settled line holds that the trial judge, on discharge, is required to look only into the record filed by the prosecution and cannot rest the order on materials placed by the accused. Discharge founded on a defence-tendered B-report and on treating a second complaint as non-maintainable from that defence paper was set aside as contrary to law- *Karnataka High Court, 2021* .

Only prosecution material at discharge

LAWWORLD 2021 KAR 0112

At framing of charge or discharge, the judge looks only into the prosecution record under the police-report and commitment provisions; defence documents (including a B-report) cannot be relied on. Discharge order that did so was vitiated. Primary support for the chart's 'shut out' rows on defence papers.

The same stage-sensitivity bars using the summons-for-documents power to build a defence file before charge. Necessity and desirability under that power are judged by the stage of the proceeding. If the object is the accused's defence, the power ordinarily cannot be invoked at the initial stage of framing charge, because what is necessary then is only the record produced with the police report- *Supreme Court on Section 91 CrPC at charge stage* .

Section 91 and the charge-stage limit

LAWWORLD 2004 SC 1153

Section 91 does not give the accused a right to summon defence documents at framing of charge; relevance at that stage is confined to the police-report record. Supports refusal to enlarge the discharge universe through threshold document summons.

Dominant rule, older gloss, and limited examination of the accused

The **dominant rule** is therefore straightforward. The court ordinarily confines itself to the Section 193/230 prosecution set. The accused cannot expand that set by defence affidavits, B-reports from other cases, private correspondence, or a threshold summons for documents aimed at establishing the defence. Reasons on discharge must still engage the specific prosecution material on record; bare generalities that 'there is enough for trial' without reference to that material reflect non-application of mind- *Karnataka High Court, 2019* .

Reasons must track the material on record

LAWWORLD 2019 KAR 1026

On discharge the Magistrate must state reasons with reference to specific material on record. General observations, and revisional reliance on applicant-produced material without pointing to prosecution material justifying refusal, were disapproved.

An older line of authority, reading the legacy discharge sections, observed that the enquiry is only for a *prima facie* case and that it may be permissible for the accused to point to reliable material affecting the very sustainability of the prosecution, and that refusal even to look at such material may cause prejudice- *Supreme Court, 2000* . That gloss does **not** authorise a defence paper book, a mini-trial, or routine reception of affidavits and extraneous reports. Read with the later closed-record decisions above, any such reference is at most a narrow caveat: it cannot enlarge the statutory universe or convert discharge into a forum for testing defence versions. Practitioners should not plead or annex as if the caveat swallowed the rule.

Prima facie enquiry and the 'reliable material' observation

LAWWORLD 2000 SC 0450

Discharge precedes charge; the court considers the record, police report and accompanying documents, and hears both sides on whether there is sufficient ground to proceed. Standard of final proof is not insisted upon. The observation that the accused may point to reliable material going to sustainability must be read subject to the dominant closed-record rule and does not licence defence evidence dumps or mini-trials.

Where the governing BNSS provision allows the court to examine the accused at this stage, that examination is a clarifying tool, not a second investigation. Answers may explain entries already on the prosecution file or admit facts that remove grave suspicion. They are not a platform to introduce alibi witnesses, defence documents, or contested factual narratives that only trial can resolve. Keep the examination short, tied to the papers, and on the record.

WARNING

Do not build a defence annexure at discharge

Do not load the application with defence affidavits, private expert reports, or B-reports from other crimes as if they were part of the charge-stage record. Argue from the Section 193/230 papers. If you refer to any matter going purely to sustainability on the face of those papers, say so in one precise proposition-do not smuggle in a parallel evidence file. Orders that rest on defence-placed material are vulnerable in revision; applications that invite that error waste the sixty-day window.

Sift-and-weigh on this record alone

Chapter 4 fixed the test: the court may sift and weigh only to see whether the prosecution material yields a prima facie case or grave suspicion. This chapter fixes the **object** of that sift-the charge-stage record and nothing ordinary outside it. Weighing means reading the police report with the accompanying statements and documents, taking them at face value as potential evidence, and asking whether they can translate into proof at trial. It does not mean admitting defence proof, resolving two plausible stories, or previewing cross-examination.

When the open material, fully credited, still leaves only conjecture-or when a person appears in the papers without a role that can become evidence-discharge follows on grounds the next chapters develop. When that same material, fully credited, supports grave suspicion, charge is framed. The boundary is procedural as much as doctrinal: stay inside the Section 193/230 file, use examination of the accused only as the statute allows, and put every proposition in the application to a page of that file. The chart above is the filter; the grave-suspicion standard is the measure applied after the filter.

TIP

Build the material schedule from the supply index

Before drafting grounds, prepare a one-page schedule: FIR number and dates, police report page count, Section 230 index entries, and the three to five prosecution pages each ground will cite. If a document is not on that index, do not treat it as open unless and until it is brought on the prosecution record by a further report. This schedule becomes the spine of the issue-wise application in Chapter 10 and the annexure set in Chapter 11.

Counsel's pass over the charge-stage file

1. Obtain and paginate the full Section 230 (or commitment) supply; note any acknowledged gaps in writing.
2. List every statement and document the prosecution will rely on; mark those that name or omit your client.
3. Discard from the working set any defence affidavit, private letter, or other-crime B-report-do not annex them as proof.
4. Against each proposed ground, jot the exact open pages that support a no-evidence, sanction, ingredient, or role attack.
5. If examination of the accused is invoked, confine questions to clarifying those open pages.

6. *Draft reasons you want the court to record by reference only to that open set-never to a parallel defence narrative.*



06

Winning Ground One: No Admissible Evidence

When the record cannot translate into proof

Admissible blank versus credibility attack

The first winning ground is simple to state and easy to mishandle. Discharge follows when the charge-stage record, read as true, still yields **no admissible evidence** that connects this accused to the alleged offence. The court is not asked to prefer the defence version or to rate witness honesty. It is asked whether anything in the police report and accompanying papers is capable of becoming legal proof at trial.

No admissible evidence

A charge-stage record in which, even if every prosecution assertion is assumed true, there is no material that the law would receive as evidence connecting the accused to the offence—because it is hearsay-only, pure opinion without primary fact, a document not legally receivable, or a total silence on the accused's role.

That is not a credibility attack. A credibility attack says the witness is lying, biased, or inconsistent. The no-evidence ground says: even if the paper is accepted, it never becomes proof. Grave suspicion must rest on material **capable of being translated into evidence**. Mere suspicion, or material that the Evidence law shuts out, does not justify a charge.

Inadmissible police statement and co-accused material

LAWWORLD 2019 SC 0466

At the charge stage the judge must sift prosecution material and not act as a post office. Strong suspicion is enough only if it rests on material capable of being translated into evidence. An accused's own police statement hit by the bar on police statements, and co-accused confession without other connecting material, cannot sustain the charge.

Prosecution material assumed true; defence shut out

LAWWORLD 2020 SC 0143

The court proceeds on oral statements and documents produced by the prosecution, assumes them true, and does not cross-examine them. If even then no offence is made out, discharge follows. Defence documents and defence theory are not the route for this ground.

Four patterns that fail the translate-into-evidence test

Map the record against four recurring blanks. Each is a face-value failure, not a trial-worthiness debate.

Hearsay-only chains

Oral evidence must be **direct**. If the only link is what A told B about what C did, and no witness claims personal perception of the fact, the chain does not translate into evidence. Police case diaries and third-hand narratives in Section 161-type statements cannot plug that gap at charge.

THE BHARATIYA SAKSHYA ADHINIYAM, 2023 - Section s.55

Oral evidence shall in all cases be direct: for a fact that could be seen, heard, or otherwise perceived, it must be the evidence of the person who saw, heard, or perceived it; for an opinion, it must be the evidence of the person who holds that opinion on those grounds (subject to limited treatise exceptions).

Pure opinion without primary fact

An informant's belief, a neighbour's suspicion, or an officer's conclusion that the accused "must have" participated is not primary fact. Opinion is receivable only from the person who holds it and only on stated grounds. Without a seen act, heard words, recovery, or other primary fact, opinion alone does not raise grave suspicion.

Documents not legally receivable

Photocopies without a secondary-evidence pathway, unproved electronic printouts that never meet the special conditions, and internal memos that are not the original disposition the law requires, do not become charge-stage proof merely because they sit in the paper book. If the document cannot be received, it cannot found grave suspicion against the accused.

Complete blank on the accused's role

Sometimes the papers describe an offence and name others, yet say nothing concrete about this accused—no presence, no act, no recovery, no words. That is not a weak case; it is no case. Framing charge on a name without connecting material is illegal.

No legal evidence on factual ingredients

LAWWORLD 1979 SC 0718

Where the prosecution case itself supplies no legal evidence or material on the factual ingredients of the offence alleged, the accused is entitled to discharge and a charge framed is illegal. Face-value reading of the record showed the alleged covering-up act could not, even prima facie, establish the offence.

WARNING

Do not slide into mini-trial

Do not annex defence affidavits, alibi certificates, or rival documents to "disprove" the prosecution. Those invite the court to weigh probability. Stay inside the prosecution record and show why, assumed true, it still cannot become evidence against this accused.

How the court sifts this ground

The sift is narrow. Assume every prosecution statement and document is true. Ask only: is there material that the law would receive, and does it connect **this** accused to the offence? If the answer is no, suspicion is mere, not grave, and discharge is the correct order. If the answer is yes-direct perception, receivable document, recovery, or other primary link-the ground fails even if the defence will later attack weight.

Face-value test: reasonable possibility of conviction

LAWWORLD 2008 KAR 0352

Even at framing of charge, the court considers whether the prosecution material, if unrebutted, is such that conviction can reasonably be said to be possible. Where, accepting the material at face value, there is no such possibility, charge cannot stand and discharge follows.

Contrast material that does translate: further statements of named witnesses, call detail records treated as relevant and admissible, and discoveries on accused information can, taken at face value, raise strong suspicion. The no-evidence ground is for the opposite record-not for a crowded paper book that counsel simply dislikes.

THE BHARATIYA SAKSHYA ADHINIYAM, 2023 - Section s.141

The Judge decides admissibility. When a party proposes evidence of a fact, the Judge may require how the fact, if proved, would be relevant, and shall admit it only if relevant. Where admissibility depends on proof of another fact, that foundational fact must ordinarily be proved first (or undertaken to the Court's satisfaction).

Practitioner checklist for Ground One

No-admissible-evidence discharge

- ☐ Index every statement and document in the Section 230 / police-report bundle that names or implicates the applicant.
- ☐ Mark each item: direct perception, hearsay, opinion, or document-and note the BSA barrier if any.
- ☐ Strike police statements of the accused that are inadmissible as police statements; do not treat them as confessions at charge.
- ☐ Strike co-accused confessions unless independent, receivable material also connects the applicant.
- ☐ Flag documents with no primary or permitted secondary path (unproved copies, bare printouts, internal notes).
- ☐ State in one paragraph the complete blank on role if no act, presence, words, or recovery is attributed.
- ☐ Plead only face-value failure to translate into evidence-not probability of acquittal or witness motive.
- ☐ Pray for reasoned discharge with express reference to the sifted items found non-receivable or non-connecting.

TIP

Drafting line that keeps the ground clean

Use: "Even if every prosecution assertion is assumed true, the record contains no material capable of being received as evidence connecting the applicant to the offence, for the following item-wise reasons..." Then list hearsay, opinion, non-receivable documents, or role blank. Do not argue sanction, missing statutory ingredients, or omnibus roping-in here-those are separate grounds.

Keep this ground short and surgical. Courts grant it when the paper book is empty of legal proof, not when counsel has a better story for trial. The next chapters take up sanction defects, missing ingredients, and the roped-in accused-each a different face-value failure.



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07

Winning Ground Two: Sanction Defects

Missing, invalid or premature sanction as a discharge plank

Charge-stage posture: patent bar versus trial issue

Where statute makes prior sanction a condition for cognizance or prosecution, a defect in that sanction can end the case at discharge-but only if the defect is **patent on the charge-stage record**. Complete absence of a required sanction, grant by an authority who on the face of the papers lacks competence, or an order that ex facie betrays non-application of mind, leave no lawful foundation to frame charge. Disputed questions-whether the right file was seen, whether satisfaction was real, whether prejudice flowed-ordinarily need evidence and are not mini-tried at discharge.

Patent sanction defect

A defect appearing from the prosecution papers themselves without oral evidence: no sanction on record where law requires it; sanction by an authority who is not the competent remover or prescribed authority on the face of the order and accompanying documents; or a sanction order that on its face shows mechanical grant without reference to the material.

NOTE

Short application of the standard

If the bar is plain, the papers cannot generate grave suspicion the court is competent to try. If sanction exists and recites consideration of material, attack the quality of that consideration at trial-not as a freestanding discharge ground.

Sanction challenge held premature where order exists

LAWWORLD 2025 KAR 021

Where sanction orders exist and narrate consideration of material, alleged invalidity is for trial. Only complete absence of sanction is a true threshold ground at the pre-trial stage.

Three patent planks that win discharge

1. Sanction wholly missing

If the offence or the accused's status attracts a mandatory prior sanction and the police report / complaint papers contain **no sanction at all**, cognizance and prosecution are stillborn. Press discharge on that blank. Do not argue merits of demand, trap, or recovery in the same breath-the jurisdictional bar is enough. Confirm the statutory hook

(for example Section 19 of the PC Act or protection under Section 197 of the old Code / its BNSS counterpart) applies to the post and the acts alleged **on the prosecution's own showing**.

Invalid sanction - discharge, not acquittal on merits

LAWWORLD 2015 SC 0744

Once sanction under Section 19 PC Act is found invalid (incompetent authority), the trial court ought to have discharged the accused instead of recording acquittal on merits. Underscores that a fatal sanction defect is a threshold exit, not a merits disposal.

2. Incompetent authority

Sanction must come from the authority competent to remove the public servant (or the authority the special statute names). If the order itself names an officer who, on the cadre and appointing-structure disclosed in the papers, could not remove the accused, the defect is patent. Anchor the plea to the prosecution's own service particulars and the face of the sanction order-do not introduce contested service history as defence evidence.

3. Ex facie non-application of mind

Application of mind is mandatory; a detailed judgment is not. The order (or the accompanying note produced with it) must show that relevant investigation material was before the authority and that independent satisfaction was recorded. An order that rests on a bare police summary never placed on record, or that is blind to the actual incriminating facts, is vulnerable even at charge stage when the blank is obvious from the papers.

Sanction must demonstrate application of mind

LAWWORLD 2007 SC 0947

The sanctioning authority must apply its mind to material collected against the public servant. Ordinarily the investigation record should be placed before it; if the order does not itself indicate consideration, those materials may later be produced to prove they were before the authority. Sanction on a bare superior's report not brought on record is defective.

No need for a reasoned judgment in the sanction order

LAWWORLD 2015 SC 1246

Validity turns on independent consideration of relevant facts and evidence, free of extraneous pressure-but the authority need not write a detailed reasoned judgment. Mechanical grant must be shown; mere brevity is not fatal.

Sanction unconscious of actual incriminating material

LAWWORLD 2019 SC 0234

TADA sanction based essentially on walky-talkie possession failed where the order did not show the authority was conscious of how that possession mapped onto the distinct offences under Sections 3, 4 or 5. Illustrates ex facie non-application when the order ignores the legal ingredients.

WARNING

Do not overplead 'non-application of mind'

If the sanction narrates the trap, statements and documents and records prima facie satisfaction, courts treat further attack as a **trial issue**. [LAWWORLD 2010 SC 0846](#) holds the authority need not say it 'personally scrutinised' every page; narration plus evidence of examination suffices. [LAWWORLD 2025 KAR 021](#) confines the pure threshold ground to **absence** of sanction.

What usually fails at discharge

- **Sanction unnecessary on the prosecution case** - e.g. accused already retired when protection does not attach; discharge solely for want of sanction then cannot stand ([LAWWORLD 2019 SC 129](#)).
- **Sufficiency quarrels** - whether every statement was annexed, whether legal vetting was ideal, whether reasons are elaborate: for trial after the sanctioning witness is examined.
- **Post-charge 'discharge' on sanction** - once charge is framed and evidence led, the court must decide on merits; sanction-only 'discharge' after a full trial is illegal ([LAWWORLD 2006 KAR 0670](#) ; [LAWWORLD 2005 KAR 0641](#)).
- **Mixing sanction with a merits mini-trial** - trap money, FSL and demand material are not re-weighed under the sanction head when the only live issue is the order's face validity.

Discharge on sanction set aside where sanction not required

[LAWWORLD 2019 SC 129](#)

Trial court found material to charge and held Section 19 PC Act sanction unnecessary because the accused had retired. High Court discharged solely for absence of sanction under Section 19 PC Act and Section 197 CrPC. Supreme Court restored the trial court's order-settled sanction law does not permit discharge when the protection is not attracted.

After a sanction-based discharge: fresh prosecution and finality

Discharge (or closure) for want of valid sanction is **not** acquittal after trial.

Double-jeopardy bars under Article 20(2) and Section 300 of the old Code do not apply where the accused never faced a competent trial on merits. The State may ordinarily return with a fresh or supplementary charge-sheet after a valid sanction-subject to how the earlier discharge order was framed and whether it was allowed to attain finality without challenge.

Discharge for bad sanction is not double jeopardy

[LAWWORLD 2018 SC 1061](#)

Article 20(2) and Section 300 CrPC apply only after trial by a competent court ending in conviction or acquittal in force. Discharge before trial for invalid sanction is not a 'trial'; fresh cognizance on a proper sanction is not barred on that ground alone.

Invalid sanction - acquittal does not per se bar fresh prosecution

LAWWORLD 1997 SC 0814

Trial without jurisdiction for invalid TADA sanction led to acquittal and release; the Court clarified that such disposal does not per se preclude fresh prosecution with valid sanction, while cautioning the State on desirability after long incarceration.

Final discharge on sanction - fresh challan after superannuation impermissible

LAWWORLD 2014 SC 126

Where the Special Judge discharged for want of valid sanction and the State left that order unchallenged until it attained finality, a fresh challan filed after superannuation could not continue contrary to the subsisting discharge. Finality of the discharge order matters.

Sanction-ground discharge checklist

- ☐ Identify the exact sanction statute and whether it applies to this post and these acts on the prosecution papers alone.
- ☐ Annex the police report index: is any sanction order present? If yes, by whom, on what date, for which offences and accused?
- ☐ Map competence from the face of the order and the service particulars in the charge-sheet-flag incompetence only when patent.
- ☐ Read the sanction for ex facie application of mind: does it refer to FIR, statements, mahazars, or only a bare recommendation?
- ☐ Avoid merits arguments (trap, recovery, conspiracy role) under this ground; keep them for other heads if needed.
- ☐ Plead the consequence sought: discharge with reasons; note liberty/fresh-prosecution language if the court is inclined to reserve it.
- ☐ If opposing a belated 'sanction discharge' after evidence has begun, cite the bar on post-trial short-circuit disposal.

TIP

Drafting edge

Frame Ground Two as three numbered sub-issues- **absence** , **competence** , **face of the order** . One patent sub-issue is enough. Quote the sanction's operative lines in a schedule; do not annex a defence affidavit on how the file 'must have' moved.

08

Winning Ground Three: Missing Ingredients

When face-value facts do not spell the offence

The face-value ingredients test

Once the papers are before the court, counsel must ask a narrow question: even if every prosecution averment is accepted as true, do those facts spell the offence charged? If a statutory ingredient is missing on the face of the record, grave suspicion cannot arise and discharge follows. This is not a credibility attack and not a demand for more evidence. It is a legal mismatch between the story told and the offence defined.

statutory ingredient

An essential element that the legislature has built into the definition of the offence-conduct, mental state, consequence, status, or precondition-without which the section is not attracted even if the remaining narrative is true.

Discharge where Sections 504 and 506 IPC ingredients fail

LAWWORLD 2019 SC 04101

Taking complaint allegations at face value-abuse and an attempted assault-the Court held that intentional insult and criminal intimidation of the requisite degree were not made out; discharge was granted and the lower orders set aside. The holding is the template for charge-stage ingredient analysis.

No prosecution where basic ingredients are altogether absent

LAWWORLD 2010 SC 0844

No person can be compelled to face trial if the basic ingredients of the alleged offence are altogether absent on the materials. The principle travels to discharge: face-value absence of ingredients ends the case at the charge stage.

The same face-value lens appears in inherent-power jurisprudence: if allegations, taken as correct in their entirety, disclose no offence, the proceeding cannot continue. At discharge under the BNSS, apply that lens section by section to the police report, relied documents, and statements on the charge-stage record-without mini-trial or defence evidence.

Face-value test: do the allegations disclose any offence?

LAWWORLD 2007 SC 085

Jurisdiction turns on whether the complaint allegations, given face value and taken as correct in entirety, disclose any offence. If not, the process cannot stand. Use this formulation when arguing pure ingredient failure at discharge.

What commonly goes missing

Four clusters recur. First, ***mens rea*** where the section demands it-knowledge, intention to screen, or intentional insult. Second, the ***prohibited act*** itself: harbouring, causing disappearance of evidence, or a defined form of intimidation, as opposed to bare presence or abuse. Third, a ***jurisdictional or status fact*** built into the offence. Fourth, a ***specific statutory precondition*** that the papers never assert.

Section 212 IPC - three ingredients; knowledge and screening intent essential

LAWWORLD 1999 SC 0121

Harbouring requires (i) commission of an offence, (ii) harbouring or concealing a person known or believed to be the offender, and (iii) intention of screening from legal punishment. Giving a lift without material on knowledge failed; conviction set aside. Map the same three limbs at discharge.

Section 201 IPC - offence in fact, knowledge, and screening intent

LAWWORLD 1952 SC 105

Section 201 requires proof that an offence was in fact committed (mere suspicion will not do), that the accused knew or had reason to believe it, and that with intent to screen the offender he caused evidence to disappear or gave false information. Participation in disposal without a proved predicate offence fails the charge.

Section 201 - mere suspicion and presence insufficient

LAWWORLD 2007 SC 0844

Intent to screen must be the primary aim; mere suspicion is not enough. Presence near the scene without cogent attribution of knowledge and screening conduct does not attract Section 201-use this against omnibus 'disposal' allegations that skip the mental element.

Section 201 - mere removal of dead body not enough

LAWWORLD 2020 KAR 0623

Four ingredients restated; helping lift and remove a body, without proof of causing disappearance to screen the offender, does not complete Section 201. Illustrates prohibited-act failure on face-value facts.

Section 498A - dowry-demand ingredient not made out

LAWWORLD 2009 SC 0278

Absence of material on dowry demand meant Section 498A ingredients were not established; conviction set aside. At discharge, insist that each limb of 498A appear in the charge-stage papers, not by inference alone.

WARNING

Do not collapse this ground into others

Missing ingredients assume the prosecution story is taken as true and still fails the statute. Do not re-argue pure hearsay blanks (Ground One) or sanction defects (Ground Two) under this head. Keep the pleading to element-by-element mismatch.

NOTE

Disputed knowledge is usually for trial

Where the record affirmatively asserts the mental element and the accused only disputes it, that conflict is ordinarily triable. Ingredient discharge needs absence of the averment or of any fact that could spell the element-not a contested denial.

Offence-wise pleading in the application

Draft the ground **offence by offence**. List the charged section, break it into numbered ingredients, and against each ingredient cite the precise FIR paragraph, statement, or document-or state that none exists. Never bundle 'all offences fail for want of ingredients' in one paragraph. Courts frame and refuse charge section-wise; your application must match that grain.

Where multiple accused face the same section, repeat the map person-wise. An ingredient may be complete against A and blank against B. Closing lines should invite the court to record, in reasons, which ingredient is missing and why the face-value record cannot supply it. That reasoned finding protects the order in revision.

Ingredient audit before filing

1. Extract every section proposed in the police report or complaint.
2. For each section, write the statutory ingredients in plain limbs.
3. Against each limb, mark the supporting averment or document on the charge-stage record.
4. Flag any limb with no supporting face-value fact.
5. Plead only the failed limbs; drop weak credibility points from this ground.
6. Pray for discharge on those sections, with a request for reasoned findings ingredient-wise.

Discharge checklist - missing ingredients

- ☐ Charge-stage record accepted at face value; no defence annexures mixed into this ground.
- ☐ Each offence pleaded separately with numbered statutory limbs.
- ☐ Mens rea limbs (knowledge, screening intent, intentional insult) expressly tested.
- ☐ Prohibited act distinguished from mere presence, abuse, or assistance without the defined conduct.
- ☐ Predicate offence identified where the section depends on one (e.g. Section 201).
- ☐ No collapse into sanction or pure admissibility arguments.
- ☐ Prayer seeks reasoned, section-wise discharge tied to the missing limb.

Used cleanly, this ground ends prosecutions that never crossed the statutory threshold. The court is not asked to weigh who will win at trial. It is asked only to read the offence and the papers side by side-and to discharge where the papers, even if wholly believed, do not spell the crime.

09

Winning Ground Four: The Roped-in Accused

Peripheral names, omnibus allegations, and absence of role

Grave suspicion must be person-specific

Discharge on this ground turns on **attribution**. The charge-stage record may cast grave suspicion on some accused and none on others. The court does not frame charge against a name because the FIR is crowded, the family is arrayed, or a conspiracy section is pasted onto every column. Suspicion must fasten on this applicant through a concrete role—an act done, words spoken, a meeting attended, a recovery linked, or a specific instigation.

Roped-in accused

A person arrayed in the FIR, complaint, or charge-sheet whose connection to the offence rests only on omnibus or collective allegations, list membership, relationship to the principal accused, or a bare conspiracy label, without material assigning a specific act, knowledge, or participation.

Omnibus allegation

A collective averment that 'all accused' harassed, conspired, or participated, without separating who did what, when, or how—insufficient by itself to generate person-specific grave suspicion.

When the papers name the applicant but assign the operative cruelty, violence, or dishonest act to another, the applicant is a classic roped-in accused. In **LAWWORLD 2012 KAR 076**, specific acts of cruelty were attributed to the husband; against the in-laws there was only an omnibus allegation of participation in a single incident, with no categorical statement that they resided in the matrimonial home or how they tortured the complainant. That material did not make out a case for trial.

Omnibus allegations against in-laws - discharge

High Court of Karnataka, 2012

On revision against refusal of discharge under the old Section 239 CrPC pathway, the Court held that omnibus participation language against accused Nos. 4 and 5, without residence or role particulars, failed to justify trial when primary acts lay against the husband. Use this for family-array and dowry-cruelty list cases.

LawWorld ID: LAWWORLD 2012 KAR 076

What fails the role test - and what does not

Mere professional or incidental contact is not a role. An advocate who only drafted a

sale deed, with no whisper of collusion, knowledge of forgery, or dishonest intent in the complaint, FIR, charge-sheet, or statements, cannot be kept in the dock on the strength of having put pen to paper for co-accused.

Advocate-draftsman with no participation material

High Court of Karnataka, 2014

Accused No. 9 was discharged because the record showed only drafting of the sale deed; absence of specific averments of intention, collusion, or knowledge meant framing charge would be unjustified. Cite when the applicant's only link is a lawful professional act.

LawWorld ID: LAWWORLD 2014 KAR 1015

The same logic reaches bare possession or compound-use labels stripped of conscious involvement. Where the material itself shows the applicant, on learning vehicles carried arms, immediately sought their removal, conscious possession and intentional aid fall away, and a general conspiracy charge fails with them.

Amjad Aziz Meharbaksh - no conscious possession or abetment

Supreme Court, 1996

Applying the framing-of-charge standard, the Court discharged the accused who neither consciously possessed the arms consignment nor intentionally aided the act; the general conspiracy charge also failed. Useful where the papers negate mens rea or active aid even on a face-value reading.

LawWorld ID: LAWWORLD 1996 SC 0422

WARNING

Specific naming defeats the ground

*This ground collapses when the complainant, at the first opportunity, names the applicant and alleges murder or abduction **at his instigation**, and the charge-sheet assigns an **active conspiracy role**. In that situation revision against refusal of discharge will not succeed-see **LAWWORLD 2021 KAR 0314**. Do not plead 'roped-in' over specific attribution.*

Active instigation and conspiracy role - discharge refused

High Court of Karnataka, 2021

Discharge refused and revision dismissed where the petitioner was specifically named in successive complaints and the charge-sheet attributed an active conspiracy role. Use as the negative checklist: if these features exist, Ground Four is the wrong horse.

LawWorld ID: LAWWORLD 2021 KAR 0314

Equally, where hospital history and closed UDR proceedings show accident and cited witnesses do not implicate the applicant at all, directing trial on abetment is a futile exercise even if co-accused remain.

No iota of evidence on abetment - discharge

High Court of Karnataka, 2019

Despite a large witness list, none implicated the petitioner for Section 306 IPC; accidental-burn history and closed UDR material supported discharge. Reinforces person-specific blank versus co-accused case strength.

LawWorld ID: LAWWORLD 2019 KAR 1146

Building the role attack in the application

*Keep the argument tight: accept the prosecution story at face value, then show that **nothing in that story is about your client** . Chart every statement and document against each accused. Extract the exact sentences that name the applicant. If those sentences are only 'A1 to A7 harassed her' or 'all accused conspired,' say so in a schedule. Do not dilute the point with probability-of-acquittal rhetoric or defence affidavits.*

Record feature	Points to discharge	Points to charge
<i>FIR / complaint narrative</i>	<i>Collective 'all accused' cruelty or conspiracy only</i>	<i>Named act, date, words, or instigation by applicant</i>
<i>Section 161-type statements</i>	<i>No witness assigns a discrete role</i>	<i>Witness describes applicant's meeting, threat, recovery, or aid</i>
<i>Seizure / recovery memos</i>	<i>Applicant absent; no link article</i>	<i>Recovery from applicant or at applicant's instance</i>
<i>Conspiracy pleading</i>	<i>Bare Section 120B label on every name</i>	<i>Overt act or agreement particularised against applicant</i>
<i>Professional / incidental link</i>	<i>Drafting, presence, or relationship alone</i>	<i>Material of knowledge, collusion, or dishonest intent</i>

Role-sift before filing Ground Four

- 1. List every accused and the single strongest act attributed to each in the police report and relied statements.*
- 2. Highlight every sentence that actually names your client-quote them verbatim in an annexure.*
- 3. Mark sentences that are purely omnibus or relationship-based; those are your discharge core.*
- 4. Check for any recovery, call detail, meeting, or payment trail tied to the client; if present, Ground Four may fail.*
- 5. Plead only absence of person-specific attribution; reserve other grounds for separate heads.*

Ground Four - drafting checklist

- ☐ *Open with the exact array position (e.g., accused No. 5) and the offences as numbered in the police report.*
- ☐ *State that, taken at face value, the record assigns no specific act, meeting, recovery, or instigation to the applicant.*
- ☐ *Quote omnibus lines side-by-side with role-specific lines against co-accused.*
- ☐ *Flag bare conspiracy or common-intention labels unsupported by an overt act of the applicant.*
- ☐ *Exclude mini-trial attacks on witness credibility; stay on attribution blank.*
- ☐ *Pray for reasoned discharge confined to the applicant without disturbing co-accused where their roles differ.*

TIP

Separate the client from the crowd

Courts respond to **contrast** . One short table in the application-co-accused's attributed acts versus the applicant's blank-often does more work than pages of abstract doctrine. Pair *omnibus family allegations* or *mere drafting* with the negative control of specific instigation in *active-role cases* .

10

Drafting the Discharge Application: Issue-Wise Template

Structure, grounds, and prayer that courts can use

Sequencing and what not to plead

A discharge application is a focused request that the court, on the charge-stage record, discharge the accused with recorded reasons. It is not a substitute trial brief. Sequence the paper so the court can decide pathway, timing, and each ground without hunting through narrative. Lead with the statutory pathway and the sixty-day clock, then patent bars (sanction, missing ingredients), then evidentiary blanks and roped-in role. Keep each ground self-contained: facts from the prosecution papers, the legal proposition in one or two sentences, and the precise ask.

Issue-wise pleading

Structuring the discharge application so each winning ground is a separate numbered head-facts drawn only from the charge-stage record, a short legal proposition, and a discrete prayer-rather than a single mixed narrative attacking the entire case.

WARNING

Do not plead

Do not invite a mini-trial: no weighing of rival probabilities, no credibility contests, no annexing defence affidavits, alibi proofs, or expert opinions that are not part of the prosecution papers. Do not dump the entire defence case. Do not argue that acquittal is 'likely'. Those paths convert a charge-stage sift into a roving enquiry and invite rejection.

Integral scheme of discharge and framing of charge

LAWWORLD 2001 KAR 056

Ss. 227/228 and 239/240 CrPC form one composite process: the court considers the police report and documents, hears both sides, and either discharges with reasons or frames charge. A discharge 'application' is only a request for that hearing and should not be treated as a free-standing proceeding dealt with piecemeal. Draft and list the application so it feeds one common charge-stage consideration for all accused, not serial mini-hearings.

Write short legal propositions without case names inside the body of the grounds. Reserve authorities for oral hearing or a thin list of propositions if the court expects them. The paper must stand on the prosecution record and the statutory test of grave suspicion versus mere suspicion, applied person-wise and offence-wise.

Cause title, preliminary objections, and schedule

Open with a clean cause title that the court can lift into its order. Identify the court, the case number after commitment or registration, the police station and crime number, the offences as stated in the police report or complaint, and the applicant-accused by name and status (in custody / on bail). State the provision invoked-Section 250 BNSS (sessions), Section 262 BNSS (warrant case on police report), or the applicable warrant/summons pathway-so the court knows which statutory home it is in.

Model skeleton (adapt to forum)

1. **Cause title** - Court; case number; Crime No. / PS; offences alleged; name and status of applicant-accused; provision under which discharge is sought.
2. **Parties and representation** - Applicant-accused; State / complainant; counsel details.
3. **Preliminary objections** - (a) Pathway and maintainability; (b) timing (sixty days from commitment under the sessions route, or from supply of copies under the warrant-on-police-report route; condonation facts if any); (c) incomplete supply of Section 230 BNSS copies if that disables fair hearing.
4. **Brief conspectus** - Five to eight lines on what the police report alleges against this accused only-no defence story.
5. **Issue-wise grounds** - Separate heads for no admissible evidence; sanction defect; missing ingredients; roped-in role (use only grounds that apply).
6. **Schedule of material relied on** - Indexed list drawn solely from the charge-stage record (FIR, police report, statements, seizure memos, sanction order, relied documents) with page/annexure cross-references.
7. **Prayer** - Discharge with reasons; interim protection pending disposal where needed; any limited alternative relief.

TIP

Schedule of material

The schedule is not the annexure checklist of the next chapter. It is a one-page index inside the application: document, source (police report / Section 230 set), and the ground it supports. Cite only what the court may look at at this stage. Do not smuggle defence papers through the schedule.

Non-application of mind and impermissible material

LAWWORLD 2019 KAR 1026

Orders refusing discharge were quashed where the courts below showed non-application of mind and relied on impermissible material, with remand for fresh consideration. Draft so every ground points to a specific item on the charge-stage record and invites a reasoned, on-record sift-not a conclusion borrowed from the chargesheet's opinion.

Issue-wise grounds: plug-in modules

Draft each ground as a module the court can accept or reject without reading the others.

Open with the factual extract from the prosecution papers, state the proposition, and close with why grave suspicion does not arise against this accused for this offence. Omit modules that do not apply; never pad.

Ground A - No admissible evidence

Facts (from record): Identify the blank-no statement attributing an act to the applicant; hearsay-only chain; document not legally receivable at this stage; or pure opinion without primary fact. **Proposition:** Where the prosecution papers, taken at face value, contain no admissible material connecting the accused to the offence, mere suspicion does not justify charge. **Ask:** Discharge on this head with reasons addressing the blank.

Ground B - Sanction defect

Facts: Sanction absent; granted by an authority not competent on the face of the order; or order ex facie shows non-application of mind (no facts, no offence, rubber-stamp).

Proposition: Where prior sanction is a condition for cognizance or prosecution and the defect is patent on the charge-stage record, the accused is entitled to discharge without a trial on disputed sanction facts. **Ask:** Discharge; in the alternative, decline to proceed until a valid sanction is produced, if the statute so permits.

Ground C - Missing ingredients

Facts: Even accepting the prosecution story, a statutory ingredient is missing-mens rea where required, prohibited act, jurisdictional fact, or express precondition. Plead offence-wise (e.g., ingredient X of offence Y). **Proposition:** If on the face of the papers an essential ingredient is absent, grave suspicion of that offence does not arise. **Ask:** Discharge for the offence(s) whose ingredients fail; do not collapse all counts into one omnibus plea.

Ground D - Roped-in role

Facts: Name appears only in an omnibus FIR paragraph, a crowd-funded list, or a vague conspiracy line with no specific act, meeting, words, or recovery. **Proposition:** Grave suspicion must be person-specific; mere presence in a list or undifferentiated allegation does not clear the charge-stage threshold. **Ask:** Discharge of this accused; if co-accused stand on different material, say so expressly so the court can split roles.

Before filing - drafting check

- ☐ Pathway and section (250 / 262 BNSS or other) stated in the cause title and opening paragraph.
- ☐ Timing pleaded with computation dates; condonation facts if beyond sixty days.
- ☐ Each ground limited to prosecution papers; no defence annexures.
- ☐ Offence-wise and person-specific wording; no omnibus 'innocent' plea.
- ☐ Schedule of material cross-refers every factual assertion.
- ☐ Prayer seeks reasoned order and, where needed, interim protection only until disposal of the application.

- Application positioned as a request for the composite charge-stage hearing, not a separate suit.

Prayers, reasons, and interim protection

Courts must record reasons at the charge stage. Make that duty easy to discharge. Pray expressly for a speaking order on each ground urged. Avoid omnibus prayers that hide which head succeeds. Where the accused is exposed to coercive process while the application is pending, seek limited interim protection tied to the hearing-not a parallel bail dissertation.

Model prayer block

1. Discharge the applicant-accused of the offences stated in the police report / complaint, on the grounds urged, with reasons recorded in writing.
2. In the alternative, discharge of specified counts whose ingredients or connecting material fail, and proceed only on the surviving count(s) if any.
3. Pending disposal of this application, stay framing of charge and coercive steps against the applicant, without prejudice to existing bail.
4. Pass any other order in the interest of justice consistent with the charge-stage record.

Costs on rejection of discharge unwarranted

LAWWORLD 2022 KAR 0125

While upholding rejection of a discharge application under Section 227 CrPC, the High Court held that imposing costs on the accused was unwarranted and waived them. Draft firmly and cleanly; do not invite a costs contest by prolix or accusatory pleading against the investigating agency.

NOTE

Tone and length

Keep the application tight-typically eight to fifteen pages of grounds plus schedule, not a paper-book of evidence. Neutral tone, active voice, and pin-cites to the supplied copies help the court finish the composite discharge-or-charge exercise in one sitting. Annexure assembly and hearing workflow follow in the next chapter.

Used this way, the template converts the four winning grounds developed earlier into a court-ready instrument: pathway clear, timing pleaded, issues severed, material scheduled, and prayers framed so a reasoned discharge-or a reasoned framing-can follow without a mini-trial.

11

Annexure Checklist and Hearing Workflow

Paper book, service, and the day of arguments

Building the paper book: annexure checklist

A clean paper book lets the court reach the issue-wise grounds without hunting through the charge-stage record. Annex only what is already on the prosecution file or was supplied under **Section 230 BNSS**. Do not dump defence affidavits or fresh investigation material. Number every annexure, paginate continuously, and mirror those numbers in the schedule of material relied on in the application.

Section 230 copies index

A short indexed list of the police report and documents the Magistrate has furnished (or is obliged to furnish) to the accused free of cost under Section 230

BNSS-statements, relied-on documents, and related papers-so counsel and the court can verify completeness of supply before discharge is argued.

Core annexures (in recommended order)

- ☐ **A-1** - FIR (with GD/entry number and date of registration)
- ☐ **A-2** - Chargesheet / police report under Section 193 BNSS (final form, including list of witnesses and documents)
- ☐ **A-3** - Section 230 copies index, with date of supply and acknowledgment if available
- ☐ **A-4** - Sanction order (if the offence requires prior sanction), with authority designation and date
- ☐ **A-5** - Key Section 180/183 BNSS statements (or legacy 161/164) that fix role, recovery, or ingredients
- ☐ **A-6** - Seizure memos, mahazars, and FSL/spot panchnamas relied on in the report
- ☐ **A-7** - Any other relied-on document expressly cited in an issue-wise ground (e.g. notification, prior order)
- ☐ **A-8** - Short material chart cross-reference note (see below)

TIP

Hard copy and electronic set

File a paginated hard-copy paper book for the court and keep a matching electronic set for the bench and prosecutor. Electronic supply of the police report and documents does not replace hard copies for court use; treat both as complementary.

Electronic supply of police report and documents

LAWWORLD 2013 SC 0148

Charge-sheet papers under the supply provision should also go in electronic form to cut delay, but hard copies remain indispensable for court proceedings-plan the paper book accordingly.

Material chart cross-references

Add a one-page note mapping each ground to annexure and page: e.g. Ground I (no admissible evidence) A-5, pp. 42-47; Ground II (sanction) A-4, pp. 38-41 . The chart should track only charge-stage material already open to the court-police report, relied-on statements and documents, and sanction papers-not a defence narrative. If supply under Section 230 is incomplete, flag the missing item on the index and reserve the right to supplement once copies are furnished; do not speculate about unseen papers.

Mandatory supply of charge-sheet materials

LAWWORLD 2018 KAR 0219

Supply of the entire charge-sheet materials (including recorded statements and electronic media, subject only to the statutory provisos) is a valuable right of the accused-use the Section 230 index to police that right before the hearing.

Service, listing, and the day of arguments

Serve a complete set of the application and annexures on the prosecutor (and co-accused counsel if the court so directs) well before the listed date. Obtain an acknowledgment on the filing copy or docket. Incomplete service invites adjournment and undercuts any urgency plea tied to the sixty-day clock.

Listing and oral hearing sequence

1. *File application with paper book; get diary/filing number and proposed listing date*
2. *Serve prosecutor; place proof of service on record before the hearing*
3. *On call, confirm supply under Section 230 and whether any shortfall remains*
4. *Accused opens: pathway, timing compliance, then issue-wise grounds tied to annexure pages*
5. *Prosecutor replies on the same material; no mini-trial or defence evidence*
6. *Short rejoinder limited to record points raised in reply*
7. *Court reserves or pronounces; insist that reasons be recorded in the order*

Keep oral submissions tight. Walk the bench through the material chart, not a second drafting of the application. Quote only the passages already flagged in annexures. If the court indicates it will frame charge the same day, renew the prayer for a reasoned order on discharge before charge is framed.

WARNING

Reasons are not optional

A discharge order-or a refusal-must show application of mind to the material on record. Non-application of mind and reliance on impermissible matter are classic vices that expose the order in revision. Do not accept a one-line rejection; request that the order address each issue-wise ground briefly.

Refusal of discharge vitiated by non-application of mind

LAWWORLD 2019 KAR 1026

Orders refusing discharge were quashed where the courts failed to apply their mind and relied on impermissible material; the matter was remitted for fresh consideration-underscoring why a reasoned, record-based hearing matters.

Reasoned discharge sustained in revision

LAWWORLD 2024 KAR 1222

Where the Special Judge considered the record and passed a reasoned discharge order, revisional interference was refused-illustrating the protective value of a clear, material-based order.

NOTE

Costs on dismissal

If discharge is refused, costs against the accused are not routine. Unwarranted costs can be waived on challenge; keep the hearing focused on the record rather than inviting a costs contest.

Hearing-day kit

- ☐ Two spare paginated paper books (court + prosecutor)
- ☐ Section 230 index with supply dates highlighted
- ☐ One-page material chart cross-reference
- ☐ Marked copies of the three or four passages you will read aloud
- ☐ Proof of service and prior orders on interim protection, if any
- ☐ Short note of dates for the sixty-day computation (if timing is live)

12

Framing and Altering the Charge

When discharge fails: Sections 251, 263 and alteration

From refusal of discharge to framing of charge

Refusal of discharge and framing of charge are two faces of one composite process. In sessions trials the Judge, after the prosecutor's opening and after considering the record and hearing both sides, either discharges under the BNSS discharge provision or frames charge under **Section 251 BNSS**. In warrant cases on police report the Magistrate follows the parallel path under **Section 263 BNSS**. No separate prosecution application is needed to frame charge; any discharge application is only a request to be heard within that single exercise.

Framing of charge

The formal written statement of the offence that the court, on the charge-stage record, finds ground for presuming the accused has committed; it fixes the accusation the accused must meet at trial and is read and explained before the plea is recorded.

Integral scheme of discharge and framing

LAWWORLD 2001 KAR 056

Ss. 227/228 and 239/240 CrPC form one scheme: the court either discharges with reasons or frames charge, reads it, and records the plea in a single composite process, undertaken once for all accused and not piecemeal on successive applications.

The standard does not change when the court moves from considering discharge to framing charge. The court sifts the prosecution material only to see whether there is a **prima facie case** or **ground for presuming** commission of an offence. Strong or grave suspicion founded on material that can translate into evidence is enough. Mini-trials, weighing of probable defence, and meticulous appraisal of probative value remain forbidden. **2022 SC authority** and **warrant-case framing authority** restate this limited enquiry for both pathways.

Prima facie standard and reasons at framing

LAWWORLD 2019 SC 124

At the initial stage only a prima facie case or strong suspicion is required, not proof beyond reasonable doubt. Detailed reasons are not required when framing charge under the sessions framing provision; reasons are mandated when discharging.

Reasons only for discharge, not for framing

LAWWORLD 2000 SC 014

Under the warrant and sessions schemes, the court must record reasons if it discharges; when it finds ground for presuming the offence and frames a written charge, the statute does not require recorded reasons for that framing step.

TIP

Do not mix bail with framing

Considerations for framing charge and for bail are distinct. A common order that both frames charge and grants bail is undesirable and invites confusion on appeal or revision. Keep the charge order clean and confined to the prima facie finding.

Framing of charge and bail not by common order

LAWWORLD 2017 SC 1140

Framing under the sessions charge provision asks only whether there is ground for presuming the offence; bail turns on other factors. Combining both in one order is not desirable.

Contents, particulars, joinder and separate charges

A valid charge must give the accused clear notice of the accusation. It should state the offence, the relevant penal provision, and particulars of time, place, person, and thing as are reasonably sufficient to describe the nature of the offence. Where the law gives the offence a specific name, that name may be used; otherwise the definition of the offence should be stated. Errors of form that do not mislead the accused on the substance of the charge do not vitiate the trial, but vague or omnibus wording that conceals the role attributed to a particular accused invites challenge at the first opportunity.

- **One offence, one charge** as the default rule, unless a statutory joinder exception applies.
- **Same transaction** offences may be charged and tried together when the acts form one continuous transaction.
- **Same kind of offence** committed within twelve months may, within statutory limits, be joined.
- **Alternative charges** are proper only where it is doubtful which of several offences the facts will prove.
- Conspiracy and the object offences may be framed together where the record supports both; the Sessions Court is not confined to sections named in the committal order.

Sessions power to frame appropriate charges

LAWWORLD 1977 SC 035

Specification of particular sections in the committal order does not preclude the Sessions Court from framing a new or appropriate charge, including conspiracy under s. 120-B IPC, as the facts justify. Once seized of the case, its power to frame charge is not trammelled by the

committal sections.

Separate charges and, where prejudice is shown, separate trials protect an accused who would otherwise face an unmanageable bundle of disconnected allegations. Counsel should press joinder objections at framing if the proposed charges mix unrelated transactions or rope in an accused without person-specific material-the same attribution concern developed earlier for discharge of the roped-in accused.

No separate hearing required solely to frame charge

LAWWORLD 2014 SC 0725

Once, on consideration of the record and hearing both sides, the Judge forms the opinion that there is ground for presuming the offence, charge may be framed; no additional, stand-alone hearing is required only for the act of framing.

Alteration or addition of charge; rights of the accused

The court may alter or add to any charge at any time before judgment. The power exists so that the charge tracks the offence disclosed by the material as the case develops, but it is not a licence to spring a new case without procedural fairness. On every alteration or addition, the court must read and explain the modified charge to the accused.

Alteration of charge

The court's power to modify, substitute, or add a charge before judgment so that the formal accusation conforms to the offence disclosed; it triggers a duty to explain the change to the accused and, where prejudice would otherwise result, to allow recall of witnesses or a fresh opportunity to meet the altered case.

Steps when charge is altered or added

- 1. Court decides that the existing charge needs alteration or that an additional charge is warranted on the record.*
- 2. Altered or added charge is reduced to writing and read over and explained to the accused.*
- 3. Accused is called upon to plead to the modified charge.*
- 4. If the change may prejudice the accused's defence, court permits recall or further cross-examination of witnesses already examined and allows fresh defence evidence on the new particular.*
- 5. If the altered charge requires a different trial forum or mode, court proceeds under the applicable transfer or commitment rule.*
- 6. Trial continues on the charge as finally settled; judgment must answer the charge on which the accused was tried.*

WARNING

After framing, no cancellation-and-discharge

Once charge is framed in a warrant case, the Magistrate has no power to cancel the charge and discharge the accused. The only terminal orders thereafter are acquittal or conviction. Do not move a second discharge application after framing; the remedy lies elsewhere.

No discharge after charge is framed

LAWWORLD 2008 SC 0761

In a warrant case, once charge is framed the Magistrate cannot cancel the charge and discharge; thereafter the court can only acquit or convict. At framing, only prosecution material is open; defence-produced material is not to be considered.

The same *prima facie* lens governs a proposed additional charge: the court asks whether the existing charge-stage material, taken at face value, yields ground for presuming the further offence-not whether conviction is likely. Mechanical framing without checking that the alleged facts disclose the essential ingredients remains illegal. *Karnataka revisional guidance* underscores that an order framing charge without that ingredient check is open to correction.

Practitioner checklist at framing and alteration

- ☐ Confirm the pathway: Section 251 BNSS (sessions) or Section 263 BNSS (warrant on police report).
- ☐ Verify the order applies the *prima facie* / grave-suspicion test, not a mini-trial.
- ☐ Check each charge for offence name or definition, section, and adequate particulars of role, time, and place.
- ☐ Object to improper joinder or omnibus wording that hides person-specific attribution.
- ☐ On any alteration or addition, insist on reading and explanation, fresh plea, and recall rights if prejudice is real.
- ☐ Do not seek discharge again after charge is framed; preserve objections for trial and for revision (Chapter 13).
- ☐ Keep framing and bail in separate orders.

Challenge to a reasoned order framing charge, or to a refusal of discharge, lies in revision. Scope of interference, forum, and interim protection are taken up in the next chapter; they are not expanded here.

13

Revision Against Discharge Orders and Refusal

Scope, forum, and limits of interference

Forum and the nature of the challenge

An order granting or refusing discharge is open to **revision**. The forum follows the court that passed the order: where a Magistrate refuses or grants discharge, revision ordinarily lies to the Sessions Court, with a further or direct path to the High Court under the revisional scheme; where a Sessions or Special Court decides the application, revision lies to the High Court. Both the accused (against refusal) and the State or complainant (against grant) may invoke the jurisdiction. The same limited scrutiny applies whichever side moves.

Revisional jurisdiction

Supervisory power to correct a patent defect, jurisdictional error, or perversity in a subordinate criminal court's order-not to re-try facts or substitute a fresh appreciation of the charge-stage record as if sitting in appeal.

Discharge as a valuable right; merits must be examined

LAWWORLD 2021 SC 0515

Discharge is a valuable right of the accused. The High Court errs if it declines to examine the merits of a revision against refusal of discharge on a supposed want of jurisdiction. Revision must address whether continuation would abuse process, including fairness of investigation where properly raised.

Do not treat revision as a substitute for the original discharge application. The paper book should carry the impugned order, the discharge application as filed below, the police report and relied documents, and a short note pinpointing the legal error-not a rewritten mini-trial brief.

Narrow scope: what the revisional court will not do

Revisional interference with a reasoned charge-stage order is **exceptional**. The court asks only whether the uncontroverted allegations and accompanying material prima facie disclose the ingredients of the offence and justify a presumption that the offence was committed. It does not meticulously re-examine evidence, forecast conviction, or weigh probable defence.

Limits of revisional jurisdiction at the charge stage

LAWWORLD 2019 SC 0324

Jurisdiction under the revisional provisions is very limited: it corrects patent defect, error of jurisdiction or law, grossly erroneous decisions, non-compliance with law, findings on no evidence, ignoring of material evidence, or arbitrary or perverse exercise of discretion. The High Court must not conduct a meticulous examination of evidence or decide whether the material will end in conviction.

Strong suspicion, not proof, at framing

LAWWORLD 2017 SC 0219

At framing, the court is concerned not with proof but with whether the material raises a strong suspicion that, if put to trial, could prove guilt. The revisional court cannot apply the final test of guilt or scrutinise evidence to see if conviction will result. Quashing of charge remains an exception, exercised sparingly.

No mini-trial in revision against refusal

LAWWORLD 2024 KAR 1241

On revision against rejection of discharge, the court only examines whether, on investigation material taken at face value, a prima facie case is made out. It cannot conduct a mini-trial, appraise evidence like an appellate court, or consider defence or income-tax explanations at this stage.

WARNING

Bar on a second mini-trial

*Revision is **not** a second discharge hearing. Detailed item-wise explanations, disputed accounts, and defence documents that were rightly shut out below remain shut out above. Arguing probability of acquittal or inviting a full re-sift of every seizure and statement invites dismissal.*

Defence dissection is only the accused's opinion

LAWWORLD 2014 KAR 104

Where the trial court considered the claim and prosecution material and found no ground for discharge, the accused's bid to dissect every alleged disproportionate item on a prima facie test was treated as mere opinion. Limited revisional scrutiny did not warrant interference.

When interference is justified

Interference is justified when the order below ignores material that forms part of the charge-stage record, applies the wrong legal test, relies on impermissible defence material, or suffers patent illegality or perversity. A well-reasoned order that sifts the record only for grave suspicion will ordinarily stand-whether it grants or refuses discharge.

- **Ignored material** - charge-sheet facts or relied statements never addressed in the reasons.

- **Wrong test** - treating discharge as a probability-of-acquittal enquiry, or framing charge on mere suspicion without grave suspicion.
- **Impermissible material** - discharge granted by relying on defence documents or explanations foreign to the prosecution record.
- **Patent illegality / perversity** - jurisdictional or legal error going to the root, not a debatable appreciation of the same papers.
- **No glaring mistake** - if none appears, a State or complainant revision against discharge fails.

Discharge set aside for use of defence material

LAWWORLD 2021 KAR 0112

Where the Sessions Judge wrongly relied on defence materials at the Section 227 stage, the discharge order was set aside and the application remitted for fresh consideration in accordance with law, with liberty to raise legal contentions including sanction.

Reasoned discharge sustained in revision

LAWWORLD 2024 KAR 1222

Where the Special Judge considered the record, accepted jurisdictional and procedural objections, and passed a reasoned discharge order, revisional interference was refused in the absence of legal infirmity, perversity, or patent factual defect.

State revision fails without glaring mistake

LAWWORLD 2019 KAR 1139

On a State revision against discharge under Section 306 IPC, examination of charge-sheet materials and the legal requirements showed no glaring mistake in the trial court's order; the revision was dismissed and discharge confirmed.

Where the error is one of approach rather than a clean outcome the revisional court can safely substitute, **remand** for fresh consideration is the usual remedy-especially on sanction posture or other pure questions of law that the trial court never applied correctly.

Remand for fresh orders on discharge

LAWWORLD 2015 KAR 108

In revision against rejection of a Section 239 application on the footing that sanction was unnecessary after superannuation, the High Court held that the proceedings themselves could not be quashed in that revision and remitted the application for fresh orders in light of governing principles.

Remand where legal issues go to the root

LAWWORLD 2019 KAR 1132

Contentions that the investigating cell lacked power and that investigation violated statutory authorisation raised legal issues going to the root; criminal revision against rejection of discharge led to remand for reconsideration.

Interim protection and practitioner checklist

Pending revision against **refusal** of discharge, seek stay of further proceedings or of the framing/reading of charge so the revision is not rendered infructuous. Pending revision against **grant** of discharge, the discharged accused ordinarily enjoys the benefit of the order until it is set aside; the State should move promptly for interim directions if revival of process is needed. Costs imposed while rejecting discharge may themselves be corrected in revision even when refusal of discharge is upheld.

Unwarranted costs on rejecting discharge waived

LAWWORLD 2022 KAR 0125

While upholding rejection of discharge under Section 227, the High Court held that costs imposed on the accused by the Sessions Judge were unwarranted and waived them, dismissing the revision on the discharge merits.

Revision pathway in outline

1. Obtain certified copy of the discharge or refusal order and fix limitation immediately.
2. Identify forum: Sessions or High Court, as the court hierarchy requires.
3. Draft grounds around patent error, wrong test, ignored material, or perversity-not a full re-argument of facts.
4. Annex impugned order, application below, and core prosecution papers only.
5. Pray for interim stay of proceedings (refusal) or appropriate interim relief (grant).
6. At hearing, hold the court to the grave-suspicion / prima facie frame; resist mini-trial invitations.
7. If error of approach is shown, press remand with time-bound fresh consideration rather than a roving merits rewrite.

Revision filing checklist

- ☐ Confirm the order is revisable (grant or refusal of discharge; not a camouflaged quash plea alone).
- ☐ State forum and limitation on the first page; explain delay if any.
- ☐ Plead the precise legal vice: ignored material / wrong test / patent illegality.
- ☐ Avoid annexing defence affidavits, income proofs, or probability arguments.
- ☐ Extract short propositions from the charge-stage record only.
- ☐ Seek interim protection tailored to grant versus refusal.
- ☐ If sanction or pure jurisdictional defect is central, flag failure-of-justice or root illegality in clear terms.
- ☐ Prepare oral submissions in under ten minutes: error first, record next, relief last.

TIP

Calibrate the prayer

Ask the revisional court to **set aside and remand** when the trial court never applied the correct test; ask for **outright discharge or restoration of discharge** only when the prosecution record, on its face, leaves no grave suspicion or when the order below is unassailable. Over-pleading final relief on contested facts weakens a strong legal point.

Keep the through-line of this book intact at the revisional gate: the same grave-suspicion standard, the same shut-out of defence evidence, and the same hostility to mini-trials. Revision corrects legality; it does not reopen the discharge draft or the annexure strategy already fixed in earlier chapters. Used that way, it protects a valuable right without derailing a triable case.



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Practice Pointers, Common Traps and Outlook

Closing the file before the charge is read

The through-line in six moves

Every successful discharge under the BNSS rests on the same sequence. First, identify the correct pathway-sessions under Section 250, warrant case on police report under Section 262, or the limited space elsewhere-and do not borrow tests from a different track. Second, file inside the statutory clocks: sixty days from commitment or from supply of copies, as the case may be. Third, argue only the grave-suspicion standard; the court sifts prosecution material to see whether a prima facie case exists, nothing more. Fourth, plead issue-wise grounds-no admissible evidence, sanction defect, missing ingredient, or roped-in role-each tied to specific papers. Fifth, serve a clean paper book. Sixth, if revision is needed, keep it narrow.

Pre-filing through-line check

- ☐ Pathway confirmed (sessions / warrant-police report / other) and correct section cited
- ☐ Sixty-day clock computed from commitment or supply of copies; condonation pleaded only if needed
- ☐ Every ground framed to grave suspicion, not probability of acquittal
- ☐ Grounds issue-wise, each cross-referenced to the material chart
- ☐ Annexures limited to charge-stage record; no defence dumps
- ☐ Prayers seek reasoned order and, where fit, interim protection-nothing omnibus
- ☐ Revision plan, if any, confined to ignore of material, wrong test, or patent illegality

TIP

Reasons travel both ways

Insist that the court record reasons with reference to specific material. A bare assertion that "there is sufficient material" or that participation "cannot be decided at this stage" is non-application of mind and is vulnerable on revision-see [LAWWORLD 2019 KAR 1026](#). The same discipline protects a well-reasoned discharge when the State revises.

Common traps that sink the application

Trap one: arguing probability of acquittal

The charge-stage court does not weigh whether conviction is likely. Detailed evaluation of transcripts, credibility, or "what the defence will prove" is a mini-trial and is forbidden. Frame every submission as absence of grave suspicion on the prosecution papers taken at face value.

Scope at charge - no mini-trial on conviction likelihood

LAWWORLD 2021 SC 0418

At discharge/charge the court only sees whether material prima facie discloses ingredients; detailed evaluation to decide likelihood of conviction is impermissible as a mini-trial. Use this to shut down probability-of-acquittal argument.

Trap two: annexing defence affidavits and documents

Ordinarily the court may look only at the record of the case and documents submitted with the police report. Defence affidavits, alibi papers, and disputed factual compilations are shut out except in the rarest case where they convincingly show the prosecution version is absurd. Annexing them invites rejection and can poison revision.

Defence material ordinarily barred at Section 227 stage

LAWWORLD 2011 KAR 0736

Court considers only the record and documents submitted therewith; defence material cannot be looked into at framing of charge save in very rare and exceptional cases. Direct authority against annexing defence affidavits.

Discharge set aside for relying on defence material

LAWWORLD 2006 KAR 0859

Special Judge's discharge was illegal for considering defence materials and alleged procedural violations at charge stage; order set aside and matter remitted. Shows the cost of the trap when the court itself falls into it-or when you invite it.

Trap three: missing the sixty-day mark

Late filing forces a condonation contest you do not need. Compute from the correct terminus-commitment or supply of copies-diary the date on receipt, and file early. If the court can still consider discharge suo motu, do not treat that as a licence to sleep; a formal, timely application preserves the record for revision.

Trap four: omnibus prayers

A prayer that merely says "discharge the accused" without seeking a reasoned order, without tying relief to named grounds, and without calibrated interim protection, is weak drafting. Equally, stacking every conceivable relief-quash, stay investigation, cost, apology-signals that the application is not a charge-stage discharge at all. Keep prayers tight: discharge on stated grounds, reasons on record, and interim protection only where the pathway supports it.

WARNING

Do not reopen a closed discharge war

Once discharge is granted or refused and revision or appeal has run its course, serial applications to re-litigate the same charge-stage points abuse process. Finality attaches; unlimited draughts on court time are not a right. Calibrate revision once, on the narrow grounds this book described, and stop.

- **Probability language** - replace "accused will be acquitted" with "no grave suspicion on the papers"
- **Defence annexures** - strip affidavits, alibi bundles, and expert opinions not part of the charge-stage record
- **Limitation** - never file on the sixty-first day without a documented condonation plea
- **Omnibus prayer** - one discharge prayer per accused/ground cluster; reasons mandatory; no quash hybrid

Outlook: BNSS clocks and electronic supply

Two BNSS features will reshape day-to-day discharge work. Fixed sixty-day windows from commitment and from supply of copies make diary discipline non-negotiable; courts will be less forgiving of casual delay once the new clocks are routine. Electronic supply of police papers and relied-on documents will start the warrant-case clock earlier and more cleanly than physical copy service ever did-counsel must treat e-delivery timestamps as the terminus and build the material chart from the same digital set the court holds.

Electronic records also raise presentation quality. Unreadable media, missing hash values, and absent certificates will surface at discharge more often; use those gaps only where they go to admissibility or to a blank in the accused's role, not as a full defence trial. The doctrine does not change-grave suspicion on the prosecution record remains the sole test. What changes is speed, proof of supply, and the ease with which a clean, issue-wise paper book can be assembled and served. File on time, argue the record you were given, and close the file before the charge is read.

NOTE

No new doctrine

This chapter adds no fresh legal test. It restates the pathway, clock, grave-suspicion standard, issue-wise pleading, clean annexures, and narrow revision already developed in Chapters 1-13. Apply those tools; avoid the traps; let BNSS timing and e-supply sharpen execution, not rewrite the merits filter.

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