



DISCHARGE AND FRAMING OF CHARGE UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: REFORM OR RESTATEMENT?

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When the Code of Criminal Procedure, 1973 (“CrPC”) was replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), it raised immediate questions across criminal courts in India: has the law on discharge and framing of charge changed? Can the accused still seek discharge on the same grounds as before? Does the court apply the same standard when deciding whether to frame a charge? Where a case is before a Special Court, from when does the right to seek discharge begin? These are not merely procedural questions. They affect every accused person from the moment a chargesheet is filed against them. The answer is largely one of continuity, though the BNSS introduces important procedural additions that courts and advocates cannot afford to ignore.

Before a trial begins, the court examines the chargesheet and either frames charges against the accused or discharges the accused for want of sufficient grounds to proceed. At this stage, the court does not determine guilt or innocence. It only considers whether the material on record discloses a prima facie case giving rise to a presumption that the accused may have committed the offence. The threshold is not proof beyond reasonable doubt. A prima facie case is sufficient but there must be some credible material on record to justify proceeding. Subjecting an accused to a full criminal trial in the absence of such material would violate the guarantee of personal liberty under Article 21 of the Constitution.

Position under the CrPC

The principles governing discharge and framing of charge were settled under the CrPC through a catena of Supreme Court judgments. In ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39***, it was held that at the charge stage, the court is not required to assess whether the trial will end in conviction. If there is sufficient ground to presume that the accused has committed the offence, the court must proceed to frame the charge. Further, in ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4***, it was held that the court has the power to sift and weigh the evidence to find out whether a prima facie case has been made out but cannot act as a mere post office for the prosecution. Where two views are equally possible and the evidence gives rise to some suspicion but not grave suspicion, the court is justified in discharging the accused. In ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568***, it was held that at the stage of discharge and framing of charge, the court can only consider the material produced by the prosecution. The accused has no right to place any material before

the court at this stage. The only right the accused has is to be heard. In ***Sajjan Kumar v. CBI (2010) 9 SCC 368***, the Supreme Court consolidated all the above principles. It was held that if the court could form an opinion that the accused might have committed the offence, it can frame the charge though for conviction, proof beyond reasonable doubt is required. The court must apply its judicial mind to the material on record and satisfy itself that the commission of the offence was possible. Where grave suspicion exists against the accused which has not been properly explained, the court is fully justified in framing the charge and proceeding with the trial. However, where two views are possible and one gives rise to suspicion only as distinguished from grave suspicion, the court may discharge the accused. The principles laid down in *Sajjan Kumar* (supra) were affirmed by the Supreme Court in ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657***.

Additions under the BNSS

BNSS introduces important procedural requirements across the provisions governing trial before a Court of Session and trial of warrant cases by Magistrates. In cases triable by the Court of Session, Section 250(1) of the BNSS grants the accused 60 days from the date of committal to file a discharge application, a timeline that did not exist under the CrPC. Section 251(1)(b) of the BNSS requires the Court of Session to frame in writing a charge against the accused within 60 days from the date of first hearing on charge. Once the charge is framed, Section 251(2) of the BNSS provides that it shall be read and explained to the accused who may be present either physically or through audio-video electronic means.

In warrant cases triable by a Magistrate, Section 262(1) of the BNSS also grants the accused 60 days from the date of supply of copies of police report and other documents to file a discharge application. Section 263(1) of the BNSS similarly requires the Magistrate to frame in writing a charge against the accused within 60 days from the date of first hearing on charge. Section 262(2) of the BNSS further provides that the examination of the accused at this stage may be conducted either physically or through audio-video electronic means, reflecting the increasing digitisation of criminal proceedings.

BNSS Requirements in Practice

Trial courts have not always complied with these procedural safeguards under the BNSS and High Courts have increasingly intervened to enforce them. In ***Kallayya Pattadamath v. State of U.P., Criminal Revision No. 252 of 2026***, the Allahabad High Court observed that while Section 262 of the BNSS and Section 239 of the CrPC are similar, they are not identical. It was noted that the 60-day window for the accused to file a discharge application and the 60-day timeline for framing of charges are new additions under the BNSS which did not find place in the CrPC. It was further held that the framing of charge stood vitiated due to non-compliance of Sections 262 and 263 of the BNSS as no opportunity was given to the accused to file a discharge application and no hearing was afforded before framing of charges. The matter was remanded to the trial court to proceed afresh.

Similarly, in April 2026, in ***Sanjay Jatav v. State of Madhya Pradesh, Criminal Revision No. 1130 of 2026***, the Madhya Pradesh High Court set aside a charge-framing order passed under Section 251 of the BNSS on the ground of non-application of mind. It was held that while a detailed order is not required at this stage, the order cannot be mechanical and the material forming the basis of the court's satisfaction must be indicated in the order. The matter was remanded to the trial court for fresh consideration.

Special Courts without Committal

An unresolved issue under the BNSS concerns Section 250(1) of the BNSS before Special Courts. The provision links the 60-day discharge window to the date of committal which functions smoothly in ordinary Sessions cases. However, Special Courts constituted under the Protection of Children from Sexual Offences Act, 2012 ("**POCSO Act**") take direct cognizance without any committal proceedings, leaving no identifiable date from which the 60-day period can begin to run. In ***Narottam Prusty v. State of Odisha (CRLMC No. 1731 of***

2025), the Orissa High Court noted that the legislative scheme under BNSS does not delineate the exact point from which the 60-day period under Section 250(1) of the BNSS is to be computed. It was held that the date of first appearance of the accused before the Special Court under the POCSO Act after cognizance shall be treated as the date of committal for purposes of Section 250(1) of the BNSS.

Supreme Court's Position

In ***Dr. Anand Rai v. State of Madhya Pradesh, 2026 INSC 141***, the Supreme Court held that the position is one of continuity rather than change in relation to the Court's power at the stages of discharge and framing of charge under the BNSS. The new timelines and electronic hearing provisions are regulatory in nature, aimed at structuring the process and reducing delay, not at transforming the judicial task itself. In substance, the power remains the same, only the manner of its exercise has been more tightly structured. It was observed that discharge is not a technical indulgence but an essential safeguard and that the process itself can become the punishment if the responsibility of framing charge is not exercised with care. In ***Aman Kumar v. State of Bihar, SLP (Crl.) No. 8437 of 2025***, the Supreme Court expressed grave concern over the widespread non-compliance with the 60-day charge-framing timeline under Section 251(1)(b) of the BNSS. It was observed that in large number of cases, charge is not being framed even after months and years after filing of the chargesheet and that this is one of the primary reasons for the trial getting delayed. The Supreme Court appointed an amicus curiae in the matter and directed that a copy of the order be furnished to the Attorney General and Solicitor General, as it proposed to issue pan-India directions for all courts across the country.

Conclusion

BNSS does not change the substantive law on discharge and framing of charge. The Supreme Court has confirmed that the position is one of continuity and that the entire body of CrPC jurisprudence continues to hold the field. What BNSS introduces are statutory timelines and electronic hearing provisions aimed at reducing delay rather than transforming the judicial task. High Courts have already begun enforcing these new requirements and setting aside orders where trial courts have failed to comply. Supreme Court's concern over widespread non-compliance with the 60-day charge framing timeline signals that pan-India directions are forthcoming. One area where the law remains unsettled at a national level concerns the operation of Section 250(1) of the BNSS before Special Courts exercising direct cognizance under special statutes. Although, Orissa High Court has offered a workable solution for Special Courts under the POCSO Act, a pronouncement from the Supreme Court on this question would clarify the legal position on a pan-India basis, including in respect of Special Courts constituted under special statutes such as the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.