



2026:AHC:128592

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 11339 of 2008 (Leading)

Mohd. Ismile

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite

Party(s)

Along with : (Connected)

1. Application U/s 528 Bnss No. 16326 of 2025:

Mohd Islam

Versus

State of U.P. and another

Counsel for Applicant(s)	:	Kuldeep Singh Chahar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 68

HON'BLE VIKAS BUDHWAR, J.

In re: Criminal Misc. Delay Condonation Application No.3 of 2025

1. The delay in filing the delay condonation application for condonation of delay for recalling the order dated 2.12.2021 in Application U/s 482 No.11339 of 2008 is condoned.

In re: Criminal Misc. Restoration Application No.3 of 2025

2. Since the grounds taken for restoring the application are sufficient and properly explained, thus the restoration application is allowed.

3. The order dated 2.12.2021 dismissing the application in default/non-prosecution is restored to its original number.

Order on Application

4. Heard Sri Kuldeep Singh Chahar, learned counsel for the applicant in

leading and connected applications as well as Sri Anuj Kumar Mishra, learned A.G.A. for the State.

5. The leading application has been preferred for quashing the charge-sheet filed in Case No.643 of 1997, under Sections 419, 420, 467, 468, 471, 201, 120-B I.P.C., Police Station- Colonelganj, District- Allahabad as well as further proceedings in Case No.748 of 2004 (State vs. Visheshwar Nath), under Sections 419, 420, 467, 471, 120-B IPC, pending before the court of CJM, Allahabad, District Allahabad.

6. In the said petition, on 13.5.2008 the following orders were passed:-

"Heard learned counsel for the applicant and learned A.G.A.

It is contended by the learned counsel for the applicant that in the present case arm license was issued in favour of the applicants, subsequently, it was found that some forgery was committed. The applicant has not committed any forgery.

The learned A.G.A. prays for and is granted four weeks time to file counter affidavit.

Issue notice to O.P. 2 returnable within a period of four weeks.

In view of the submissions made by the learned counsel for the applicants and the learned A.G.A., further proceedings in C.B. case no. 643 of 1997, under sections 419, 420, 467, 468, 471, 201, 120-B IPC, P.S. Colonelganj, district Allahabad, pending in the court of Special Chief Judicial Magistrate, Allahabad shall remain stayed till the next date of listing.

List in the month of July, 2008."

7. However, the said petition came to be dismissed in default on 2.12.2021 and the following orders were passed:-

"None appears except learned A.G.A.

The matter pertains to the year 2008. It appears that by efflux of time either cause of action is no more surviving or for any other reason matter

has rendered infructuous and that is why none is present to press this application.

In view of the above, this application is dismissed for want of prosecution.

Interim order, if any, stands discharged.

However, it is provided that if the cause of action still survives, the applicant is at liberty to move appropriate application for recall of the order.

Certify the order to the Court concerned immediately."

8. Thereafter, non-bailable warrants came to be issued on 12.5.2023, which led to filing of the connected petition in which on 9.5.2025, the following orders were passed:-

"Sri Kuldeep Singh Chahar, learned counsel for the applicant and Ms. Somya Madhyan, learned A.G.A. for the State are present.

The present application u/s 528 of BNSS has been filed with prayer to quash the order dated 12.5.2023, passed by the Chief Judicial Magistrate, Mahoba in Criminal Case No. 748 of 2004 (State v. Mohd Islam and others), arising out of Case Crime No.804 of 1997, under Sections 419, 420, 468, 471, 201 and 120-B of IPC, P.S. Colonelganj, District Allahabad, whereby non-bailable warrant has been issued.

Learned counsel for the applicant submitted that impugned First Information Report dated 27.05.1997 has been lodged on the basis of false and frivolous allegations with ulterior motive and only to harass the applicant. It is further submitted that an application under Section 482 Cr.P.C. No. 11339 of 2008 has been filed in which applicant has been protected by the Co-ordinate Bench of this Court and dismissed for want on prosecution on 2.12.2021. Learned counsel for the applicant wants time to file restoration application in the aforesaid case.

Prima facie, matter requires consideration.

Notice on behalf of respondent no. 1 has been accepted by learned A.G.A.

Issue notice to respondent no. 2 through C.J.M. concerned, returnable at an early date.

Learned A.G.A. as well as respondent no. 2 may file their counter affidavits within three weeks.

Rejoinder affidavit may thereafter be filed within one week.

Put up as fresh on 11.09.2025.

Till the next date of listing, effect and operation of impugned order dated 12.5.2023 of aforesaid case shall remain stayed against the applicant."

9. Learned counsel for the applicant has submitted that the applicant is innocent and he has not committed any offence and he has been falsely implicated, particularly when none of the offences stood made out against him as he has no connection with the same. He however submits that since the applicant intends to file a discharge application seeking discharge from the court below, thus till the discharge application is decided, protection which has been accorded to the applicant in the connected application on 9.5.2025 be continued.

10. Learned A.G.A., on the other hand, submits that whatever might be the applicant has committed the offence and that is why charge-sheet has been submitted and once a statutory right is available to the applicant seeking discharge, then it is always open for him to seek discharge.

11. Having heard the submissions so made across the Bar and bearing in mind the stand taken by the learned counsel of applicant, as per the instructions from his client that the applicant shall file discharge application, the leading and connected applications are being **disposed of** in the following terms:-

(a) The applicant shall file a discharge application before the court below seeking discharge in Criminal Case No.748 of 2004 (State of UP vs. Mohd. Islam and others), arising out of Case Crime No.643 of 1997, under Sections 419, 420, 468, 471, 201, 120-B IPC, Police Station- Colonelganj, District Allahabad by 24.7.2026.

(b) On the said motion, the competent court shall decide the discharge application within a period of two months thereafter.

12. Till the discharge application is decided, no coercive action shall be taken against the applicant.

13. The protection so accorded today shall only be available once the applicant stricts to the time lines as stipulated by this Court, and in case there is any violation of the terms and the conditions so sets out, the protection so accorded shall stand vacated reference to Bench.

(Vikas Budhwar,J.)

June 22, 2026

Vikas Verma