



2026:AHC:64844

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8896 of 2026

Pappy @ Israr Hussain

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Mohammad Jamil Akhtar, Shahzad Alam, Sr. Advocate
Counsel for Opposite Party(s)	:	G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Supplementary affidavit filed today is taken on record.

2. Heard Sri V.M. Zaidi, learned Senior Counsel assisted by Ms. Sufiya Siddiqui, learned counsel for the applicant and Sri Prashant Kumar Singh, learned A.G.A. for the State.

3. Present application under Section 528 B.N.S.S. has been filed with the prayer to set-aside/ quash the order dated 06.01.2026 and the order dated 28.01.2026 passed by the learned Special Judge (POCSO Act)/ Additional Sessions Judge, Court No.22, Kanpur Nagar, whereby rejecting the application of the applicant for recalling the order dated 06.01.2026 as well as the entire proceedings of Special Session Trial No.28 of 2015 (State of U.P. Vs. Sheebu @ Sarfaraz and others) arising out of Case Crime No.403 of 2014, under Sections 376, 363, 354-Ka, 506 I.P.C., Police Station Babupurwa, District Kanpur Nagar, pending in the court of Additional District Judge, Court No.22, Kanpur Nagar.

4. It is submitted by the learned Senior Counsel appearing for the applicant that the applicant is facing criminal prosecution under Sections 376, 363, 354A and 506 I.P.C. before the learned trial court. The FIR in the present case was registered on 31.12.2014, and the Investigating Officer submitted the charge sheet on 31.03.2015. The charges were framed and thereafter the prosecution adduced evidence in the trial court and took 10 years in completion of examination of prosecution evidences. Subsequently, the statement of the accused-applicant under Section 313 Cr.P.C. was recorded on 04.12.2025. The matter was then fixed for defence evidence on

11.12.2025; however, on that date, the applicant could not move an application for adducing defence evidence nor filed the list of defence witnesses. The learned trial court thereafter fixed 24.12.2025 and subsequently 06.01.2026 for the said purpose. However, the opportunity to adduce defence evidence was closed by the learned trial court vide order dated 06.01.2026. Thereafter, the applicant moved a recall application seeking recall of the said order dated 06.01.2026; however, the same was rejected by the learned trial court vide order dated 28.01.2026.

5. Being aggrieved by the aforesaid orders dated 06.01.2026 and 28.01.2026, the present application under Section 528 B.N.S.S. has been moved by the applicant.

6. It is further submitted by the learned Senior Counsel appearing for the applicant that the prosecution took 10 years time in adducing prosecution evidence. The applicant was not at fault in delay of the present trial. The learned trial court wrongly and illegally rejected the application moved by the applicant and closed the defence evidence. The applicant would be deprived from his valuable legal right to defend himself in case the orders impugned are not set aside by this court and prayed that the applicant be allowed to adduce defence evidence in accordance with law.

7. The aforesaid prayer made by the learned counsel for the applicant has been vehemently opposed by the learned A.G.A. for the State. It is submitted by the A.G.A. that the applicant is causing delay in the trial and he knowingly and intentionally did not adduce the defence evidence on 06.01.2026. Therefore, the learned trial court has rightly closed defence evidence and when application for recalling the order dated 06.01.2026 was filed, the same was rightly and correctly rejected by the learned trial court while order dated 28.01.2026.

8. I have heard the rival submissions of the parties and perused the record.

9. Before dealing with the reasoning given by the trial court for rejecting the application of the applicant for leading defence evidence, it is to be understood as to what is the scope of Section 233 (3) Cr.P.C. A bare reading of sub-section (3) of Section 233 Cr.P.C. would reveal that if the accused applies for the issuance of any process for compelling the attendance of any witness or the production of any document or thing, the court shall issue such process unless he considers, for reasons to be recorded, that such

application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Moreover, the court is required to record its reasoning for refusing the request to summon a defence witness. A bare perusal of the Section 233(3) Cr.P.C. would reveal that except on those grounds the request cannot be turned down on any other ground. It is also well settled that the trial court cannot deny an accused the right to summon witnesses, he /she has cited to examine them as defence witnesses which is his sacrosanct fundamental right.

10. It is well settled that if no acquittal was passed under Section 232 Cr.P.C., the court has to call upon the accused to enter on his defence. Admittedly, in this case, no judgment of acquittal has been passed under Section 232 Cr.P.C./255 B.N.S.S., therefore, the provision of Section 233 Cr.P.C./256 B.N.S.S. are fully attracted. The accused has a right to be provided an opportunity to adduce any evidence in support of his defence. This right of the accused is a very valuable right which cannot be curtailed in any way. Therefore, a heavy duty is cast upon the Court to see as to whether or not the defence evidence sought to be summoned, is necessary for defending the charge levelled against the accused. If it is so, the trial court has to summon the defence witnesses and has to adopt a reasonable approach and in such a matter, should not reject the prayer for summoning defence evidence except on the grounds provided in sub-section (3) of Section 233 Cr.P.C./256 B.N.S.S.

11. In **Kalyani Baskar vs. M.S. Sampooram; (2007) 2 SCC 258**, the Supreme Court while elaborating the meaning of fair trial observed as below:-

"Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

12. In case the applicant is not provided sufficient opportunity to bring on record his defence by examining the witnesses, it shall derail fair trial, which is a valuable right of the applicant and the applicant would not be able to prove his innocence in the trial.

13. However, from the record of the present case, it is clear that sufficient opportunities were granted by the learned trial court to the applicant/accused to adduce defence evidence but for one or another reason, the applicant sought adjournments, therefore, the learned trial court closed the defence evidence vide order dated 06.01.2026.

14. It is submitted by the learned Senior Counsel appearing for the applicant that one further opportunity may kindly be granted to the applicant to adduce defence evidence. It is further undertaken that no unnecessary adjournment shall be sought by the applicant, and that a fresh application for adducing defence evidence shall be filed within a period of fifteen days from today.

15. On an appreciation of the contentions, it is discernible that an opportunity for adducing evidence is a part of the right to fair trial.

16. Considering the facts and circumstances of the present case, the present application is **allowed**. The impugned orders dated 06.01.2026 and 28.01.2026 are hereby set aside, subject to payment of costs of Rs. 5,000/-, which shall be deposited before the learned trial court within a period of fifteen days from today.

17. Upon such deposit, the applicant shall file a fresh application, in accordance with law, for adducing defence evidence within the same period. The learned trial court shall consider and decide the said application on its own merits, without being influenced by its earlier orders dated 06.01.2026 and 28.01.2026, and shall afford proper opportunity to the applicant to adduce defence evidence.

18. The amount so deposited shall be handed over to the informant/ victim of the present case.

19. It is made clear that this shall be the last opportunity for moving a proper application for adducing the defence evidence within the time prescribed hereinabove and no further adjournment shall be granted to the applicant in any manner whatsoever.

20. In case the applicant fails to deposit the aforesaid amount within a period of fifteen days from today and does not move an appropriate application for adducing defence evidence/ list of witnesses, the learned trial court shall proceed further in accordance with law.

21. However, in the event such an application is filed within the prescribed period, the learned trial court shall consider and decide the same, in accordance with law. It is expected that the learned trial court will summon only material witnesses keeping in view of Section 233(3) Cr.P.C. and will make every endeavour to conclude defence evidence within a period of three months from today.

(Vivek Kumar Singh,J.)

March 28, 2026
Radhika