



2026:AHC:58391

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5325 of 2026

Rampher

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Ram Adhar Ram, Vinay Kumar Bharti
Counsel for Opposite Party(s) : G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Sri Vinay Kumar Bharti, learned counsel for the applicant and Sri Shashidhar Pandey, learned A.G.A. for the State.

2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application and quash to the entire proceeding of the Criminal Misc. Case No. 23 of 2026 (State Versus Sameem Ahamad and others), arising out of Case Crime No.0024 of 2025, under sections-316 (2), 319(2), 318 (4) of B.N.S.S. 2023, Police Station-Bilariyaganj, District-Azamgarh, as well as the charge sheet dated 17.08.2025 as well as cognizance order dated 02.01.2026 passed by Additional Chief Judicial Magistrate, Court No. 11, Azamgarh.

It is further prayed that this Hon'ble Court may also be pleased to stay the further proceeding of the Criminal Misc. Case No. 23 of 2026 (State Versus Sameem Ahamad and others), arising out of Case Crime No.0024 of 2025, under sections-316 (2), 319(2), 318 (4) of B.N.S.S. 2023, Police Station-Bilariyaganj, District-Azamgarh,"

3. Learned counsel for the applicant submits that the applicant has not committed any offence as alleged in the FIR. He further submits that only role against the applicant is that he has persuaded O.P. No.2 to give

money to co-accused persons and the O.P. No.2 gave money to the co-accused, thereafter, forged ticket as well as passport has been issued to him. He further submits that the applicant has not received any amount out of the said money, which was given by O.P. No.2 to co-accused Shamim Ahmad. Learned counsel for the applicant further submits that in this case the I.O. has collected evidence against co-accused but also submitted charge sheet against the present applicant and the concerned trial court has taken cognizance in this matter vide order dated 02.01.2026 under section 316(2), 319(2) and 318(4) BNS. He further submits that the cognizance-cum-summoning order dated 02.01.2026 does not sustain in the eyes of law as the same has been passed without application of judicial mind and the same is liable to be set aside.

4. Per contra, learned State Counsel vehemently opposes the application and submits that the material collected by the I.O. during investigation cannot be treated as evidence under the Bhartiya Sakshya Adhiniyam, 2023, until and unless the witnesses are examined in examination-in-chief on oath as well as cross-examination and the documents which have been provided, shall also be proved by the witnesses during trial of the case. He further submits that the impugned cognizance-cum-summoning order suffers from no irregularity, which may vitiate the criminal proceedings as per the provisions of Section 507 BNSS (corresponding Section 461 Cr.P.C.). The provisions of Section 507 BNSS are delineated below for ready reference :-

"Section 507 - Irregularities which vitiate proceedings- If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-

(a) attaches and sells property under section 85;

(b) issues a search-warrant for a document, parcel or other things in the custody of a postal authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good

behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

(h) makes an order under section 152 as to a local nuisance;

(i) prohibits, under section 162, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter XI;

(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 210;

(l) tries an offender;

(m) tries an offender summarily;

(n) passes a sentence, under section 364, on proceedings recorded by another Magistrate;

(o) decides an appeal;

(p) calls, under section 438, for proceedings; or

(q) revises an order passed under section 491, his proceedings shall be void.

5. Learned A.G.A. further submits that it is settled proposition of law that FIR is not an encyclopaedia of the event and it is not expected to contain a complete, chronological account of every aspect of the incident, rather the main purpose of an FIR is to inform the police about the commission of a *cognizable offence* (a serious crime where police can arrest without a warrant) so that they can begin an investigation. To buttress his argument, he has placed reliance on judgments passed by Hon'ble Supreme Court in the cases of **V.K. Mishra and another vs. State of Uttarakhand and another, (2015) 9 Supreme Court Cases 588**, **Latesh alias Dadu Baburao Karlekar vs. State of Maharashtra, (2018) 3 Supreme Court**

Cases 66, Amish Devgan vs. Union of India and others, (2021) 1 SCC 1.

6. Learned State Counsel further submits that recently Hon'ble Supreme Court in paragraph 25 of the case of **B.N. John vs. State of U.P. and another, [2025] 1 S.C.R. 12 : 2025 INSC 4** has reiterated the aforesaid proposition of law as propounded in its earlier judgments. Relevant paragraph no.25 of **B.N. John's case (supra)** is delineated below, for ready reference :-

*""25. In the FIR there is no allegation of use of criminal force or assault by the appellant so as to invoke the provision of Section 353 of the IPC. It is to be remembered that a criminal process is initiated only with the lodging of an FIR. Though FIR is not supposed to be an encyclopedia containing all the detailed facts of the incident and it is merely a document that triggers and sets into motion the criminal legal process, yet it must disclose the nature of the offence alleged to have been committed as otherwise, it would be susceptible to being quashed as held in **Bhajan Lal's case (supra)** (vide clause 1 of Para 102 of the decision).*

*This Court in **CBI v. Tapan Kumar Singh, (2003) 6 SCC 175** observed as follows:*

*“20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. **What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence.** At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound*

to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information.....”

(emphasis added)”

7. Learned State Counsel lastly submits that offences mentioned under Section 351(3) B.N.S. are triable by Magisterial Court and is warrant trial case and opportunity of hearing shall be given to the accused-applicant at the time of framing of charge in view of Section 262(2) of BNSS (corresponding Section 239 of Cr.P.C.). For ready reference Section 262(2) of BNSS is being quoted below:

Section 262. When accused shall be discharged.-(1) *The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230.*

(2) If, upon considering the police report and the documents sent with it under section 193 and making such examination, if any, of the accused, either physically or through audio-video electronic means, as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

8. I have gone through the entire submissions advanced on behalf of both the sides and perused the record.

9. Bearing in mind that further investigation is still going on in the instant matter and also in view of the facts and circumstances of the case as well as law laid down by Hon'ble Supreme Court, this Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order, so as to grant any relief to the applicant at this stage. Moreover, this Court cannot adjudicate disputed questions of fact, while exercising inherent jurisdiction under Section 528 BNSS, as has been held time and again in catena of judgments by the Hon'ble Supreme Court.

10. However, it will be open for the applicant to file a fresh application before this Court after completion of investigation. Further, it is needless to state that the accused-applicants shall have an opportunity of being heard at the stage of framing of charge under Section 262(2) of BNSS (*corresponding Section 239 of Cr.P.C.*). The applicant may raise all their grievances at the stage of framing of charge before the trial court. The trial court shall evaluate all the materials collected by the I.O. and consider the case of the applicant at the time of framing of charge, strictly in accordance with law.

11. With the aforesaid observation, this application is **disposed of**.

12. Sri Shashidhar Pandey, learned A.G.A. is directed to sent a copy of this order to the concerned Police Station for its communication to the concerned trial court as well as to the superior police officers/authorities.

(Praveen Kumar Giri,J.)

March 20, 2026
Manish Himwan