



2026:AHC:60476

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5183 of 2026

Farzana And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Anil Kumar Sharma, Kapil Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicants and learned AGA for the State-respondent.
2. The present application has been preferred challenging cognizance order dated 21.05.2025 and entire proceedings of Case No.3594 of 2024 (State Vs. Farzana and others), arising out of Case Crime No.137 of 2024, under Section 323, 325, 452, 504, 506 IPC, P.S. Kotwali, District Etawah, pending before learned Chief Judicial Magistrate, Etawah.
3. Learned counsel for applicants argued that applicants have been falsely implicated in the present case by opposite party no.2 only to harass them since no offence as alleged, has ever been committed by them. It has also been argued by learned counsel for applicants that a civil suit is pending between the parties regarding certain properties due to which the present criminal proceedings have been initiated by way of implicating the applicants on the basis of concocted story. Learned counsel for applicants has further submitted that the injuries received by the injured, are simple in nature except one injury in shape of fracture in one finger and the same was sustained by the injured by way of falling down in the altercation took place between the parties. Learned counsel for applicants further submitted that there is hardly any evidence against applicants to corroborate them with the alleged incident. It has also been argued by learned counsel for applicants that without conducting fair investigation, the concerned Investigating Officer submitted chargesheet against applicants whereupon without applying its judicial mind, learned court concerned took cognizance of

offence over the said chargesheet which is abuse of process of law and as such, same may be quashed.

4. Per contra, learned AGA vehemently opposed the prayer as made in the application by way of submitting that the contentions, which are sought to be raised on behalf of applicants, would relate to disputed questions of fact, and would involve appreciation of evidence. It is submitted that at the time of taking cognizance, only a prima facie case is to be seen and the court concerned is not expected to hold a mini trial.

5. After hearing the rival submissions extended by learned counsels for the parties and perusing the records, this Court is of the opinion that at the stage of taking cognizance/summoning, the Magistrate is only required to record a prima facie opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused. In judgment rendered by Hon'ble Apex Court in case of **S.W. Palanitkar and Others v. State of Bihar and Another; (2002) 1 SCC 241**, it was held that the test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". In the case of **Nupur Talwar v. Central Bureau of Investigation and Another; (2012) 11 SCC 465**, it was reiterated that the limited purpose of consideration of material at the stage of issuing process being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt". At the stage of taking cognizance, a court's primary focus is to determine if a prima facie case exists, meaning whether there is sufficient evidence to suggest that an offense has been committed, and not to delve into the merits of the case or the evidence.

6. The aforementioned legal position has also been considered in a recent decision of this Court in the judgment dated 6.5.2024 passed in **Matters under Article 227 no. 3254 of 2024 (Kailash and another vs. State of U.P. and another)**.

7. From perusal of the material available on record in shape of narrations made in the FIR, chargesheet, statement recorded during investigation, injury report and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against applicants. All the submission made

at the bar, relates to the disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 528 BNSS.

8. On the aforesaid reasons, the prayer sought through the instant application is refused.

9. Lastly, learned counsel for applicants has submitted that liberty may be granted to applicants to surrender before the court concerned and apply for bail to which learned AGA has no objection.

10. In view of the aforesaid, the instant application is finally **disposed of** with a direction to the court concerned that in case, the applicants surrender before the court concerned within a period of four weeks from today and apply for bail, their bail application shall be considered and decided expeditiously in accordance with law laid down in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another (2022 SCC OnLine SC 825)**.

11. However, it is made clear that till four weeks from today, no coercive action shall be taken against applicants herein in pursuance of aforesaid case.

March 23, 2026
Vivek Kr.

(Saurabh Srivastava,J.)