



2026:AHC:71113

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7486 of 2026

Sanjay Kumar Patel

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Atharva Dixit, Roshni Murad
Counsel for Opposite Party(s)	:	G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. Present application under Section 528 BNSS has been preferred for quashing the impugned order dated 20.11.2025 passed by the court of learned Additional Sessions Judge/ Special Judge (Prevention of Corruption Act), Court No.4, Varanasi, in Sessions Trial No.453 of 2023 (State of Uttar Pradesh Vs. Sanjay Patel), arising out of Case Crime No.0105 of 2023, under Sections 302, 328, 201 and 498 I.P.C., Police Station Badagaon, District Varanasi, pending in the court of learned Additional Sessions Judge/ Special Judge (Prevention of Corruption Act), Court No.04, Varanasi.
3. It is submitted by the learned counsel for the applicant that the applicant is the sole accused in Case Crime No.0105 of 2023, under Sections 302, 328 and 201 I.P.C., Police Station Badagaon, District Varanasi. He has been languishing in jail in connection with the aforesaid case crime. PW-1 appeared in the trial court and he was cross-examined by the counsel for the applicant. The PW-2, Ramdei, who was a witness of fact, appearing in the trial court on 15.11.2025 but she could not be examined by the counsel for the applicant on account of professional engagement. The counsel for the applicant was busy in conducting cross-examination in another case. Consequently, the cross-examination of PW-2, Ramdei could not be undertaken on the said date. The lapse was not intentional. The counsel for the applicant moved an application dated 20.11.2025 for recalling of aforesaid prosecution witness PW-2, Ramdei, but the same was rejected by

the learned trial court vide impugned order dated 20.11.2025.

4. It is further submitted that the application dated 20.11.2025 has been wrongly and illegally rejected by the learned trial court since non cross-examination of the aforesaid witness was neither deliberate nor with any intention to cause delay in the trial. It is further prayed that one more opportunity be granted to the applicant to cross-examine the aforesaid witness/ PW-2, Ramdei and it is undertaken by the learned counsel for the applicant that no further adjournment would be sought by defence counsel if aforesaid witness appears in the trial court for cross-examination.

5. Per contra, learned A.G.A. for the State opposed the prayer and submitted that the application dated 20.11.2025 filed by the applicant before the learned trial court was misconceived and the same was rightly rejected by the learned trial court vide order dated 20.11.2025.

6. Heard learned counsel for the parties and perused the record.

7. Before going into factual discussion of the present case, it is necessary to discuss the legal position relating to the controversy at hand. The section 311 of Cr.P.C is reproduced as under:-

" S.311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re-examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case."

8. On the analysis of the Section 311 Cr.P.C., it appears that section 311 Cr.P.C. clothes the court with the following powers. According to first part of the Section, the Court can exercise the power :-

"(1) to summon any person as a witness, or.

(2) to examine any persons in attendance, though not summoned as a witness, or,

(3) to recall and re-examine any person already examined.

The second part, which is mandatory and imposes an obligation on the Court:-

(1) to summon and examine, or

(2) to recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case."

9. In **Raja Ram Prasad Yadav Vs. State of Bihar and Anr., A.I.R 2013 (SC) 3081**, it has been held that it is, therefore imperative that invocation of Section 311 Cr.P.C and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provisions, namely, for achieving a just decision of the case. The power vested under the said provisions is made available to any court at any stage in any inquiry or trial or other proceedings initiated under the code for the purpose of summoning any person as a witness or for examining any persons in attendance, even though not summoned as witnesses or to re-call or re-examine any person in attendance. In so far as recalling and re-examining of any person already examined, the court must necessarily consider and ensure that such re-call and re-examination of any person, appears in the view of the court to be essential for the just decision of the case.

10. It appears that cross-examination of PW-2, Ramdei, is essential for the just decision of the case since she is a witness of fact.

11. Considering the facts and circumstances of the present case, in the opinion of the Court, one more and last opportunity may be granted to the defence counsel for cross-examination of aforesaid witness.

12. However, it is observed that the learned trial court did not commit any illegality by passing the impugned order dated 20.11.2025 but in the interest of justice and fair trial, one more and last opportunity is granted to the applicant to cross-examine the aforesaid witness.

13. In view of the above, the present application is **allowed** and aforementioned impugned order dated 20.11.2025 is hereby set aside subject to payment of costs of Rs.5,000/-, which shall be deposited before the trial

court by means of Demand Draft in the name of Ramdei within a period of three weeks from today. Upon such deposit, a fresh application would be filed by the applicant for recall of the aforesaid witness/ PW-2, Ramdei, which shall be considered and decided by the trial court without being influenced vide its earlier order dated 20.11.2025 and the aforesaid witness will be summoned for further cross-examination. The amount so deposited shall be handed over to the aforesaid witness, PW-2, Ramdei upon her appearance before the learned trial court.

14. It is made clear that this shall be the last opportunity for the cross-examination of PW-2, Ramdei, and no further adjournment shall be granted to the applicant in any manner whatsoever.

15. In case of failure of cross-examination of aforesaid witness/ PW-2, Ramdei, on her appearance before the date fixed by the learned trial court, the trial court shall proceed further in accordance with law.

(Vivek Kumar Singh,J.)

March 30, 2026
Radhika