



2026:AHC:124876

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 19476 of 2026

Avnish @ Dalchandra

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rama Kant Gupta
Counsel for Opposite Party(s)	:	G.A.

Court No. - 34

HON'BLE CHAWAN PRAKASH, J.

1. Heard learned Counsel for applicant, learned A.G.A. for State and perused the record. No one is present on behalf of opposite party no.2.

2. This application under Section 528 BNSS has been filed by the applicant with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to allow the present Criminal Misc. application and quash the impugned Cognizance/summoning order dated 21-02-2026 passed by the Judicial Magistrate, Ist Budaun, in Criminal Case No. 15396 of 2026 (State Vs. Avnish alias Dalchandra) as well as Charge sheet no. 205 of 2025, dated 20-12-2025 arising out of case crime no.277 of 2025, Under Section 115(2), 352, 351(3), of B.N.S. Police Station-Moosajhag, District Budaun, pending in the Court of Judicial Magistrate, Ist Budaun."

3. Learned Counsel for the applicant submits the applicant is innocent and has been falsely implicated in the present case. Opposite party no.2 lodged an F.I.R. as Case Crime No. 277 of 2025, under Sections 115(2), 352, 351(3) BNS, Police Station Moosajhag, District Budaun, regarding the incident dated 04.12.2025. As per the allegation made in the F.I.R., the applicant along with two other persons assaulted the informant and his brother Yogendra with kicks, fists and sticks due to which the informant and Yogendra sustained injuries. Yogendra was medically examined. Nature of injuries were found to be simple. He further submits that the applicant was working with Sharma Trading Company situated in Haryana and was not

present at the time of occurrence. He was present at his work-place. Proprietor of the firm has issued a certificate to prove that the applicant was present at the work place. He further submits that the Investigation Officer has not conducted the fair and proper investigation and filed charge-sheet against the applicant and the learned Magistrate has taken cognizance on 21.02.2026, whereas no *prima facie* case is made out against the applicant, therefore, the summoning/cognizance order as well as entire proceedings of the aforesaid case may be quashed.

4. *Per contra*, learned A.G.A. has submitted that from the perusal of the allegations made in the F.I.R., the statements of the opposite party no.2 and witnesses and the material collected during the course of investigation, *prima facie* offence is clearly made out against the applicant and as such, entire proceedings cannot be quashed.

5. As per record, opposite party no.2 lodged an F.I.R. as Case Crime No. 277 of 2025, under Sections 115(2), 352, 351(3) BNS, Police Station Moosajhag, District Budaun, regarding the incident dated 04.12.2025. Injured Yogendra was medically examined. As per the medical report, injuries are simple in nature. During investigation, statements of opposite party no.2 and other witnesses were recorded and after completion of investigation charge-sheet was filed against the applicant and the learned Magistrate has taken cognizance on 21.02.2026.

6. From the perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the applicant. 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. At this stage only *prima facie* case is to be seen in the light of the law laid down by Supreme Court in cases of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**. The disputed defence of the accused cannot be considered at this stage.

7. Considering the facts and circumstances of the case, I do not find any ground to quash the aforementioned case, therefore, the prayer for quashing

the same is hereby refused.

8. Accordingly, the application is **dismissed**.

(Chawan Prakash,J.)

June 3, 2026
Vijay