



2026:AHC:124391

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 13974 of 2026

Iftekhar Khan

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Pankaj Kumar Rai
Counsel for Opposite Party(s)	:	G.A.

Court No. - 38

HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. This application has been filed challenging the order dated 25.03.2026 passed by Court of Additional District Judge, Court No.3, Amroha, in Session Trial No.435 of 2015, arising out of Case Crime No.332 of 2015, under Sections 302, 120-B, 201 I.P.C., Police Station Gajraula, District Amroha, whereby the learned court below has deferred consideration of the application under Section 91 Cr.P.C. / 94 BNSS at the stage of defence evidence.
3. By order dated 07.04.2026, learned A.G.A. was granted 10 days time to seek instructions in the matter.
4. About two months have passed, but instructions have not been received by learned A.G.A. Therefore the Court proceeds to consider the matter on merits.
5. Learned counsel for the applicant submits that the matter pertains to identification of an unknown dead body and the applicant was falsely implicated in the matter. It is contended that during investigation, the family members of the deceased had themselves made a request for DNA test and the Investigating Officer has neither submitted DNA test report before the trial court nor has it been clarified whether DNA test was conducted or not. It is therefore contended that under the aforesaid circumstances, a detailed application dated 25.03.2026 was moved before

the learned trial court indicating all the circumstances and making a prayer to direct the Investigating Officer/competent authority to produce DNA report as well as F.S.L. report and, in case, the said reports have not been prepared, directions be issued to the competent authority to carry out the test and submit a report.

6. Learned counsel submits that deferring the consideration of the said application impleadly amounts the rejection of the same and, therefore, the order may be set aside.

7. Learned A.G.A. has vehemently opposed the prayers made and it is contended that exercise of power under Section 91-A Cr.P.C. is discretionary and, as of now, the application has not been rejected and hence, the present application is premature. It is further submitted that prayers made in the application can be considered after the accused persons get their statement recorded under Section 313 Cr.P.C. and once the learned trial court has deferred consideration of the application for that stage, no illegality has been committed.

8. Refuting the submissions made by learned A.G.A., learned counsel for the applicant has placed reliance upon following judgments:-

(i). Om Prakash Sharma v. CBI, Delhi, (2000) 5 Supreme Court Cases 679;

(ii). Rinku Singh v. State of U.P. and another, Application u/s 482 No.3473 of 2023 decided on 29.03.2023; and

(iii). Shailendra Gupta alias Shailu @ Shailendra Kumar, Criminal Revision No.5290 of 2022 decided on 21.02.2023.

9. Referring to the aforesaid judgments/orders, it is submitted that identical arguments raised on behalf of the State were thoroughly considered not only by the Supreme Court but also by this Court and it has been held that stage of consideration of an Application under Section 91 Cr.P.C. / 94 B.N.S.S. is irrelevant and it is in the discretion of the Court to consider the same irrespective of the stage.

10. I have considered the submissions made and perused the record.

11. Before appreciating the legal submission as made by learned counsel for the parties, it would be appropriate to place Section 91 of Cr.P.C. / 94 BNSS, which is as follows:

"Section 91 of Cr.P.C. Summons to produce document or other thing:- (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

12. In **Om Prakash Sharma (supra)**, the Hon'ble Supreme Court has laid down as under:-

"6. The powers conferred under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things "necessary or desirable" for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for

proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide Union of India v. Prafulla Kumar Samal. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted a itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused.

13. In view of the discussion, it is apparently clear that discretion to consider the application depends on the facts and circumstances of the particular case and has no direct concern with the stage at which application under the said provision is moved.

14. In the present case, the very aspect of DNA test and its necessity as well as holding/conducting/not conducting the said test or its report being or not being on record appears to be germane to the very controversy involved in the matter and therefore this Court is of the view that merely because the case is proceeding for recording the remaining prosecution evidence after the statement of PW-7 was recorded, the same in itself is no ground to defer the consideration of application dated 25.3.2026. Fair trial of an accused being a germane principle of the criminal trials, as discussed by the Hon'ble Supreme Court in various authorities and also in

relation to exercise of power under Section 91 Cr.P.C. / 94 BNSS in the case of Om Parkash Sharma (supra), the Court is inclined to set aside the order impugned and issue proper directions.

15. Since opposite party nos. 2 and 3 are private parties, the Court could have issued notice to them and granted interim order staying trial of proceedings, however, considering the fact that sessions trial is of the year 2018, merely for the reason of deferring the consideration of an application, it would not be appropriate to install the trial and therefore, in the facts of the case, notice is not being issued to the private opposite parties

16. The application is **allowed** and order dated 25.03.2026 is hereby set aside.

17. Learned trial court is directed to take up the application dated 25.3.2026 under Section 91 Cr.P.C. / 94 BNSS, at the first instance before proceedings further with the matter and decide the same strictly in accordance with law after giving the opportunity to the prosecution, within a period of two months from the date of production of copy of this order.

18. It is made clear that this Court has not made any observation regarding merits of the application under Section 91 Cr.P.C. / 94 BNSS and intervention has been made only and only for the reason that its consideration has been deferred which appears to be contrary to the judgments referred to hereinabove.

19. The learned trial court shall be at its own wisdom to deal with the application on its own merits.

(Kshitij Shailendra,J.)

June 1, 2026

A.N. Mishra