



2026:AHC:65825

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35201 of 2025

Chandrapal Jain And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Sunil Kumar
Counsel for Opposite Party(s)	:	G.A., Shivam Mishra

Court No. - 83

HON'BLE SANJIV KUMAR, J.

1. Heard Mr. Sunil Kumar, learned counsel for the applicants, learned AGA for the State, Mr. Shivam Mishra, learned counsel for opposite party no.2 and perused the record.

2. This application under Section 528 Bhartiya Nagarik Suraksha Sanhita, 2023, (in short BNSS) has been filed to quash entire proceedings of Sessions Trial No. 138 of 2023, arising out of Case Crime No. 385 of 2021, under Sections 452, 504, 323, 506, 325, 308 IPC, Police Station Jewar, District Gautam Budh Nagar, pending in the court of Additional District and Sessions Judge, IIrd, Gautam Budh Nagar.

3. Brief facts giving rise to the present application are that opposite party no.2, Ajeet Jain, lodged an FIR against the present applicants and two other named co-accused, stating therein, that on 31.05.2021 at about 02:00 p.m., all the four accused entered in his house, armed with iron rod, sharp-edged weapons and *farsa*, and started hurling abuses and committed assault, whereby informant himself, Kusum Jain, Rakshita Jain and Sudhir Jain sustained grievous injuries. Sudhir Jain was attacked with *farsa* and all the injured persons were attacked with iron rod with an intention to kill. Thereafter, the accused left the place extending death threats and hurling abuses.

4. Upon this information, FIR was lodged and, after investigation, charge-sheet has been filed against the accused persons under Sections 452, 504, 323, 506, 325, 308 IPC, upon which, the concerned court has taken cognizance of the offence and summoned the accused persons. Since the

case was triable by the court of Sessions, it was committed to the court of Sessions for trial.

5. Learned counsel for the applicants submits that earlier Rakesh Kumar Jain/applicant no.2 had lodged an FIR against Mahendra Jain, Jeetu Jain, Sudhir Jain, Kusum Jain and Vanshika Jain, which was registered as Case Crime No. 384 of 2021, under Sections 323, 427, 504, 506, 324, 325 IPC at Police Station Jewar, District Gautam Budh Nagar.

6. Learned counsel for the applicants next submits that as per supplementary medical report of injured Sudhir Jain, a linear fracture was found in the right greater wing of spheroid bone with no displacement of fragment, injured Ajeet Jain sustained fracture of fifth metacarpal neck left and injured Kusum Jain sustained fracture of ulna shaft. It is submitted that there is complete mismatch between the injury reports and the supplementary injury reports, on the face of it. It is further submitted that even if supplementary injury reports of the all the three injured persons is taken to be correct, no offence under Section 308 IPC is made out against the applicants and, at the most, offence under Section 325 IPC would be made out.

7. Learned counsel for the applicants next submits that no specific role has been assigned to any particular accused and general allegations have been made against them. It is further submitted that the injured persons have stated that Sudhir Kumar Jain sustained head injury, whereas he himself has not alleged that he has sustained any fracture on his head. None of the doctors has opined that any of the injury was fatal to life.

8. Learned counsel for the applicants next submits that the charge-sheet was filed in a casual and illegal manner. The applicants had filed discharge application before the trial court, which was rejected on 25.04.2023, without considering the ground of discharge and charges have been framed on 02.11.2023. It is also submitted that there is a cross-case and till date no evidence has been adduced by the prosecution. It is lastly submitted that offence under Section 308 IPC is not made out against the applicants.

9. Per contra, learned counsel for opposite party no.2 has vehemently

opposed the aforesaid prayer and submitted that the FIR was lodged on correct facts. The applicants and other named accused committed the alleged offence, in which informant and others sustained grievous injuries. The injured and other witnesses have supported the prosecution case. The injuries were caused over head and other vital parts of the body, therefore, *prima facie* offence under Section 308 IPC is clearly made out against the applicants. It is also submitted that charges have already been framed and the case is at the stage of prosecution evidence, therefore, this application has no force and it is liable to be dismissed.

10. Learned AGA has defended the entire criminal proceedings.

11. In view of submissions of both the parties and from a perusal of material on record, it is not in dispute that in the present case, cognizance has been taken by the court concerned and after the case was committed to the Court of Sessions, the applicants filed a discharge application, which was dismissed. It is also not in dispute that charges have been framed against the applicants and the case is at the stage of recording the testimony of prosecution witnesses. It is also not in dispute that the matter relates to a cross-case and both the cases are pending for disposal before the Sessions court.

12. The main contention on behalf of the applicants is that no offence under Section 308 IPC is made out against the applicants as there is no evidence to suggest that the alleged injuries were caused with an intention to commit culpable homicide not amounting to murder. It is submitted that injuries to all the three injured, namely Sudhir Kumar Jain, Ajeet Jain and Kusum Jain were not fatal to life. It is also submitted that the doctor has not opined that the injuries were dangerous to life.

13. In this regard, a perusal of injury reports and supplementary injury reports of all the three injured shows that injured Sudhir Kumar Jain sustained a linear fracture over his head, besides other injuries. Injured Ajeet Jain sustained fracture of fifth metacarpal neck and injured Kusum Jain sustained fracture over ulna bone beside other injuries. As per prosecution case, the injured were attacked with iron rod, sharp-edged weapons, and *farsa*, and it is stated in the FIR that they were attacked with an intention to kill by iron rod, sharp edged weapon and *farsa*. The first informant, injured

and the other witnesses have supported the prosecution case in their statements recorded by the Investigating Officer during investigation.

14. To appreciate the arguments advanced on behalf of the applicants, it would be relevant to quote Section 308 IPC, which reads as under:

Section 308 IPC - Attempt to commit culpable homicide

“Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and,

if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

15. Sections 299 defines ‘culpable homicide’ and Section 300 IPC defines ‘murder’ and it would be relevant to mention them, which read as under:

“299. Culpable homicide.—

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

“300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(secondly) — If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(thirdly) — If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such

act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.— When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

(First) — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)— That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.— Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.— Culpable homicide is not murder when the person

whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

16. In view of the above provisions, if we look at Section 308 IPC, the essential ingredient for constituting an offence under this Section is an act committed with ‘intention’ or ‘knowledge’ and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder. The first part of Section 308 IPC prescribes lesser punishment, where no ‘harm’ is committed, and the second part of the Section prescribes higher punishment, where ‘harm’ is committed. So, in view of the above, even if there is no harm committed, Section 308 IPC would get attracted.

17. The arguments on behalf of the applicants are that there is no evidence that there was any intention of the applicants to commit an offence of culpable homicide not amounting to murder. It is also argued that there are general exceptions for act done on grave and sudden provocation or in exercise of right of private defence. In the present case, there is allegation against the applicants that they have committed the act with the intention to kill, armed with deadly weapon and injuries were committed on vital parts of injured. Therefore, *prima facie* offence under Section 308 IPC is made out against the applicants. The matter being that of cross-case, so which party was the aggressor and which party acted in self-defence and whether the applicants acted on grave and sudden provocation or not, is a matter of evidence, which would be decided by the trial court after evidence, during trial.

18. The arguments advanced on behalf of learned counsel for the applicants relate to disputed question of facts. Such issues necessarily require appreciation of evidence and evaluation of factual materials on record. The inherent jurisdiction of this Court under Section 528 BNSS is limited in scope and is not intended to adjudicate upon contested factual matters or to determine the truthfulness of allegations at this preliminary stage. These are matters which fall squarely within the domain of the trial court and are to be examined after the parties have led their respective evidence. This Court, in the present proceedings, cannot undertake an examination or appreciation of the evidence collected during investigation, as doing so would amount to conducting a mini trial, which

is impermissible in law.

19. In view of the foregoing discussion, no good ground is made out to interfere with the criminal proceedings pending before the trial court. Therefore, this application lacks merit and it is, accordingly, **dismissed**.

(Sanjiv Kumar,J.)

March 30, 2026

Subham