



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 779 of 2024

06 December, 2024

Nitin Rana --Applicant

Versus

State of Uttarakhand & Anr. --Respondents

Present:-

Mr. Piyush Sammal, Advocate for the applicant
Mr. G.S. Sandhu, Addl. A.G. with Mr. Deepak Bhardwaj, Brief Holder for the State.

Hon'ble Vivek Bharti Sharma, J. (Oral)

By means of present petition, petitioner seeks the following relief:-

“(i) Set aside/quash the cognizance/summoning order (impugned order) dated 12.09.2024 passed by F.T.C./ Learned Additional Sessions Judge/Special Judge (POCSO), District Udham Singh Nagar in Sessions Trial No.390 of 2024 ‘State v. Nitin Rana’ u/s 363, 366, 376 IPC & u/s 5, 6 of the POCSO Act, FIR No.86/2024, P.S. Khatima (Annexure No.1).”

2. Learned counsel for the petitioner would submit that essentially this petition is for quashing the order dated 12.09.2024 whereby the trial court has dismissed the application moved by the petitioner/accused u/s 311 of Cr.P.C., however, he is at loss to explain that how come in the prayer made in clause no.1, the words ‘cognizance/summoning order’ find mention. He would express his regrets that by inadvertence and lack of checking the petition before



filing the same before the Court, he could not find this mistake and prays to correct it by making an appropriate application.

3. Perusal of the petition would reveal that this petition is supported by an affidavit of Aparna Rana, who is stated to be the sister of the petitioner/accused, however, age of the petitioner/accused, as stated in the petition, and the age of the deponent, as stated in the affidavit, is 29 years and the counsel for the petitioner/accused would again express his inability to explain this discrepancy, if any, or that if the petitioner/accused and the deponent are twins.

4. Moreover, this petition is filed with the signatures of the petitioner/accused on the *Vakalatnama* whereas the affidavit is filed by his alleged sister Aparna Rana. This Court is unable to appreciate that if the petitioner/accused could have signed the *Vakalatnama* in the Trial Court by moving an application before the Trial Court after getting permission from the Court on 14.11.2024 then why the affidavit could not be sworn in by him before the Trial Court itself. In the firm opinion of this Court, in cases where the petitioner/accused might have some facts in his personal knowledge then it is only the petitioner/accused who can depose about those facts in support of his petition or application, and none else.

5. In such circumstances, this Court is of the view that when an accused is in judicial custody and for purpose of filing any application, revision or appeal in higher court he signs his *Vakalatnama* in the Trial Court



with its permission then he can also sign his application, revision, appeal and can swear his affidavit in support thereof, as the case may be, and the same should be attested by the Presiding Judge in the foot of such *Vakalatnama*, application, revision, appeal and/or affidavit.

6. Accordingly, it is directed that whenever any application by learned counsel for the accused, who is in judicial custody, is made before the Court for getting the *Vakalatnama*, application, revision or appeal signed and to swear in the affidavit, then the same shall be done in presence of the Presiding Judge of the Trial Court, who in turn, shall attest this fact at the bottom of such *Vakalatnama*, application, revision, appeal and/or affidavit that the same has been signed before the Court. Similarly, the Presiding Judge would attest the fact that the accused has sworn in the affidavit in presence of the Court. If such an affidavit or *Vakalatnama* is filed with the petition/application on behalf of the accused before this Court then that would be accepted by the Registry as signed, executed or authorized correctly.

7. It is also directed that if any such application is moved by the accused, who is in judicial custody, before the Trial Court with prayer to sign the *Vakalatnama*, etc. to file the same before any other Court, other than the Trial Court, and the date fixed in the Trial Court is not in near future then the application can be moved in the Trial Court to pre-pone the date, specifically for this purpose. If such application is made, the Trial Court would summon the accused from the judicial



custody for this purpose only so as to avoid any delay.

8. At this stage, learned counsel for the petitioner/accused seeks and is granted permission to withdraw the present petition with liberty to file fresh by correcting the prayer clause as well as to file the affidavit of the petitioner/accused duly signed by him in the trial court and duly attested by the Trial Court.

9. Let a copy of this order be sent to all the courts of the State for information and compliance as well as to Director, Uttarakhand Judicial and Legal Academy, Bhowali for disseminating this direction to all the Judges undergoing induction, refresher training.

(Vivek Bharti Sharma, J.)
06.12.2024

Rajni

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GUSAIN

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