

Court No. - 13

Case :- APPLICATION U/S 528 BNSS No. - 92 of 2024

Applicant :- Suraj Singh @ Surya Pratap Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Govt. Lko And 2 Others

Counsel for Applicant :- Vinod Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Learned A.G.A. has filed personal affidavit of Sri Radhey Shyam Rai, Addl. Superintendent of Police (West), District Gonda, which is taken on record.

2. Heard learned counsel for the applicant, Sri Piyush Kumar Singh, learned A.G.A. and Mr. S.K. Singh Kalhans, Advocate.

3. On 13.12.2024, the following order was passed:

"1. Vakalatnama filed by Shri S.K. Singh Kalhans, Advocate on behalf of opposite party no.3/complainant is taken on record.

2. In pursuance of earlier order, Shri Dinesh Singh, SHO, PS- Paraspur, District- Gonda is present before the court along with the complete case diary.

3. Heard learned counsel for the applicant, learned counsel for the complainant as well as learned AGA for the State and perused the record.

4. The present application has been filed with the prayer to quash the impugned order dated 23.09.2024 as well as order dated 01.10.2024 passed in Sessions Trial No.723 of 2024 (State Vs. Uday Bhan Singh and Ors.) arising out of Case Crime No.329 of 2024 under Sections 191(2), 191(3), 190, 103(1), 352 of BNSS, PS- Paraspur, District- Gonda.

5. Learned counsel for the applicant submitted that the FIR of case in question was lodged on 19.07.2024 on the written complaint of private respondent and the investigation was conducted and charge sheet was prepared by the investigating officer on 20.08.2024, which was submitted on the same date before the learned Magistrate, on which, the cognizance was taken. Thereafter, the case was committed to the court of sessions and on 01.09.2024, charge was framed against the accused. He further submitted that proviso of Section 193(9) BNSS provides that during the course of trial, further investigation can only be conducted with the permission of court concerned and same shall be completed within a period of 190 days which may also be extended with the permission of court concerned, but in the present case, only with the intention to cure the illegalities, one application was filed by the complainant before the Superintendent of Police, Gonda with the averment that earlier Investigating Officer had not recorded the complete statement of complainant and other witnesses under section 161 CrPC, therefore, order

may be passed for recording of their statements. On which, Additional Superintendent of Police, West, Gonda passed an order on 15.10.2024 directing the SHO, PS- Paraspur, District Gonda for conducting further investigation and recording the statement of complainant as well as other witnesses under section 161 CrPC. He further submitted that aforesaid order was passed without obtaining any permission from the court concerned in accordance with the proviso of Section 193(9) of BNSS. Thereafter, statement under section 161 CrPC was recorded which is after long delay from the date of alleged incident, therefore, kind indulgence of this court is necessary.

6. Learned AGA has vehemently opposed the prayer of applicant and submitted that there is no illegality in the order passed by Additional Superintendent of Police, West, Gonda, by which the further investigation was ordered and statements of complainant as well as other witnesses were recorded again and submitted to the court concerned, but they do not dispute this fact that no permission was taken from the court concerned before passing the aforesaid order for further investigation.

7. Shri Dinesh Singh, SHO, PS- Paraspur, District- Gonda has categorically stated that there is no description about the permission of Court for further investigation.

8. Considering the submissions of learned counsel for the parties, going through the contents of application as well as other relevant documents, it is evident that order dated 15.10.2024 was passed by Additional Superintendent of Police, West, Gonda for further investigation after framing of charge which is in clear violation of proviso of Section 193(9) of BNSS, therefore, matter requires consideration.

9. List this case on 19.12.2024 at 02:30 PM.

10. On the next date, Additional Superintendent of Police, West, Gonda shall appear in person before this Court along with his personal affidavit explaining, under what circumstances, in violation of the aforesaid proviso, he passed the order for further investigation.

11. On the next date, officer present today shall again appear in person before this Court.

12. Trial court is also directed not to consider the supplementary police report submitted by the police after framing of charge.

13. It is also open to the applicant to move application for deferment of the proceeding of case in question before the trial court.

14. Registry is directed to show the name of Shri S.K. Singh Kalhans, Advocate as counsel for opposite party in the cause list whenever the case is listed next."

4. Learned counsel for the applicant submitted that no any order was passed under Section 193(9), B.N.S.S. and the learned court below rejected the discharge application of the applicant considering the supplementary Police report and the investigating officer also failed to consider the plea of alibi of

applicant in accordance with the provisions of Section 107 of U.P. Police Regulation.

5. In Para-4 of the personal affidavit of Mr. Rai, Addl. Superintendent of Police, filed today, it is admitted that no any order was passed for further investigation, only direction was issued for conducting an inquiry by way of recording the statement of the informant of the case in question, but the investigating officer recorded majeed statement of the witnesses and such statements were seen by the supervising officer and submitted to the court concerned.

6. Considering submissions of learned counsel for the parties and going through the contents of the petition as well as personal affidavit, filed today, as Mr. Rai, Addl. Superintendent of Police, admitted that no any order was passed under Section 193(9) B.N.S.S. for further investigation, therefore, learned trial court is directed to return the copies of supplementary Police report to the Superintendent of Police, Gonda, forthwith.

7. The Superintendent of Police, Gonda, is directed to ensure further investigation by examining the plea of alibi of the applicant in accordance with the provisions of para 107 of U.P. Police Regulation and submit a fresh supplementary Police report.

8. It is open to the applicant to file fresh discharge application before the competent court.

9. In case any such application is filed, same shall be considered and decided by reasoned and speaking order.

10. Accordingly, the petition is **disposed off**.

11. Impugned order dated 23.09.2024 as well as order dated 01.10.2024 passed in Sessions Trial No.723 of 2024 (State Vs. Uday Bhan Singh and Ors.) arising out of Case Crime No.329 of 2024 under Sections 191(2), 191(3), 190, 103(1), 352 of BNSS, PS- Paraspur, District- Gonda, are hereby **set aside**.

(Rajeev Singh, J.)

Order Date :- 19.12.2024
A.Nigam