



2025:UHC:3933

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 634 of 2025

14 May, 2025

Ajay Pratap Saini

--Petitioner

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Ms. Sadaf, Advocate for the petitioner.

Mr. Deepak Bisht, learned D.A.G. for the State.

Hon'ble Vivek Bharti Sharma, J.

This criminal misc. application is filed under Section 528 of B.N.S.S. by the petitioner/accused for setting-aside the order dated 02.05.2025 passed by learned Additional District Judge/F.T.S.C., Haridwar and to direct the learned court to re-summon the Principal posted at Kaithar Khurd, Rajpur-Buxar, Bihar for his examination before the learned trial court or to fix particular time period to lead evidence within which the defense evidence may be recorded.

2. Learned counsel for the petitioner/accused would submit that after the statement of the



petitioner/accused under Section 313 of Cr.P.C. the petitioner/accused made an application to summon the Principal of Madhya Vidhyalaya Kaithar Khurd, Rajpur-Buxar, Bihar; that, as per the record of that school the date of birth of the prosecutrix is 11.05.2000; that, if her date of birth as recorded in Bihar's school is considered then prosecutrix would be major on the date of the alleged incident. However, despite all the process being issued for 07 hearings the witness from Bihar did not appear, consequently, the trial court closed the defense evidence.

3. Learned State counsel would fairly concede that as per the certified copy of the order-sheet it is reflected that summons were issued, however, vide order dated 02.05.2025 the defense evidence of the petitioner/accused was closed with observation that *the petitioner/accused was given 07 adjournments for placing the defense evidence but he failed to adduce the same.*

4. On query of the Court, learned counsel for the petitioner/accused would submit that the tracking report of the summons being received by the witness is placed at page no.22 (*Annexure no.04 to*



the petition); that, there is no failure on the part of the petitioner/accused to take steps for issuance of the summons, therefore, how could the opportunity of defense evidence be closed.

5. In view of the above, this Court is of the considered view that it is bounden duty of the court to see that sufficient opportunity to the prosecution as well as to the defense be provided to place their case and evidences because in the justice dispensation equal opportunity has to be provided to all the parties. The court has to see that if no culprit should go unpunished then at the same time, no innocent person should be punished for the offence that he has not committed. Therefore, the accused also has right to adduce evidence in defence.

6. In view of the submissions made by the learned counsel for the parties, the present petition is disposed of by setting-aside the impugned order dated 02.05.2025 passed by the learned Additional District Judge/F.T.S.C., Haridwar.

7. The trial court is directed to issue summons for appearance of the witness from school of Bihar



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and take coercive steps, as per law that may include the issuance of non-bailable warrant, bailable warrant, stoppage of salary and arrest, if needed as provided in B.N.S., 2023.

(Vivek Bharti Sharma, J.)

14.05.2025

Akash