



2025:UHC:4740

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 788 of 2025

Pooran Singh Adhikari Petitioner

Versus

State Of Uttarakhand Respondent

Presence:-

Mr. Lalit Singh Sammal, learned counsel for the petitioner.

Mr. Deepak Bisht, learned Deputy A.G. along with Mr. Prabhat Kandpal, learned Brief Holder for the State.

Dated : 10.06.2025

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

This petition is filed under Section 528 B.N.S.S. by the petitioner to quash the impugned order dated 27.05.2025 passed by learned Special Sessions Judge, District Pithoragarh in Special Session Trial No. 27 of 2019, whereby the learned trial court has allowed the application moved by the prosecution under Section 311 Cr.P.C. *(as the criminal procedure then was)*.

2. Learned counsel for the petitioner would submit that the petitioner is an accused in a case registered under Section 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985; that, the matter was listed for prosecution evidence; that, the prosecution filed an application under Section 311 of the Code of Criminal Procedure seeking permission to



summon the Maalkhana entry register and the case property through the Maalkhana Mohrir of the concerned District; that, the concerned Trial Court vide order dated 27.05.2025 has allowed the said application. Aggrieved by the said order, the petitioner has preferred the present petition.

3. Learned counsel for the petitioner/accused would further submit that the impugned order is unsustainable in the eyes of law, as it is neither a reasoned nor a speaking order; that, moreover, it was passed without affording the petitioner an opportunity to file objections to the said application.

4. *Per contra*, learned State counsel would submit that the court below rightly passed the impugned order, as the Maalkhana entry register constitutes an important piece of evidence forming part of the investigation; that, summoning the same is essential for proper adjudication of the case. However, learned State counsel would submit that its omission from the list of witnesses was inadvertent.

5. Heard learned counsel for the parties and perused the record in light of the submissions made.

6. In the considered view of this Court, although the impugned order may be irregular to



the extent that no opportunity was given to the petitioner to file a reply/objection, but, it cannot be termed illegal. Furthermore, the permission granted to summon the case property and the *Maalkhana* register does not amount to filling up an inherent lacuna in the case of the prosecution. Both the evidences are part of investigation. It is not the duty of the court to punish for the mistakes by not remedying it if the same is necessary for dispensation of justice. Moreover, learned counsel for the petitioner/accused could not submit that how the impugned order dated 27.05.2025 has caused prejudice, if any, to the petitioner. An irregular order can only be set aside if it has resulted in any prejudice, which is not the case here.

7. In view of the above, the petition lacks merit and is accordingly dismissed *in limine*.

8. No order as to costs.

9. Let a copy of this order be sent to court concerned for information.

(Vivek Bharti Sharma, J.)

10.06.2025

Mamta