



2025:AHC:178838

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 9324 of 2025

Gaurav Agarwal And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Gaurav Pundir, Jully Ojha, Sr.
Advocate

Counsel for Opposite Party(s) : G.A., Maneesh Kumar, Vivek Pandey

Court No. - 76

HON'BLE VIKRAM D. CHAUHAN, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present application has been filed by the applicants for quashing the summoning order dated 11.06.2024 as well as the entire proceedings of Complaint Case No. 69 of 2024 (M/s Agarwal Motors v. Gaurav Agarwal & others), under Section 138 of N.I. Act, P.S.- Banna Devi, District- Aligarh, pending in the court of Presiding Officer, Additional Court, District- Aligarh.

3. It is submitted by learned counsel for applicants that ends of justice would be served if the applicants are permitted to appear before the court concerned through counsel in terms of Section 228 of BNSS.

3-A. Learned counsel for the applicants submits that applicants undertake to ensure presence of their Counsel/Pleader before the court concerned on each date fixed. It is further submitted that the applicants shall not seek any unnecessary adjournment and will participate in the trial court proceedings through the Advocate/Pleader. It is further submitted that the applicants will have no objection in the event the evidence is recorded in the presence of Advocate/Pleader of the applicants.

4. The applicants are subjected to prosecution for the offence under Section 138 N.I. Act. The punishment provided under the aforesaid Section is for imprisonment for a term which may extend to two years.

5. It is not the case of the State/informant that the applicants have any previous criminal history or the applicants may tamper with the evidence. It has also not been suggested on behalf of opposite party that the applicants would flee away from justice or that the applicants have not co-operated at the time of investigation.

6. The Supreme Court in the case of **Sharif Ahmed and Another Vs. State of Uttar Pradesh and Another, 2024 INSC 363** in respect of granting exemption from personal appearance has held as under in paragraph 47:-

"Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code [Section 205 of the Code. also see Section 317 of the Code] should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi and Another v. Rani Jethmalani (1979) 4 SCC 167, held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. [see also, Puneet Dalmia v. Central Bureau of Investigation, Hyderabad, (2020) 12 SCC 695]. Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law."

7. Considering the nature of controversy, it is directed that in case application in terms of Section 228 of BNSS is filed, the trial court to dispense with the personal attendance of the applicants and the applicants be permitted to appear through pleader/counsel subject to the following conditions:-

- (a) The applicants shall appear before the court concerned through counsel on the next date or within 15 days from today whichever is earlier.
- (b) The applicants shall on affidavit submit their permanent address as well as the current address of residence before the court concerned within 15 days from today. The applicants shall also submit before the court concerned the contact number as well as the e-mail address (if any) of the applicants.
- (c) The applicants shall also submit an affidavit before the court concerned that they would not tamper with the evidence or threaten the witnesses during the pendency of the trial.
- (d) In the event, the applicants change address of residence, they shall submit on affidavit with regard to change of address within two weeks before the court concerned.
- (e) It shall be the duty of the applicants to ensure that the pleader/counsel engaged by the applicants is present before the court concerned on the date fixed without exemption. The failure on the part of the pleader/counsel to appear before the court concerned when the matter is taken up will be construed as absence of the applicants and the court concerned, thereafter, would be at liberty to take such measures for enforcing the personal attendance/personal appearance of the applicants as may be required under law.
- (f) The applicants shall not seek any unnecessary adjournment before the court concerned. In the event, the counsel/pleader engaged by the applicants is not available, it shall be the duty of the applicants to engage another counsel and ensure that the newly engaged counsel is present before the court concerned for progress of the case.
- (g) The court concerned at any stage of the proceeding can direct the personal attendance of the applicants by order in writing and that if necessary enforce such attendance in accordance with law. It is further provided, where the court concerned issues any summon or warrant on account of the absence of the counsel for the applicants before the court

concerned or in respect of any other matter, the police authorities shall be obliged under law to execute the summon or warrant and ensure the attendance of the applicants before the court concerned.

(h) Whenever the court concerned directs personal attendance of the applicants before the court concerned, it shall be the duty of the applicants to remain present before the court concerned and to ensure that the trial court proceedings are not adjourned on account of absence of the applicants. It shall be the duty of the counsel engaged by the applicants to inform the applicants with regard to the progress of the case and, in the event, the personal attendance of the applicants is required. The non-communication by the counsel for the applicants about the progress of the case or the order of the court concerned for personal attendance of the applicants shall not be permissible as defence on behalf of the applicants.

(i) The prosecution/police authority/complainant shall ensure that the witnesses are produced before the court concerned without delay as and when directed by the court concerned.

(j) The court concerned shall not grant any unnecessary adjournment to any of the parties and endeavour to conclude the proceedings in a time bound manner.

(k) The court concerned will be at liberty to take coercive measures in accordance with law where the applicants are found to be tampering with the evidence or delaying the trial without any justification or where it is proved that the applicants are threatening the informant or the witness.

8. Subject to the aforesaid observations/directions, the present application under Section 528 BNSS stands ***disposed of***.

(Vikram D. Chauhan,J.)

October 8, 2025

Rama Kant