

Reserved on 22.5.2025

Delivered on 10.07.2025

Neutral Citation No. - 2025:AHC:109409

Court No. - 77

Case :- APPLICATION U/S 528 BNSS No. - 13680 of 2025

Applicant :- Naseem Neta Alias Naseem (Ahmad Khan)

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Prakash Mishra, Sr. Advocate

Counsel for Opposite Party :- Sandeep Kumar, G.A.

Hon'ble Saurabh Srivastava, J.

1. Supplementary affidavit preferred on behalf of applicant is taken on record.
2. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Jai Prakash Mishra, learned counsel for the applicant and learned AGA for the State.

Prayer

3. Present application has been preferred with prayer to quash the entire proceeding of Case no. Nil of 2024 (State vs. Naseem Neta @ Naseem and others) arising out of Case Crime no. 60 of 2022, under section 34, 272, 273 IPC and Section 60(A) of Excise Act, PS- Phoolpur, District Azamgarh and supplementary charge sheet no. 81B of 2022, dated 26.07.2024 and cognizance order dated 06.09.2024, pending in court of learned Additional Chief Judicial Magistrate, Court no. 11, District Azamgarh.

Brief Facts

4. Learned counsel for applicant submitted that FIR bearing Case Crime no. 60 of 2022 under Section 60(A) of Excise Act and sections 272, 273, 34, 302 IPC, PS- Phoolpur, District Azamgarh has been registered on

22.02.2022 by Rajendra Prasad Yadav (informant) against 5 named and 2 unknown persons alleging therein that brother of informant died by consuming liquor which was being sold by accused persons. Investigation followed and the Investigating Officer collected statements recorded under Section 161 Cr.P.C. of the named accused Rangesh Yadav in Case Diary no. 2 dated 23.02.2022 wherein name of accused Pankaj Yadav, Mohd. Nadeem, Mohd. Faheem, Mohd. Kalim, Mohd. Naeem, Mohd. Saleem, Sehbaaz and Salmaan came out.

5. Applicant is neither named in the FIR nor in the statements of witnesses and accused persons, collected during investigation including charge sheet no. 81 of 2022 submitted on dated 04.04.2022 in aforesaid Case Crime no. 60 of 2022. Case Diary no. 20 dated 24.04.2022 revealed that Additional Superintendent of Police (Rural), District Azamgarh directed for continuance of investigation in Case Crime no. 60 of 2022. The Investigating Officer recorded second (Majeed) statement of newly added accused Nadeem son of Mohd. Saeed in Case diary 43 dated 13.09.2022 wherein first time, applicant's name surfaced and it has been alleged that applicant had suggested the accused Nadeem to sell Sanitizer as Alcohol and has given mobile number of one Goinka Mitra for taking supply. Supplementary charge-sheet dated 26.07.2024 has been submitted against the applicant before learned trial court whereupon, learned court concerned took cognizance on dated 06.09.2024 which has been challenged through instant application.

Submission on behalf of applicant

6. It is contended by learned counsel for applicant that during investigation, CDR of accused Nadeem has been collected, from perusal of same, it reflects that applicant was never in touch of the accused Nadeem or any other accused person. There is no call details of call between applicant and any of the accused persons. The credibility and veracity of second statement of newly added accused Nadeem in Case Diary 43 dated 13.09.2022 is highly suspicious and the accused Nadeem

in his first statement in Case Diary no. 5 dated 01.03.2022 neither confessed the name of applicant nor assigned any role. There is no credible material collected (except statement of co-accused Nadeem in Case Diary 43 dated 13.09.2022) in Case Crime no. 60 of 2022 to sustain complicity of applicant.

7. It is pertinent to mention here that during investigation of aforesaid Case Crime no. 60 of 2022, Investigating Officer recorded statement of one Brijesh Kumar Yadav and Ravindra Yadav to sustain complicity of the applicant as disclosed by co-accused Nadeem in Case Diary 43 dated 13.09.2022. The said witnesses have a criminal history and police pressurizes people of such nature to make them give statement in order to trap anyone. The confession of co-accused before the police have no evidentiary value and as such statement of Brijesh Yadav and Ravindra Yadav are hearsay evidence. The said statement has also been recorded after two years of the incident and the same cannot be accepted.

8. It is also not out of place to mention that FIR dated 07.04.2022 has been registered as Case Crime no. 0097 of 2022 under Section 3(1) of U.P.Gangsters Act, PS- Ahraula, District Azamgarh against all accused persons in the instant case, except the applicant on the basis of aforesaid Case Crime no. 60 of 2022 under Section 60(A) of Excise Act and sections 34, 272, 273 IPC. According to G.D. no. 002 dated 10.12.2024, the police prepared supplementary gang-chart without collecting any credible evidence against the applicant along with three other persons which has been approved by the authority concerned in joint meeting dated 06.12.2024 and was merged with previous gang-chart dated 05.04.2022.

9. In Case Crime no. 0097 of 2022 under Section 3(1) of U.P.Gangster and Anti-Social Activities (Prevention) Act, 1986, PS- Ahraula, District Azamgarh, applicant's arrest has been stayed vide order dated 10.01.2025 passed by Division Bench of this Court in Crl. Misc. Writ Petition no. 23895 of 2024 (Naseem Neta @ Naseem Ahmad (Khan) vs. State of U.P.

and others). In present Case Crime no. 60 of 2022 under section 34, 272, 273 IPC and Section 60(A) of Excise Act, PS- Phoolpur, District Azamgarh, applicant has been granted anticipatory bail vide order dated 19.07.2024 passed by co-ordinate Bench of this Court in Crl. Misc. Anticipatory Bail Application no. 4582 of 2024 (Naseem Neta @ Naseem (Ahmad Khan) vs. State of U.P.).

10. For substantiating his arguments, learned counsel for applicant relied upon judgment rendered by Hon'ble Apex Court in case of **Karan Talwar vs. The State of Tamil Nadu in Criminal Appeal no. Nil of 2024 (@ SLP (Crl.) No. 10736 of 2022)** and in case of **Hari Charan Kurmi and Jogia Hajam vs. State of Bihar reported in 1964 AIR 1184.**

Submission on behalf of State

11. Per contra, learned AGA vehemently opposed the prayer sought through instant application and supported the orders impugned that entire proceeding initiated against applicant is fully justified and requires no interference.

Observations and Conclusion

12. After hearing rival submissions extended by learned counsels for the parties and perusing the records, this Court finds that entire arguments raised by learned counsel for the applicant is amenable before learned trial court, it is apparent from the record that the trial is still pending to be adjudicated and the grounds whatsoever has been raised for seeking quashing of the entire proceeding through the instant application are the grounds which ought to be taken up by applicant before in shape of cross-examination and examination-in-chief.

13. The judgments cited above and relied upon by learned senior counsel of the applicant rendered by Hon'ble Apex Court has been decided in Appeal wherein judgment of the High Court has been considered for determining punishment against the accused wherein certain ratio has been decided that what has to be taken into consideration by the High

Court while determining or upholding punishment passed by learned trial court and as such the judgment cited and relied upon by learned senior counsel appearing on behalf of applicant is not attracting the circumstances prevailing in the present case since it is the application preferred at the behest of applicant under Section 528 BNSS wherein the entire proceeding has been sought to be quashed by this Court. It is time and again held by Hon'ble Apex Court that no mini-trial is permitted and the evidences so recorded and the statement made during trial is only the subject matter of trial itself and as such judgment cited by learned senior advocate is not applicable in the instant matter.

14. The instant application u/s 528 BNSS stands **dismissed** accordingly.

Order Date :- 10.07.2025

Shaswat

(Saurabh Srivastava,J.)