

**IN THE HIGH COURT OF UTTARAKHAND****AT NAINITAL****CRIMINAL MISC. APPLICATION No.1280 of 2025**

Birendra Singh Kandari & others

--Applicants

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Mr. Himanshu Pal, learned counsel for the applicants.

Mr. Vipul Painuli, learned A.G.A. for the State

Ms. Monika Pant, learned counsel for the respondent no.2 through V.C.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS, 2023"), the applicants have sought to quash the Criminal Misc. No.396 of 2025, "Directorate of Enforcement vs. Birendra Singh Kandari & others", arising out of ECIR No.ECIR/DNSZO/01/2024, (dated 31.01.2024), under Section 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA Act"), registered at P.S. Enforcement Directorate, Dehradun as well as the impugned summoning order dated 18.07.2025 passed by learned Special Judge, PMLA/District & Sessions Judge, Dehradun.



2. At the outset, learned counsel for the applicants would draw the attention of the Court to Annexure No.10 (Page No.222 of the present application), which is sought to be assailed by means of the present criminal misc. application under Section 528 of BNSS, 2023.

3. A perusal of the said document would reveal that there is no separate summoning order on record. Rather, Annexure No. 10 comprises notices/summons dated 18.07.2025.

4. Learned counsel for the respondent no.2 would submit that the applicants have been issued a pre-cognizance notice, as is evident from the order dated 14.07.2025, which has been annexed as Annexure No.9 to the counter affidavit filed on behalf of the respondent no.2.

5. A perusal of the order dated 14.07.2025 passed by the learned Special Judge, PMLA/District & Sessions Judge, Dehradun would reveal that, by the order dated 14.07.2025, it was directed that notices be issued to the accused for hearing on the point of cognizance and the file be put up for hearing on cognizance on 04.08.2025. Thus, the learned counsel for the respondent no.2 would submit that the present criminal misc. application is totally misconceived and, in fact, pre-mature and there could not have been any challenge to a simplicitor summons/notice dated 18.07.2025.



6. In this regard, learned counsel for respondent no. 2 has drawn the attention of the Court to Section 46 of the PMLA Act, 2002, which provides for the application of the provisions of the Code of Criminal Procedure, 1973 to proceedings before a Special Court. In the present case, by virtue of the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023, the provisions of the BNSS, 2023 would apply to the proceedings under the PMLA Act, 2002 and in particular Section 223 of BNSS, 2023 in the present context. Section 46 of the PMLA Act, 2002 is extracted hereunder for ready reference:-

“46. Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.- (1) *Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:*

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor



under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.”

Section 223 of the BNSS, 2023 is extracted hereunder for ready reference:-

“223. Examination of complainant.- (1) *A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that no cognizance of an offence under this section shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—



(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them:

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless –

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”

7. Learned counsel for the applicants, though, could not dispute the position of law regarding the provisions of Section 46 of PMLA Act and Section 223 of the BNSS, 2023, he, however, would submit that the summons/notices dated



18.07.2025, annexed as Annexure No.10 is defective in as much as they refer to Section 61 of the Cr.P.C.

He would further submit that it would suffice if the present proceedings are closed with the observation that, in future, pre-cognizance notices shall specifically mention that they are being issued as pre-cognizance notices.

8. In such view of the matter, since, by virtue of the notices dated 18.07.2025, the applicants have been called upon to appear before the Special Court to avail an opportunity of hearing on the point of cognizance, nothing survives for consideration in the present case. Accordingly, the present Criminal Miscellaneous Application deserves to be dismissed.

9. The present Criminal Misc. Application under Section 528 of BNSS, 2023 is, thus, dismissed with the aforesaid observations.

(Siddhartha Sah, J.)

08.07.2026

Akash