

Judgment reserved on: 29.07.2026
Judgment delivered on: 03.08.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.1504 of 2026

Vivek Swaroop

--Applicant

Versus

State Of Uttarakhand and Others

--Respondents

Presence:-

Mr. Aditya Singh, learned counsel for applicant.

Mr. Vipul Painuly, learned A.G.A. for the State of Uttarakhand/respondent No.1.

Mr. Sudhir Kumar, learned counsel with Mr. Saurabh Kumar Pandey, learned counsel for respondent No.2.

Hon'ble Pankaj Purohit, J. (Oral)

This C528 application has been filed by the applicant assailing the order dated 09.07.2026 passed by learned First Additional Sessions Judge, Haldwani, District Nainital, in Criminal Appeal No.23 of 2024 *Vivek Swaroop Vs. Jyoti Singh and Others*.

2. The brief facts of the case are that the applicant lodged FIR No.314 of 2014 against respondent nos.2 and 3 for offences under Sections 420, 504 and 506 IPC, but the accused persons were charged under Section 420, 389, 504 and 506 IPC. Upon conclusion of trial in Criminal Case No.2607 of 2014, learned ACJM, Haldwani, vide judgment dated 06.03.2024, acquitted the accused persons. Aggrieved thereby, applicant preferred Criminal Appeal No.23 of 2024 before the learned Sessions Judge. During pendency of the appeal, applicant moved an application contending that several incriminating circumstances emerging from the evidence, including the CFSL report and the deposition of PW-1,

had not been put to the accused while recording their statements under Section 313 Cr.P.C., and therefore sought framing of additional questions. Learned appellate court, by impugned order dated 09.07.2026, rejected the said application, giving rise to the present C528 application.

3. Learned counsel for applicant submits that learned appellate court gravely erred in rejecting the applicant's application seeking framing of additional questions under Section 313 Cr.P.C. He further submits that several incriminating circumstances emerging from the evidence on record, including the deposition of PW-1, CFSL report, specific circumstances of extortion and other documentary evidence, were never put to the accused while recording their statements under Section 313 Cr.P.C., thereby resulting in an incomplete examination.

4. Learned counsel for applicant contends that a criminal appeal against acquittal is a continuation of the trial and the appellate court possesses ample power to cure such procedural defects to secure the ends of justice. According to learned counsel, instead of examining whether the omitted circumstances were material, the learned appellate court rejected the application merely on the ground that it would delay the proceedings and that this Court had directed expeditious disposal of the appeal, which is legally unsustainable.

5. It is argued by learned counsel for applicant that the impugned order has occasioned failure of justice by declining to consider a material application on its merits. It is, therefore, prayed that the impugned order dated 09.07.2026 be set aside and the applicant's

application seeking framing of additional questions under Section 313 Cr.P.C. be allowed in accordance with law.

6. It is further submitted by learned counsel for applicant that in the case of ***Jagjeet singh and others vs Ashish Mishra alias Monu and another*** reported in ***(2022) 9 SCC 321***, the criminal jurisprudence has evolved and Hon'ble Apex Court has clearly stated that the victim has a right to participate during each stage of trial and his rights are independent to that of the states right to conduct the trial. The relevant portion of the aforesaid judgment is herein quoted below:

“22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen . We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.”

7. Learned counsel for respondent no.2 contends that the criminal jurisprudence after aforesaid judgment did not evolve but it merely made explicit what was already implicit in Section 302 Cr.P.C./Section 339

BNSS. The relevant section is herein quoted below for ready reference:-

“302 Cr.P.C. Permission to conduct prosecution:-

1. Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

2. Any person conducting the prosecution may do so personally or by a pleader.”

8. Learned counsel for respondent No.2 vehemently argued that the applicant/victim was free to move an application under section 302 Cr.P.C./339 BNSS so that he could participate in the trial. Application under the said section was, in fact, made by him in the trial court, but it was rejected, as it was made at a later stage that is at the stage of arguments. Therefore, the said application was rejected by learned court below. He further argued that the applicant by means of C528 application is trying to coerce the learned appellate court below to fill up a lacuna which he himself created at the trial stage. He further stated that section 313 Cr.P.C. is based upon the principle of *audi alteram partem* and incorporates the salutary principle of natural justice. He further emphasized that the provision is intended to benefit the accused and it is the accused only who can raise an objection if the provision is not complied with. He relied upon the judgment of **Basavraj R. Patil and others vs State of Karnataka and others (2000) 8 SCC 740.**

9. Having heard learned counsel for the parties and having perused the material available on record, and after going through the relevant provision of laws and case laws supplied by learned counsel for parties, this court is of the considered opinion that the impugned judgment suffers from no irregularity, as the applicant had ample opportunities by way of section 302 of Cr.P.C. at the stage of trial. But, he did not himself avail it and only at a very later stage i.e. at the stage of arguments an application under Section 302 Cr.P.C. was made. The records also show that he has time and again tried to delay the trial by various legal tactics. He also made an application under section 313 Cr.P.C. before learned Appellate Court, which was rejected by applying cogent and legal reasons. One of the reasons of learned appellate Court was also that applicant is adopting dilatory tactics to delay the trial. The application was rejected on the ground that sufficient opportunity was given to the accused person to explain the circumstances appearing against them in the trial stage. This Court does not find any reason to interfere with the reasoned order passed by learned appellate court. The allegations that specific questions relating to extortion were not put to the accused is clearly against the records as perusal of the records clearly show that those questions were put to the accused persons for example question Nos.12,15 and 25. The perusal of record also makes it very clear that around 36 questions were asked by the trial court under section 313 Cr.P.C. which gave ample opportunity to explain any adverse interference appearing against the accused persons. The perusal also makes it quite clear that learned appellate court has taken strong view against the applicant dilatory tactics which include filing

of application under Section 391 Cr.P.C., application under Section 313 Cr.P.C. without having any sufficient grounds. After perusal of the records, this Court agrees to the views expressed by learned appellate court. The case in hand does not warrant any interference under section 528 BNSS. The case law relied by the applicant is also of no help to him, as he already had the opportunity to participate in the trial by means of Section 302 Cr.P.C. The applicant cannot be allowed to fill the latches and lacuna created by him at the trial stage in the appellate Court or by means of this C 528 application.

10. This C528 application is, accordingly, dismissed.

11. Pending application(s), if any, stands disposed of.

(Pankaj Purohit, J.)

03.08.2026

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