

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS UKHC010134252026  2026:UHC:6824
			<u>UKHC010134252026</u> <u>C528/1658/2026</u> Himanshu Raikwal --Applicant Versus State of Uttarakhand & another --Respondents <u>Hon'ble Rakesh Thapliyal, J.</u> Mr. Lalit Sharma, learned counsel for the applicant. 2. Mr. Tumul K Nainwal, learned AGA for the State of Uttarakhand. 3. The instant petition is moved by the present applicant - Himanshu Raikwal S/o Shri Vikram Singh Raikwal, who is injured of the incident, for challenging the order of the learned Additional Chief Judicial Magistrate, Nainital, dated 20.07.2026, in a matter relating to FIR No.30 of 2026, whereby the application of the prosecution for seeking remand of the accused, namely, Gaurav Kulyal @ Goli, Rahul Singh Rawat, Gaurang Rautela @ Golu and Ajay Kulyal, for the offence punishable under Section 109 of BNS, 2023 is rejected. 4. Since the prosecution has not challenged the order, consequently the applicant being informant/injured/victim, filed this petition under Section 528 of BNSS, 2023 challenging the order of the Additional Chief Judicial Magistrate, Nainital dated 20.07.2026, on the following grounds:- “(a) The order refusing the remand on an application of the prosecution is completely with non application of mind, since one of the injured, namely, Ramesh Kirola, who is still in ICU in Max Hospital, Delhi and is not in a position to give any statement. The photographs have also been shown and as per the latest update, about this injured, he is still in coma.

			(b) Latest medical report of the Max Hospital, Delhi, is also placed before this Court by Mr. Tumul K Nainwal, learned AGA, which has been supplied by the Investigating Officer to him, who is also present in Court. On perusal of which it reveals that the injury is on most vital part of the body and danger to life and the injured is in coma.” 5. I have perused the order refusing the remand order passed by the Additional Chief Judicial Magistrate, Nainital, dated 20.07.2026, and the reason as reflected from paragraph 7 of the order is really very shocking and surprising and how such an observation has being recorded by the Additional Chief Judicial Magistrate, Nainital, without verifying the injury of the injured. Why the prosecution has not been given an opportunity to place the injury report and surprisingly in paragraph 8 of the order, the Additional Chief Judicial Magistrate, Nainital, observed that the statement of the injured Ramesh Kirola, have not been recorded though as a matter of fact, this injured is in coma. How the Magistrate have recorded such an observations that the statement of this injured was not recorded who is in coma. The order refusing the remand is completely without application of mind. 6. Learned AGA also submits that after perusing the injury report of the injured Ramesh Kirola, the injuries are on most vital part of the body and this injured is not in a position to give any statement, therefore, taking into consideration the seriousness of the injuries, the matter should be remanded back to decide the application of the prosecution for seeking remand of the accused persons for the offence punishable under Section 109 of BNS, 2023. 7. After hearing the submissions of the learned counsel for the parties and after perusing the order impugned dated 20.07.2026 passed by the Additional Chief Judicial Magistrate, Nainital, as well as the injury report of the injured Ramesh Kirola, which has been placed before this Court by the learned AGA as well as the fact that the injured Ramesh Kirola, who is
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			still in coma, the matter is remitted back with a direction to the learned Session Judge, Nainital to assign this matter for the purposes of deciding the remand application filed by the prosecution to some other Court, so that the order be passed on seeking remand by prosecution strictly as per the mandate of law. 8. Subject to the observations and directions as above impugned order is set aside and instant C528 application is disposed of accordingly. (Rakesh Thapliyal, J.) 04.08.2026 Nitesh/
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