



2026:AHC:69871

**Reserved on 23.03.2026**

**Delivered on 02.04.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 28640 of 2025**

Imtiyaz Ahmad Alias Raju Pilot

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite  
Party(s)

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|-------------------------------|---|---------------------------------|
| Counsel for Applicant(s)      | : | Moeez Uddin, Tausif Asgar Kaifi |
| Counsel for Opposite Party(s) | : | Brijesh Kumar Kesharwani, G.A.  |

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**Court No. - 80**

**HON'BLE VIVEK KUMAR SINGH, J.**

1. Rejoinder affidavit filed today is taken on record.
2. Heard Sri Moeez Uddin, learned counsel for the applicant and Sri Rabindra Kumar Singh, learned A.G.A. for the State.
3. Present application under Section 528 B.N.S.S. has been preferred for quashing the charge dated 25.06.2025 and the order dated 28.05.2025 passed by the Additional Sessions Judge/ Special Judge, POCSO Act, Prayagraj, in Special Trial No.2063 of 2024 (State Vs. Imtiyaz Ahmad @ Raju Pilot) arising out of Case Crime No.192 of 2024, under Sections 137(2), 70(2), 123 B.N.S. and Section 5G/6 of POCSO Act, Police Station Koraon, District Prayagraj, whereby the discharge application filed by the applicant was rejected. A further prayer has also been made for the discharge of the applicant under the aforesaid sections.
4. It is submitted by the learned counsel for the applicant that a false case was registered against the applicant and other co-accused on 21.07.2024 in respect of alleged incident dated 18.07.2024, as Case Crime No.0192 of 2024, under Sections 137(2), 123, 70(2) B.N.S. and Section 5g/6 of POCSO Act at Police Station Koraon, District Prayagraj. The delay in lodging the FIR has not been properly explained by the prosecution. The victim has not

levelled any allegation against the applicant in respect of alleged offence of rape. When she was produced before the medical officer, she did not state that she was subjected to rape by the applicant. No evidence in respect of age of the victim was collected by the Investigating Officer during the course of investigation. Therefore, the prosecution against the applicant under the POCSO Act is illegal. It is further submitted that there is no evidence against the applicant on the basis of which a charge could be framed against him. Accordingly, the applicant filed a discharge application before the learned trial court, which was wrongly rejected vide order dated 28.05.2025 and consequently, charge was framed upon the applicant on 25.06.2025. It is further submitted that the applicant under the facts and circumstances of the present case is liable to be discharged by this Court and the order of framing charge dated 25.06.2025 be quashed.

5. It is mentioned by the applicant in the affidavit filed in support of the present application that the victim is aged above 18 years and as such, no case under POCSO Act is made out against the applicant. The informant of the present case did not file the birth certificate or school certificate of the victim and the learned trial court wrongly overlooked this illegality and considered the medical report of the victim and on the basis of medical report, it was opined by the learned trial court in paragraph-9 of the impugned order that the victim was 14 years of age at the time of alleged incident. However, as per the medical report/ Chief Medical Report dated 27.07.2024, the victim was aged about 17 years.

6. Learned A.G.A. opposed the prayer made by the learned counsel for the applicant and filed counter affidavit, submitting therein, that the victim, in her statements recorded under Sections 180 and 183 B.N.S.S., has supported the prosecution case. The victim was a minor girl at the time of incident and, as per the statement of the victim, involvement of the applicant was found in the commission of the present offence. The Investigating Officer, after due investigation, submitted charge sheet against the applicant on 25.06.2025. It is also submitted by the learned A.G.A. that after perusal of the FIR and the statements of the victim recorded during the course of investigation, a prima facie offence is made out against the applicant and the learned trial court did not commit any illegality in framing charge against the present applicant. The Chief Medical Officer, Prayagraj, vide his report dated dated 27.07.2024

opined that the victim was aged about 17 years at the time of alleged incident, therefore, the victim was a minor girl at the time of the incident.

7. I have heard the rival submissions advanced by the learned counsel for the parties and perused the record.

8. On perusal of the statement of the victim, it is clear that a prima facie offence is made out against the applicant since the victim stated in her statement recorded under Section 180 B.N.S.S. that she was aged about 14 years and when she was going to attend her coaching on 18.07.2024, she was abducted by the accused persons. Later on, the statement of the victim was recorded under Section 183 B.N.S.S., wherein she stated that she was abducted by the accused persons and she was subjected to rape by them. The injuries were noticed on the body of the victim and in the opinion of the Chief Medical Officer, Prayagraj, the victim was aged about 17 years, a minor girl, in terms of POCSO Act.

9. In order to appreciate rival contentions (i.e. whether the evidence, led by the prosecution during course of investigation, is sufficient to proceed against the applicant or he may be discharged at this stage), the relevant provisions of Cr.P.C. or B.N.S.S. may be adverted to.

10. The procedure for trial before a court of session is provided under Chapter XVIII of the Cr.P.C. and Sections 227 and 228 which relate to discharge and framing of charges are extracted below:-

*"227. Discharge.-- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

*228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--*

*(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first*

*class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*

*(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*

*(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

11. Now, the procedure for trial before a court of sessions is provided under Chapter XIX of the BNSS and Section 250 and 251 of the BNSS are relating to discharge and framing of charge, which are reproduced hereunder:-

**"250. Discharge.**-(1) *The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under Section 232.*

*(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

**251. Framing of charge.** (1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*

*(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in*

*accordance with the procedure for the trial of warrant-cases instituted on a police report;*

*(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.*

*(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

12. The prerequisites for framing of charge were subject matter of consideration in **Soma Chakravarty vs. State through CBI**, reported in **(2007) 5 SCC 403**, and it was held that the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial, and at the stage of framing of charge the probative value of the material on record cannot be gone into and the said material has to be accepted as true.

13. The question as to when discharge of an accused would be warranted in exercise of powers under Section 227 of the Code in the light of its scope and object was considered in **P. Vijayan vs. State of Kerala and another**, reported in **(2010) 2 SCC 398**, and it was held that at the stage of Section 227, the Court has merely to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused.

14. The scope of exercise of powers under Sections 227 Cr.P.C. and 228 Cr.P.C. with regard to framing of charge/discharge again fell for consideration in **Sajjan Kumar Vs. Central Bureau of Investigation**, reported in **(2010) 9 SCC 368**, and it was held that at the stage of framing of charge under Section 228 Cr.P.C. or while considering discharge petition filed under Section 227 Cr.P.C., it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or

acceptability thereof, and it is at the trial that the Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material and veracity of various documents.

15. The relative scope and distinction between Sections 227 Cr.P.C. and 228 Cr.P.C. with regard to discharge of accused and framing of charge was discussed and explained in detail in **Amit Kapoor vs. Ramesh Chander and another**, reported in **(2012) 9 SCC 460** and it was held that at the stage of Section 228 Cr.P.C., the Court is not concerned with proof, but with a strong suspicion that the accused has committed an offence and the final test of guilt is not to be applied at the stage of framing of charge.

16. In **State of Tamil Nadu vs. N. Suresh Rajan and others**, reported in **(2014) 11 SCC 709**, while considering the scope of exercise of jurisdiction and power by Court at the stage of framing of charges or discharge of accused under Sections 227 Cr.P.C. and 228 Cr.P.C., it was restated that no mini trial is contemplated at the stage of considering the discharge application and only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused without any requirement of going deep into the matter.

17. The exercise of powers under Section 227 of the Code and the matters to be considered and the extent of inquiry permissible on part of Court was again subject matter of consideration in **Asim Shariff vs. National Investigation Agency**, reported in **(2019) 7 SCC 148**, and it was reiterated that the judge while considering the question of framing of charge under Section 227 Cr.P.C. is to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and the Court, at this stage, is not supposed to hold a mini trial by marshalling the evidence on record.

18. The relevant considerations to be made by the Court at the stage of Section 227 of the Code were discussed in **M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru**, reported in **(2020) 2 SCC 768** and it was reiterated that the Court at this stage, without making a roving inquiry into the pros and cons, is only required to consider the broad probabilities and the probative value of material on record is not to be gone into.

19. The ambit and scope of exercise of power under Sections 227 and 228 of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the trial court comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not, he will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.

20. In the case in hand, in the opinion of this Court, a prima facie offence against the applicant is made out from perusal of statements of witnesses, therefore, the trial court did not commit any illegality or irregularity in framing the charge under the penal provisions of IPC and POCSO Act. The learned trial court has rightly framed the charge against the applicant on 25.06.2025 since the material produced alongwith the charge-sheet prima facie, shows that the applicant was involved in the offence of sexual assault, on the victim who was below 18 years of age at the time of the incident.

21. Learned counsel for the applicant has not been able to point out any material error, illegality or perversity in the orders passed by the trial court so as to persuade this Court to exercise its inherent jurisdiction under Section 528 B.N.S.S.

22. The application stands **dismissed** accordingly.

23. The Registrar (Compliance) is directed to to send a copy of this order to the Trial Court by the fasted mode. The Trial Court on receiving this order will proceed further in accordance with law.

(Vivek Kumar Singh,J.)

**April 2, 2026**  
Radhika