HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 13220 of 2026

Chandra Shekhar Shahi

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ved Prakash Shukla
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.

2. Heard Mr. Ved Prakash Shukla, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. The present application under Section 528 BNSS has been filed with a prayer to quash the entire criminal proceeding as well as charge sheet dated 01.05.2024 as well as cognizance and summoning order dated 24.05.2024 passed by learned Chief Judicial Magistrate Gorakhpur as well as impugned order dated 12.03.2026 rejecting the discharge application of the applicant in Case No. 27179 of 2024 (State Vs. Kamlesh Yadav & others) arising out of Case Crime No. 112 of 2023 under Sections 419, 420, 467, 468, 471,120-B & 34 I.P.C., Police Station-Aiims, District-Gorakhpur, pending in the Court of learned Chief Judicial Magistrate Gorakhpur and to stay the entire criminal proceeding of the aforesaid Case.

4. Learned counsel for the applicant submits that no case is made out against the applicant and the criminal proceedings drawn is an abuse of process of law. It has been further submitted that the applicant has been falsely implicated in this case.

5. On the other hand, learned A.G.A. for the State submits that *prima facie* there is ample material against the applicant.

6. From the perusal of records, it transpires that after the completion of investigation the applicant was charge-sheeted on 01.05.2024 and the cognizance was taken on 24.05.2024 against the applicant. It has also been apprised that the charges have been framed on 24.03.2026 under Sections 419, 420, 467, 468, 471,120-B & 34 IPC.

7. The Hon'ble Apex Court in **Amit Kapoor vs. Ramesh Chander and Another (2012) 9 SCC 460** has enunciated the principles to be considered for proper exercise of jurisdiction particularly with regard to quashing of a charge in exercise of power under Section 528 B.N.S.S. which are enumerated as under:

"1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

These are the principles which individually and preferably cumulatively (one or more) be taken into consideration."

8. As the charges have been framed against the applicant and the Trial Court having taken a tentative view which is subject to final culmination of the proceedings, therefore, the Court while exercising its power under Section 528 BNSS would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. In other words, the truth of the matter has come out when the prosecution evidence is led, the witnesses are cross examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 Cr.P.C. and then the accused is provided an opportunity to lead evidence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgements.

9. Accordingly, in view of the aforesaid facts and circumstances, this application u/s 528 BNSS is **dismissed** with liberty to the accused-applicant to put forth all his contentions during the course of trial and the Trial Court shall conclude the trial as earliest possible for which the applicant and the prosecution shall cooperate.

(Nand Prabha Shukla,J.)

October 23, 2026
Shivani Sri.

Digitally signed by :-
SHIVANI SRIVASTAVA
High Court of Judicature at Allahabad