2026:AHC:211078

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37368 of 2026

Muskan @ Swati

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajay Pratap Singh, Ashish Kumar Maurya, Mahendra Pandey, Vinit Upadhyay, Vishal Kaushal
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Sri Vinit Upadhyay, learned counsel for applicant and learned AGA for the State.

2. The present application has been preferred for seeking quashing of chargesheet dated 27.05.2026 as well as cognizance order dated 11.06.2026 and entire proceedings of Criminal Case No.1793 of 2026 (State Vs. Ritesh Kumar and another), arising out of Case Crime No.190 of 2025, under Section 108 BNS, P.S. George Town, District Prayagraj, pending before learned Additional Chief Judicial Magistrate-10th, Prayagraj.

3. As per the prosecution, son of opposite party no.2/informant, namely, Anuj Kumar was the student of B.Sc. IInd Year at Allahabad University who was residing in George Town in a rented room. On 06.09.2025 at about 12.00 PM, his friends Shristi Jaiswal and one Yash Kushwaha give him a poisoned laddu and after eating the same, his health was deteriorated and thereafter, he was admitted in Shanti Vilas Hospital and thereafter, in Shambhu Nath Hospital where he died. After lodging of the FIR in pursuance of the said offence, a detailed investigation was carried out and during investigation, a note was found in the notepad application of the mobile phone of the deceased, which had been written by the deceased himself, wherein he stated that Muskan @ Swati and one Ritesh Kumar will be responsible if anything happens to him. It was also written in the note that both of them have treated him very badly and have blackmailed him. After conclusion of the investigation, chargesheet was submitted against applicants under Section 108 BNS whereupon cognizance of offence was taken by learned court concerned vide order dated 11.06.2026 which

impugned the present application.

4. Learned counsel for applicant has challenged the entire criminal proceedings of the said case alongwith impugned chargsheet and cognizance/summoning order on the grounds that applicant has been falsely implicated in the present case since she has not committed any offence as alleged in shape of provoking the deceased to commit suicide. Learned counsel for applicant further submitted that the foundational ingredients of an offence under Section 108 BNS comprise suicidal death and abetment thereof and to bring a case within the purview of Section 108 BNS, there must be a clear intention on the part of the accused to aid, instigate, or abet the commission of suicide, whereas there is hardly any evidence against applicant to corroborate her with the alleged offence. It has also been submitted by learned counsel for applicant that without conducting fair investigation, the concerned Investigating Officer submitted chargesheet in the present case whereupon cognizance of offence was taken vide impugned order dated 11.06.2026 by learned court concerned and as such, the same may be set aside along with entire proceedings of the present case.

5. Per contra, learned AGA vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel for applicant by way of submitting that in the notepad of the deceased, clear cut allegations have been levelled against applicant, meaning thereby, applicant was directly and indirectly involved in the acts of humiliation and harassment which led the deceased to commit suicide. Learned AGA further submitting that the contentions, which are sought to be raised on behalf of applicant, would relate to disputed questions of fact, and would involve appreciation of evidence. It is submitted that at the time of taking cognizance, only a prima facie case is to be seen and the court concerned is not expected to hold a mini trial.

6. Before entering into the merits of the case, it is necessary to see what are the considerations as far as the offence under Section 108 of the Bharatiya Nyaya Sanhita, 2023 is concerned. Section 108 BNS defines abetment of suicide, which reads thus:

> *"108. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine"*

7. Section 45 of the Bharatiya Nyaya Sanhita, 2023 defines abetment of a thing, which reads thus:

> *"45. Abetment of a thing. A person abets the doing of a thing, who-*
>
> *First.-Instigates any person to do that thing; or*
>
> *Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing."*

8. Section 108 BNS talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

9. The said Section penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 45 BNS. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

10. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done.

11. In the instant case, from the notepad of the mobile pertains to the deceased, it appears that by the acts of applicant, the deceased went into depression which might be a reason to commit suicide, but the same shall be determined after conducting trial and not at the state of taking cognizance of offence.

12. At the stage of taking cognizance of offence, the Magistrate is only required to record a prima facie opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused. In judgment rendered by Hon'ble Apex Court in case of **S.W. Palanitkar and Others v. State of Bihar and Another; (2002) 1 SCC 241,** it was held that the test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". In the case of **Nupur Talwar v. Central Bureau of Investigation and Another; (2012) 11 SCC 465**, it was reiterated that the limited purpose of consideration of material at the stage of issuing process

being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt". At the stage of taking cognizance, a court's primary focus is to determine if a prima facie case exists, meaning whether there is sufficient evidence to suggest that an offence has been committed, and not to delve into the merits of the case or the evidence.

13. From perusal of the material available on record in shape of narrations made in the FIR, chargesheet, statements recorded during investigation and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against applicant. All the submission made at the bar, relates to the disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 528 BNSS.

14. Consequently, the application is found to be devoid of any merit and is, accordingly, **dismissed**

15. However, it is made clear that learned trial court concerned shall proceed with the trial without being influenced by any of the observations made in this order, which are solely for the purpose of deciding this application. It is also made clear that this order shall not preclude the applicant to avail all the remedy which are available to her as per law.

October 7, 2026
Vivek Kr.

(Saurabh Srivastava,J.)

Digitally signed by :-
VIVEK KUMAR
High Court of Judicature at Allahabad