2026:AHC:208937

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 38562 of 2026

Rahul @ Suraj Nishad And Another

.....Applicant(s)

Versus

State Of U.P. And Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Anil Kumar Verma, Kamalesh Kumar Nishad, Ravindra Kumar Srivastava
Counsel for Opposite Party(s)	:	G.A., Vishveshwar Mani Tripathi

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicants and Mr. Vishveshwar Mani Tripathi, learned counsel for opposite party no.2 as well as learned AGA for the State.

2. The present application has been preferred challenging charge-sheet dated 10.05.2026 and cognizance/summoning order dated 15.05.2026 along with entire proceedings of Criminal Case No.84552 of 2026 (State Vs. Rahul and Others), arising out of Case Crime No.55 of 2026, under Sections 109(1), 115(2), 126(2), 351(3), 352 BNS, P.S. Khorabar, District- Gorakhpur, pending before learned court of Additional Chief Judicial Magistrate-I, Gorakhpur.

3. Learned counsel for applicants argued that applicants have been falsely implicated in the present case by opposite party no.2 only to harass them since no offence as alleged, has ever been committed by them. It has also been argued by learned counsel for applicants that injured victim has never alleged any specific role to the applicants in respect of alleged incident. It is also pointed out that civil suit has been pending between the family of applicants and family of the injured persons and this criminal proceedings has been initiated against the applicants by opposite party no.2 only to settle his personal score. Learned counsel for applicants further submitted that there is hardly any evidence against applicants to corroborate them with the alleged incident. It has also been argued by learned counsel for applicants that without conducting fair investigation, the concerned Investigating Officer submitted chargesheet against applicants whereupon without applying its judicial mind, learned court concerned took cognizance of

offence over the said chargesheet which is abuse of process of law and as such, same may be quashed.

4. Per contra, learned AGA and learned counsel for opposite party no.2 vehemently opposed the prayer as made in the application by way of submitting that the contentions, which are sought to be raised on behalf of applicants, 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. They further sought the attention of Court over the injury report of injured Pintu Nishad, which clearly shows the gravity of offence and as such the prayer sought through instant application is not liable to be exceeded by this Court.

5. After hearing the rival submissions extended by learned counsels for the parties and perusing the records, this Court is of the opinion that at the stage of taking cognizance/summoning, 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 offense has been committed, and not to delve into the merits of the case or the evidence.

6. The aforementioned legal position has also been considered in a recent decision of this Court in the judgment dated 6.5.2024 passed in **Matters under Article 227 no. 3254 of 2024 (Kailash and another vs. State of U.P. and another)**.

7. From perusal of the material available on record in shape of narrations made in the FIR, chargesheet, statement recorded during investigation, injury report and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against applicants. 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.

8. On the aforesaid reasons, the present application is devoid of merit and, hence, the same is **dismissed**.

9. However, it is made clear that this order shall not preclude the applicants from availing all the other legal remedies which are available to them as per law.

October 6, 2026
Saif

(Saurabh Srivastava,J.)

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad