2026:AHC:208891

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 41355 of 2026

Anil Chaudhary

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Manish Kumar, Shivendra Raj Singhal, Vinay Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

2. The present application U/S 528 of BNSS has been filed by the applicant to quash the order dated 03.04.2026 passed by Additional District and Sessions Judge, Court No. 14, Aligarh in Session Trial No.1538 of 2021, arising out of case crime No. 220 of 2021, under Sections 420, 467, 468, 471, 272, 273, 120-B IPC and Section 60A Excise Act, P.S. Akrabad, District Aligarh, whereby an application under Section 311, Cr.P.C. has been rejected.

3. Learned counsel for the applicant submits that the impugned order has been passed without considering the facts and circumstances of the case and the position of law. It is further submitted that the applicant filed an application under Section 311, Cr.P.C. for summoning PW-1 Pravesh Kumar, first informant/police personnel for cross-examination as their cross-examination has been closed earlier. It is further submitted that this is a case of Excise Act and recovery of illegal liquor, in which the trial is pending against 09 co-accused persons including the present applicant. The impugned order has been passed by the trial court after observing that the application in question has been filed at the stage of statement of the accused under Section 313 of Cr.P.C. Learned counsel further argued that the co-accused Vijendra Kapoor, who had also filed application under Section 311 Cr.P.C. has been rejected vide order dated 09.03.2026, which order was challenged by the said accused by means of filing application Application

U/s 528 of B.N.N.S. No. 20528 of 2026 in which, the co-ordinate Bench of this Court had set aside the order impugned dated 09.03.2026 with the direction to the trial Court to summon the prosecution witness P.W.1 on the behest of the applicant within 15 days from the date of filing a certified copy of the order before it. Learned counsel further argued that the application of the applicant has been rejected on the same ground, therefore the applicant is also entitled for the same relief.

4. Learned A.G.A. has not denied the position of law. There is no other point for consideration except giving an opportunity to the present applicant for cross-examination of PW-1 and the FIR has been lodged by the State.

5. Learned counsel for the applicant has relied upon the judgment of Apex Court in ***Natasha Singh Vs. C.B.I. (State), (2013) 5 SCC 741.***

6. In ***Dr. Rajesh Talwar and another Vs. C.B.I. and another, (2014) 1 SCC 628***, the Supreme Court considered the issue of fair trial observing in Para 10, which is as under:-

> "10. This Court in Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors. (Writ Petition (Crl.) No.154 of 2013) decided on 30.9.2013, after referring to its earlier judgments in Triveniben Vs. State of Gujarat, AIR 1989 SC 1335; Zahira Habibullah Sheikh and Another Vs. State of Gujarat and others, AIR 2006 SC 1367; Capt. Amarinder Singh Vs. Prakash Singh Badal & Ors., (2009) 6 SCC 260; Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), AIR 2012 SC 750; and Natasha Singh Vs. CBI (State), (2013) 5 SCC 741, dealt with the issue of fair trial observing: Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to

> vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. xx xx xx xx Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights."

7. In the case of ***Natasha Singh Vs. C.B.I. (State), (2013) 5 SCC 741***, the Supreme Court dealt with the scope of discretionary power of Section 311, Cr.P.C. after referring the judgment of P. Sanjeeva Rao Vs. State of A.P., AIR 2012 SC 2242, which is as under:-

> "Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs, Amritsar, (2000) 10 SCC 430. The following passage is in this regard apposite: `In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.'

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> We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined in chief about an incident that is nearly seven years old..... we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself."

8. Revert back to the present case, the case is related to closing the opportunity of cross-examination of prosecution witnesses PW-1 Pravesh Kumar, first informant/police personnel.

9. In view of the above facts and circumstances, keeping in mind the settled position of law in ***Natasha Singh (supra)*** and ***Dr. Rajesh Talwar (supra)*** and without going into the merits of the case, the order dated 09.03.2026 is set aside. The application is disposed of with a direction to the trial court to summon the prosecution witness PW-1 Pravesh Kumar, first informant/the police personnel for cross-examination on behest of the applicant within 15 days after filing of a certified copy of this order and the applicant is directed to complete the cross-examination on the first presence of the witness.

(Dr. Gautam Chowdhary,J.)

October 5, 2026
S.Ali

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad