HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 43024 of 2026

Amir

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Shubham Kesarwani, Yogesh Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The instant application under section 528 BNSS has been preferred to quash the charge-sheet dated 22.02.2024 and cognizance/summoning order dated 08.04.2025 as well as the entire proceedings of Session Case No.890 of 2025 (State vs. Saddam and Another) arising out of Case Crime No.275 of 2023, under sections 328, 366, 370 IPC, P.S. Ganjdundwara, District-Kasganj, pending before learned court of Chief Judicial Magistrate, Kasganj.

3. Learned counsel for applicant argued that applicant has been falsely implicated in the present case by opposite party no.2 only on account of the fact that he is real brother of co-accused Saddam, since no offence as alleged has ever been committed by him. It has also been argued by learned counsel for applicant that applicant was not named in the FIR, his name came into light during investigation and there is no direct or indirect connection of the applicant in the present case. Learned counsel for applicant further submitted that there is hardly any evidence against applicant to corroborate him with the alleged incident. It has also been argued by learned counsel for applicant that without conducting fair investigation, the concerned Investigating Officer

submitted charge-sheet against applicant whereupon without applying its judicial mind, learned court concerned took cognizance of offence over the said charge-sheet which is abuse of process of law and as such, same may be quashed.

4. Per contra, learned AGA 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 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.

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 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.

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 applicant from availing all the other legal remedies which are available to him/her as per law.

October 23, 2026
Saif

(Saurabh Srivastava,J.)

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