**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 46268 of 2026**

Babloo And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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| Counsel for Applicant(s) | : | Rishikesh Kumar Maurya |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 72**

**HON'BLE DEEPAK VERMA, J.**

1. Heard Sri Rishikesh Kumar Maurya, learned counsel for the applicants and Sri P. P. Pandey, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the impugned summoning order dated 11.09.2026 passed by the Chief Judicial Magistrate, Budaun as well as the entire criminal proceedings of Complaint Case No. 26276 of 2024 (Smt. Pooja Vs. Babloo and another) Under Section 376-D, 452, 504, 506 of I.P.C., P.S. Ujhani, District-Budaun, pending before Chief Judicial Magistrate, Budaun.

3. Counsel for the applicant submits that it is alleged in the complaint that the applicant on 26.08.2022 at about 10 pm entered in the house of complainant and committed rape, thereafter, when a complaint was not registered by the police authority then she gave application U/s 156(3) Cr.P.C. and then an FIR was registered and I.O. submitted final report against which protest petition was moved by opposite party no.2, which was treated as complaint on 25.07.2025 and summons was issued. He further submits that present complaint lodged by opposite party no.2 is malicious prosecution in revenge and in counter to one FIR dated 11.09.2022 was lodged U/s 452, 354, 504, 506 I.P.C. Summoning by learned Magistrate is without application of judicial mind and on perusal of contents of complaint as well as statement recorded U/s 200 and 202 Cr.P.C., no offence under the alleged sections is made out and victim has not medically examined and there is no medical report in regard to

commission of rape. In view of that, the present proceeding against the applicants is liable to be set aside.

4. *Per contra*, learned A.G.A. opposed the submission raised by applicants' counsel.

5. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that it is well settled that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 528 BNSS cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the impugned criminal proceeding against the applicants is abuse of the process of the Court and is liable to be quashed by this Court. The power under Section 528 BNSS at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking at their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage.

6. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, Manik B. Vs. Kadapala Sreyes Reddy and another, 2023 Live Law (SC) 642, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 528 BNSS as the same do not suffer from any illegality or infirmity.

7. Considering the argument advanced by applicants' counsel, it is alleged in the complaint that on 26.08.2022 applicants entered in the house of

complainant and committed rape. The complainant immediately called 112 and police came but no report was registered, thereafter, on 29.08.2022 complainant herself appeared before SSP and gave application but no action was taken by SSP, then opposite party no.2 filed present application U/s 156(3) Cr.P.C. The statement recorded U/s 223 BNSS/200 Cr.P.C. of the victim, *prima facie*, discloses offence against the applicants. Victim has stated that applicants forcefully committed rape after hearing the noise Rakesh and Naurang came to the spot. Submission of applicants' counsel that present case lodged in counter to one FIR bearing Case Crime No.0621 of 2022 was registered, the present application has moved in counter, cannot be accepted as application moved by complainant for registration of the offence on 07.09.2022 whereas application on behalf of the applicant was moved on 25.09.2022. Moreover, on perusal of complaint and statement U/s 223 and 225 Cr.P.C., offence is made out against the applicants. No interference is warranted.

8. The present 528 BNSS application of applicants is hereby **dismissed** with the aforesaid observation.

**(Deepak Verma,J.)**

**October 23, 2026**
Nitin Verma

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