HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 47151 of 2026

Gaurav Kumar Rathour

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Saurabh Tripathi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 75

HON'BLE SANJAY KUMAR PACHORI, J.

1. Shri Saurabh Tripathi, learned counsel for the applicant and Shri A.K. Rai, learned A.G.A. for the State are present.

2. The present application under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 has been filed by the applicant to quash the order dated 7.8.2026 passed by Additional Sessions Judge/F.T.C. No. 23, Shahjahanpur in Session Trial No. 1301 of 2021, arising out of case crime No. 60 of 2021, under Sections 147, 148, 149, 302, 201, I.P.C., Police Station- Roza, District Shahjahanpur, whereby an application under Section 311, Cr.P.C. of applicant/accused has been rejected.

3. Learned counsel for the applicant submits that the impugned order has been passed without considering the facts, circumstances and position of law. It is further submitted that application in question has been filed to grant opportunity to cross-examine PW-7, S.I. Dinesh Kumar Sharma (Investigating Officer). It is further submitted that opportunity to cross-examine PW-7 has been closed on 18.6.2025 and the application in question has been filed on 7.7.2026. The trial court dismissed the application in question after observing that application in question has been filed after about one year of closing of opportunity.

4. Learned A.G.A. has not denied the factual matrix of case.

5. There is no other point for consideration except to grant opportunity to cross-examine PW-7, S.I. Dinesh Kumar Sharma

(formal witness/Investigating Officer). Due to this reason, the opportunity to hear opposite party No. 2 is dispensed with.

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:*
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> *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.

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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. 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 application is **allowed**. The order dated 7.8.2026 is quashed. The trial court is directed to issue summon to PW-7, S.I. Dinesh Kumar Sharma (Investigating Officer) for cross-examination and the applicant is directed to complete cross-examination of PW-7, S.I. Dinesh Kumar Sharma (Investigating Officer) on his first date of appearance in the trial court without any adjournment.

October 27, 2026
T. Sinha

(Sanjay Kumar Pachori,J.)

Digitally signed by :-
TRIPTI SINHA
High Court of Judicature at Allahabad