2026:AHC:209714

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 48210 of 2025

Shiv Ji Yadav

.....Applicant(s)

Versus

State Of U.P. And 5 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kameshwar Singh, Sudhanshu Kumar Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 75

HON'BLE SANJAY KUMAR PACHORI, J.

Sri Kameshwar Singh, learned counsel for the applicant and Sri Tej Bhan Singh, learned A.G.A. for the State are present. Despite service of notice upon opposite party Nos. 2 to 6, none appears on their behalf.

The present application under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 has been filed to quash the order dated 29.8.2025 passed in Special Case No. 77 of 2016, arising out of case crime No. 652 of 2016, whereby an application under Section 319, Cr.P.C. has been dismissed by Special Judge (POCSO Act), Court No. 8, Ballia.

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 the statements of PW-1 and PW-2 including the victim have been recorded before the Special Judge (POCSO Act), Court No. 8, Ballia and an application under Section 319, Cr.P.C. has been filed by the first informant to summon other named accused persons in the F.I.R. for trial, which has been rejected on the ground that the court has not jurisdiction to summon the person for trial.

Learned A.G.A. has not denied the factual position of the case at this stage.

Brief facts of the case are that the F.I.R. dated 7.4.2016 with regard to incident dated 24.3.2016 under Sections 376-D, 120-B, I.P.C. and Section 3/4 of POCSO Act was registered on 7.4.2016 against 7 named persons. After completing the investigation, charge sheet has been submitted against Dadan Yadav, Anil Yadav and Bhagwan Yadav. The victim was 14 years old at the time of the incident.

Learned trial court cited the case laws of the Apex Court in **Hardeep Singh Vs. State of Punjab and others, (2014) 2 SCC (Cri) 86 (Constitution Bench), Vijendra Singh and others Vs. State of Punjab, AIR 2017 SC 2839, Labhuji Amratji Thakor and others Vs. of Gujarat, 2018 Lawsuit (SC) 1163** and **S. Mohammad Ispahani Vs. Yogendra Chandak and others, (2017) 16 SCC 226** and dismissed the application under Section 319, Cr.P.C. after observing that the court has no jurisdiction to call persons as in the application it has not been mentioned that the proposed accused persons are adult or not.

There is no other point for consideration except to allow the application under Section 319, Cr.P.C. Due to this reason, the opportunity to hear Private-Opposite Party Nos. 2 to 6 is dispensed with.

In view of the above facts and circumstances, impugned order is not sustainable. Hence, the application is **allowed**. The order dated 29.8.2025 is quashed.

The trial court is directed to decide the application afresh in accordance with law.

October 7, 2026
T. Sinha

(Sanjay Kumar Pachori,J.)

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