



2026:AHC:17923

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 36420 of 2025

Vijendra Kumar

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Divyanshu Pathak, Hemant Shukla
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Learned A.G.A. has filed the counter affidavit. Sri Shive Datta Yadav, learned counsel for the opposite party no.4 appears and files vakalatnama as well as the counter affidavit. The same are taken on record.

2. Sri Divyanshu Pathak, learned counsel for the accused-applicant appears and submits that he does not want to file rejoinder affidavit in reply to the counter affidavit filed by the State as well as the opposite party no.4. He submits that sole ground of moving the present application under Section 528 B.N.S.S. is the framing of charge by the trial court without the mandatory compliance of Section 230 B.N.S.S., which mandates that the copy of police report and other documents shall be provided to the accused-applicant and further submits that the order of taking cognizance dated 06.01.2025 passed by the Special Judge POCSO Act, Etawah in Special Case No.22 of 2025 (State of U.P. Vs. Vijendra Kumar), arising out of Case Crime No.111 of 2024, under Sections 137(2), 87, 352, 65(1) B.N.S. and Sections 3/4(2) of POCSO Act as well as Sections 3(1)Dha, 3(2)5 of S.C./S.T. Act, Police Station Usarahar District Etawah, has not made any mention in the order that the copies be provided to the accused-applicant. He further submits that Sections 261 and 262 of B.N.S.S. provides for an opportunity of accused to move the discharge application and provides a limitation for the same, whereas, the trial court without providing the documents and the copy of police report

to the accused-applicant has fixed the date for framing of charge and therefore, has not complied the mandatory provisions of the Act. Hence, seeks interference of this Court.

3. Sri Shive Datte Yadav, learned counsel for the opposite party no.4 and learned A.G.A. for the State have stated that the trial court has provided the copies of police papers and documents, which has been received by the accused-applicant on the margin of the order shown at page no.95 of the application. Both of them have stated that the order dated 06.01.2025 shows that the court has taken cognizance in the presence of the accused on 06.01.2025 and sufficient time was provided to the accused to move the discharge application, but has not been moved by the accused, which led to the framing of charge on 04.04.2025. Further submits that the applicant has belatedly moved the present application and therefore, the application is devoid of merits and liable to be dismissed.

4. This Court has taken into consideration the rival submissions made by the parties and perused the record.

5. Section 230 B.N.S.S. provides that the court concerned shall provide the copies of documents and police papers relied on by the prosecution not beyond 14 days from the date of production or appearance of the accused. The provision of Section 230 B.N.S.S. is reiterated underneath:-

"Section 230. Supply to accused of copy of police report and other documents. *In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:—*

(i) the police report;

(ii) the first information report recorded under section 173;

(iii) the statements recorded under sub-section (3) of section 180 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of section 193;

(iv) the confessions and statements, if any, recorded under section 183;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of section 193;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court;

Provided also that supply of documents in electronic form shall be considered as duly furnished."

6. The charge sheet dated 13.12.2024 is submitted before the Special court of POCSO Act, on which, the trial court has taken cognizance by order dated 06.01.2025. The order taking cognizance is reiterated underneath:-

"आज विवेचक अपराध संख्या- 111/2024, थाना- उसराहार, इटावा की ओर से विवेचना के उपरान्त अभियुक्त विजेन्द्र कुमार के विरुद्ध धारा- 137(2), 87, 352, 65(1) B.N.S. & 3/4(2) Pocso Act & 3(1)ध, 3(2)5 SC/ST ACT के अपराध में आरोप पत्र प्रस्तुत किया गया है।

अभियुक्त विजेन्द्र कुमार जिला कारागार से उपस्थित आया। सुना एवं अभियुक्त के विरुद्ध प्रेषित आरोप पत्र एवं संलग्न केस डायरी का अवलोकन किया। वादी मुकदमा पीड़िता एवं अन्य गवाहों के धारा 180 बी. एन. एस. एस में दिये बयानों का अवलोकन किया।

अभियुक्त विजेन्द्र कुमार के विरुद्ध धारा 137(2), 87, 352, 65(1) B.N.S. & 3/4(2) Pocso Act & 3(1)ध, 3(2)5 SC/ST ACT के अपराध का संज्ञान लिये जाने के लिए पर्याप्त आधार है। अपराध का प्रसंज्ञान लिया जाता है।

विशेष वाद पंजीकृत हो

पत्रावली वास्ते आरोप दिनांक- 20.01.2025 को प्रस्तुत हो।

अभियुक्त विजेन्द्र कुमार जिला कारागार से आहूत हो।"

7. The above order reveals that on the date of taking cognizance, the

accused, who was in jail, was before the court. The endorsement on the margin of the order reveals that the warrant of the accused was changed on that date and it also carries the signatures of the accused. The order does not show the compliance of mandatory requirement of Section 230 B.N.S.S. as there is no compliance directed in the order, it cannot be inferred by the signatures of the accused at the margin that the copies of the documents and police papers would have been provided to the accused-applicant. The compliance of Section 230 B.N.S.S., 2023 is not a mere formality but an epitome of fair trial.

8. It is the argument of learned counsel of the accused-applicant that the trial court by order dated 06.01.2025 has fixed the date for framing of charge, whereas, Sections 261 and 262 B.N.S.S. specifically provide for moving an application for discharge. This argument of learned counsel is not convincing because a right is provided to the accused-applicant for moving an application for discharge, for which the time period is provided. The Court cannot anticipate whether the accused-applicant may move the application for discharge or not. As such, the fixing of a date for framing of charge is a just and proper order.

9. This Court found that the non-compliance of Section 230 B.N.S.S. has made further proceedings of the case and framing of the charge in contravention to the legal provision and violation of the cardinal principle of free and fair trial, which has an implication that the charge framed by the trial court on 04.04.2025 is liable to be quashed, to give way to the accused for moving of discharge application.

10. Thus, the applicant shall be provided with the copies of police papers and the documents in accordance with Section 230 B.N.S.S. within a week. The accused thereafter, shall be at liberty to move the discharge application in pursuance to the provision of Sections 261 and 262 B.N.S.S.

11. The application under Section 528 B.N.S.S. is accordingly ***allowed***.

(Avnish Saxena,J.)

January 27, 2026

Shivangi