2026:AHC-LKO:76773

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPLICATION U/S 528 BNSS No. - 1110 of 2026

Reserved
AFR

Pankaj Chauhan

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And 4 Others

.....Opposite Party(s)

Counsel for Applicant(s) : Harendra Singh, Satish Kumar Sharma
Counsel for Opposite Party(s) : G.A., Rajesh Kumar Gupta

Court No. - 15

HON'BLE SHREE PRAKASH SINGH, J.

1. Heard Dr. Amrendra Nath Tripathi, learned Senior Counsel, Amicus, assisted by Mr. Sanjeev Kumar Mishra, Mr. Harendra Singh and Mr. Satish Kumar Sharma, counsels for the applicant, Mr. Aniruddha Kumar Singh, learned A.G.A.-I assisted by Mr. Rajnish Kumar Verma, Mr. Sushil Kumar Pandey, Ms. Nusrat Jahan, Mr. Bhaskar Mall, Mr. Bishwa Nath Nishad and Mr. Nirmal Kumar Pandey, learned A.G.A.s. for the State.

2. By preferring the present application, the applicant has assailed the summoning order dated 28th February, 2026 passed by the Additional District and Sessions Judge/Special Judge POCSO, Maharajganj, in Sessions Trial No. 0109/2026 (State of U.P. vs. Pankaj) and the charge sheet dated 07th February, 2026 has also been challenged. Further prayer is made for quashing of the criminal proceeding of the abovenoted S.T. case.

3. As per the prosecution story, the mother of the victim lodged an FIR alleging therein that the applicant Pankaj Chauhan was in love with the daughter of complainant, namely Sonakshi Chauhan, having 17 years of age, under the state of threat and coercion, he made physical relations with her and as soon as it was informed to her on 8th February, 2025, the complainant told the aforesaid facts to the parents of the applicant and called upon them

for solving the said issue, but they didn't turn up, thus, the information was given to the police station with a request of lodging the First Information Report against the accused person.

4. It is argued by counsel for the applicant that in the statement of the victim recorded under Section 180 and 183 of BNSS, is evident that the alleged victim was acquainted with the applicant for last six months from the date of incident and both were in love and because of the denial on the part of the applicant for solemnizing the marriage, under the state of grievance, the FIR is lodged. He added that the alleged victim was major at the time of the said incident and the false story has been coined. He submitted that the Investigating Officer in a cursory manner has conducted the investigation and ignored the fact of the alleged victim being major as well as the contradiction in the statement under Sections 180 and 183 of the BNSS.

5. He contends that the alleged victim has been shown as minor only with view to give the severity to the charges leveled in the First Information Report and to put the matter under the offence of POCSO Act.

6. After the aforesaid arguments, counsel for the applicant submits that the interest of justice would subserve if this Hon'ble Court may please to give the liberty to the applicant to move discharge application before the trial court through his counsel, and the trial court may be directed to consider and decide the same within the time stipulated by this court.

7. Per contra, counsel appearing for the State has opposed the contentions above noted and submitted that the nature of the allegation is serious. He submits that the Investigating Officer, after collecting the documentary evidence, found that the victim is minor and filed the charge sheet under Section 77, 64(1) of BNS and under Section 3/4 of POCSO Act. Lastly, he submitted that the applicant has not been enlarged on bail and therefore he cannot be given liberty to move discharge application.

8. Learned Amicus Dr. Amrendra Nath Tripathi, appearing has submitted that there is no bar for moving the discharge application prior obtaining the bail. He submits that the provision of exemption at two stages are provided; first, that Section 205 of Cr.P.C. (section 228 of BNSS), which is the stage prior issuance of the summons, and second, the provision of Section 317 of Cr.P.C. provides the provision of exemption from personal appearance in trial before the Magistrate as well as the Court of Sessions, therefore, bail is

not a need for moving the discharge application before the trial.

9. Having heard learned counsel for the parties and after perusal of record, it transpires that the counsel for the applicant, after arguing on merits, has sought relief that the liberty may be given to the applicant to move discharge application through counsel, though fact remains that the applicant has not been enlarged on bail yet. The objection is taken by the counsel for the State that the discharge application is not maintainable unless the accused is enlarged on bail. In the light and view of the aforesaid, two questions cropped up for consideration:

(i) Whether the discharge application filed on behalf of accused is maintainable without obtaining bail?

(ii) Whether the application for exemption from attendance of an accused is maintainable without obtaining bail?

10. It is discernible that the word "discharge" has not been defined either in the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code") or under Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS"). The inference can be drawn from the various pronouncement of the Apex Court as well as of this Court regarding the word "discharge", which can be termed as pre-trial mechanism where a court terminates proceeding against an accused if it finds that such charges are "groundless" or lacking in prima facie evidence. Thus, it is an important safeguard of an accused from undergoing an unwarranted trial.

11. It is noteworthy that the provisions for discharge in Cr.P.C. are mainly found under Section 239 in the matter of warrant cases (Magistrate trial) and under Section 227 of Cr.P.C. in the matter of Sessions trial. The provisions of Section 239 and 227 of Cr.P.C. are read as under:-

"Section 239- When accused shall be discharged.

If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 227- Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. A bare perusal of the above-noted provisions are apparent that under Section 239 of Cr.P.C., an accused can be discharged if the Magistrate is of considered opinion that charges against such accused are groundless, and while doing so, such Magistrate shall record his satisfaction. Provision of Section 227 of Cr.P.C. provides the power of discharge, which in fact can be invoked on the ground that there is no sufficient ground for proceeding against the accused while recording its reason and ultimately, the provision of Section 245 of Cr.P.C. empowers the Magistrate for invoking the provision of discharge in complaint cases. In Indian criminal law, there is no statutory provision for discharge in summons cases, whereas, Section 251 of Cr.P.C. says as follows:-

"251. Substance of accusation to be stated.

- When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

13. Having gone through the above-noted provision of discharge provided under the Code, it reveals that there is no overt provision regarding the stage of moving the discharge application before the trial court and further, there is no provision for personal exemption before the trial court while moving such discharge application. However, there are certain provisions for exemption from personal appearance as enshrined under Section 205 of CrPC / Section 228 of BNSS and Section 317 of CrPC / Section 355 of BNSS, which are given as follows for ready reference:-

"Section 228. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his advocate.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

355. Provision for inquiries and trial being held in absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.Explanation.-For the purpose of this section, personal attendance of the accused includes attendance through audio-video electronic means."

14. Bare perusal of the above-noted provisions, it is abundantly clear that the provisions do not disclose that whether those are available prior an accused is enlarged on bail, but the conjoint reading of the provision of Section 205/317 of CrPC with the provisions of discharge given in the Code, it transpires that there are two stages of exemption of personal appearance.

15. The first stage is the provision of Section 205 of CrPC, which says that the Magistrate while issuing summons, may dispense with the personal attendance of the accused and permit him to appear through his pleader while recording the reasons for so doing.

16. Further, the provision of Section 317 of Code provides that if the **Judge** or **Magistrate** is satisfied for reasons to be recorded, in any inquiry or trial under the Code, the personal attendance of the accused may be dispensed with and it can be opened that accused be represented by a pleader.

17. The above-noted provision has a vast application as the same applies to the warrant and session cases both and and the stage is also elaborated, that is the stage of inquiry or trial as prescribed under the Code.

18. Apart from the aforesaid provisions, this Court has been conferred with the inherent powers under Section 482 of Cr.P.C. / Section 528 BNSS with non-obstante clause, which reads as under:-

"528. Saving of inherent powers of High Court.

Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

19. It is abundantly clear from the above-noted provision that while invoking inherent powers in order to "prevent abuse of process" and in order "to secure ends of justice", this Court can invoke its inherent power to either exempt the personal appearance of the accused at the time of the decision of discharge application in exceptional cases while recording the reasons. In fact, there can be no restriction on the inherent power of this Court if there is exigency to secure the ends of justice. Further, invoking the inherent power, this Court can direct the trial court to consider the exemption from personal appearance on an application moved under Section 317 of Cr.P.C. / Section 355 BNSS.

20. It is held that the power be used sparingly for granting exemption. If the exemption is deemed then this can be used.

21. It is of worth consideration that there is no bar of any kind on moving a discharge application and on consideration on the same by the trial court without obtaining the bail, whereas, when this Court read collectively the provision of Section 317 and 205 along with Section 239, 227 and 245 of Cr.P.C., it transpires that there is a route provided from exemption of personal appearance in a cases where the reason requires to do so.

22. I am also aware of the law rendered by the Apex Court in case of **Sharif Ahmed and Another v. State of Uttar Pradesh and Another,** reported in **(2024) 14 Supreme Court Cases 122**, wherein paragraph 79 it has been held as under:-

"Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct. as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi v. Rani Jethmalani 40 held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption.41 Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is

silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law."

23. The Hon'ble Supreme Court has observed that it is not a correct position that provision of granting the exemption for personal appearance prior to obtaining bail is missing. The Hon'ble Supreme Court in case of **Maneka Sanjay Gandhi v. Rani Jethmalani,** reported in **(1979) 4 SCC 167**, has categorically held that power to grant exemption from personal appearance should be exercised liberally when it requires under the facts and circumstances of the case.

24. Now, I am of the considered opinion that Section 317 and 205 of the Code is very much there and, therefore, the same should not be read in a prohibitory or restrictive manner that the same cannot be invoked prior to grant of bail.

25. In view of the above noted submissions and discussions, the question framed as above, are answered positively, as follows:-

(i) The discharge application can be preferred, by an accused, without applying/obtaining bail.

(ii) Generally, the exemption from attendance of an accused is not permitted except apart the provision prescribed under Section 205 of Cr.P.C.(228 BNS), which can be exercised by the Magistrate prior summoning the accused. Further the power u/s 317 Cr.P.C. (355 BNS) can be exercised by the learned Magistrate or court of Session. It is held that an accused can institute an application u/s 317 of Cr.P.C.(section 355 of BNS) for his exemption, from personal attendance before the trial court along with the discharge application, with cogent and substantial grounds.

26. Undoubtedly, the High Court invoking the inherent power, can exempt the personal attendance of an accused, in any proceeding, with cogent reasons.

27. So long as the case in hand is concerned, the applicant has sought liberty to move discharge application through counsel. The reason for exemption of appearance has not been elaborated in the affidavit filed in support of the application, therefore, the liberty is given to the applicant to move discharge

application along with the application under Section 317 of Cr.P.C. seeking exemption from personal appearance, before the trial court, if he so desires, within period of fifteen days from the date of pronouncement of this order, in-turn, the trial court is directed to consider and decide the same, in accordance with law, expeditiously.

28. With the aforesaid observations, the instant application is hereby **decided.**

October 26, 2026
Mayank

(Shree Prakash Singh,J.)

Digitally signed by :-
MAYANK PRATAP SINGH
High Court of Judicature at Allahabad,
Lucknow Bench