

# Yaseen Alias Yaseen Muhammad vs State Of U.P. And 3 Others on 30 April, 2025

**Author: Saurabh Srivastava**

**Bench: Saurabh Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68259

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 14780 of 2025

Applicant :- Yaseen Alias Yaseen Muhammad

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Virpratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard learned counsel for applicant and learned AGA for the State.
2. This application under Section 528 BNSS has been filed by applicant challenging order dated 01.04.2025 passed by learned Special Judge (POCSO Act), Hamirpur in Special Case No.186 of 2017 (State Vs. Yaseen Muhammad), arising out of Case Crime No.64 of 2017, under Sections 363, 366 IPC and 8 POCSO Act, lodged at Police Station Chikasi, District Hamirpur through learned court concerned allowed the application preferred at the behest of prosecution under Section 216 Cr.P.C. and amended the charge by adding Section 376 IPC and Section 4 of POCSO Act.

3. Brief facts of the present case are that an FIR bearing Case Crime No.64 of 2017 was lodged by first informant on dated 14.04.2017 against applicant under Section 363, 366 IPC and 8 POCSO Act alleging that applicant abducted his minor daughter. After registering the said FIR, the concerned Investigating Officer conducted inquiry in shape of recording statement of victim under Section 161 Cr.P.C. wherein she stated that accused/applicant did not commit any assault upon her, thereafter she has also been brought before learned court concerned for recording her statement under Section 164 Cr.P.C. on dated 19.04.2017 wherein she stated that she went with applicant with her own free will and applicant has falsely been implicated by her father in the present case. After collecting evidence and recording statement of victim, the concerned Investigating Officer submitted chargesheet on dated 16.05.2017 against applicant under Section 363, 366 IPC and 8 POCSO Act whereupon cognizance of offence was taken and trial proceeded.

4. During trial, on dated 15.04.2019, statement of victim was recorded as P.W.-2 before learned trial court concerned wherein she stated that applicant had committed rape upon her and the earlier statements under Section 161 and 164 Cr.P.C. which were recorded, given by her due to threat of applicant. In her cross-examination on dated 12.02.2025, she stated the same thing. In pursuance of the statement of victim as P.W.-2, prosecution preferred application under Section 216 Cr.P.C. before learned trial court concerned which was allowed vide order dated 01.04.2025 after considering the objection preferred at the behest of applicant which impugned the present application.

5. Learned counsel for the applicant submitted that in the statement of victim recorded under Section 161 Cr.P.C. she had made no allegation of any wrong doing by applicant; similarly in her statement under Section 164 Cr.P.C., she made no allegation regarding sexual assault on her by applicant. Learned counsel for applicant further submitted that the statement of the victim before learned court concerned during trial, is tutored one, and cannot be believed but learned trial court has erred in ignoring glaring contradictions in her statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. Learned counsel for applicant further submitted that the impugned order passed by learned trial court suffers from illegality as it was required to consider whether there is cogent and credible evidence available for altering the charge under Section 216 Cr.P.C. inasmuch as the statement of the victim is a bundle of lies, and cannot be said to be cogent and credible and as such, the impugned order is liable to be set-aside.

6. Per contra, learned AGA vehemently opposed the prayer sought through the instant applicant and rebutted the stands taken up by learned counsel for applicant by way of submitting that as per Section 216, learned court concerned can alter or add any charge at any time before judgment is pronounced and as such, order impugned is just and proper.

7. After having the rival contentions raised by learned counsel for parties and perusal of the records as well as order impugned, it would be imperative to quote Section 216 Cr.P.C. which is as follows:-

"216. Court may alter charge.

1. Any Court may alter or add to any charge at any time before judgment is pronounced.

2. Every such alteration or addition shall be read and explained to the accused.

3. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

4. If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

5. If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

8. Section 216 Cr.P.C. gives ample powers to the Court to alter or amend the charge at any time before judgment is pronounced. The question, which needs for consideration in the present case, is whether there is evidence to support the charge under Section 376 IPC and 4 POCSO Act. If the evidence of the victim is read, she has made specific allegation of rape against applicant who threatened her also that if she would make statement before police or court regarding rape, she and her family would face dire consequences and there is no doubt that she was minor at the time of incident. Thus, there is prima facie evidence available to support the charge, which is the requirement under Section 216 Cr.P.C. for addition/alteration of the charge.

9. In view of the aforesaid discussions, the impugned order dated 01.04.2025 does not suffer from any illegality or perversity, which requires interference by this Court in exercise of jurisdiction vested under Section 528 BNSS.

10. Accordingly, the instant application stands dismissed.

11. However, it is made clear that this order shall not preclude the applicant from availing the remedies which are available to him as per law.

Order Date :- 30.4.2025 Vivek Kr.