

Gopal @ Gopal Rathore vs State Of U.P. And 3 Others on 1 April, 2025

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44961

Court No. - 72

Case :- APPLICATION U/S 528 BNSS No. - 10436 of 2025

Applicant :- Gopal @ Gopal Rathore

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

Counsel for Applicant :- Mohit Kumar Singh, Sujata Choudhary

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori, J.

1. The present application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, has been filed to quash the order dated 23.12.2024 passed by Special Judge (Gangster Act)/ Additional Sessions Judge, Court No. 7, Agra in Session Trial No. 625 of 2021 arising out of Case Crime No. 22 of 2019, under Sections 326(B), 452, 504, 506 of I.P.C., Police Station- Madan Mohan Gate, District Agra, whereby application under Section 311 of Cr.P.C. has been dismissed.

2. Learned counsel for the applicant submits that the application under Section 311 of Cr.P.C. has been filed on 06.12.2024 to recall the PW-2 Alpana and PW-3 S.I. Charan Singh for cross-examination which has been closed in absence of the counsel for the present applicant. The

trial court has observed that the application has been filed after about 1 year and 4 months of the recording of the witness of the PW-2 for delay in the conclusion of the trial. If opportunity to cross-examination of the witnesses PW-2 and PW-3 has not been provided, the applicant will suffer irreparable loss and injury.

3. Learned A.G.A. has not disputed the factual position of law.

4. Learned counsel for the applicant given undertaking that witnesses PW-2 and PW-3 would be cross examined on two successive dates fixed by the trial Court in this regard.

5. Heard Ms. Sujata Choudhary, learned counsel for the applicant and Sri B.N. Upadhyay, learned A.G.A. for the State.

6. Before considering the rival submissions of the parties, it is apposite to consider the settled position of law.

7. 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:

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.

xx xx xx xx 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."

8. 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.' xxx xxx xxx xxx 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."

9. It is admitted fact that the PW-2 and PW-3 has not been cross-examined by the present applicant and the opportunity has been closed, after observing that none was present for applicant.

10. In view of the facts and circumstances of the case and keeping in mind the settled position of law in Dr. Rajesh Talwar (supra) and Natasha Singh (supra), the present application is liable to be allowed and the order dated 23.12.2024 is liable to be quashed. Hence, the present application u/s 528 of BNSS is accordingly, allowed and the order dated 23.12.2024 is set-aside. The trial court is directed to issue summon to PW-2 and PW-3 for cross-examination and the cross-examination of the aforesaid witnesses to be continued till the conclusion of the cross-examination on day to day basis.

Order Date :- 1.4.2025 Ishan (Sanjay Kumar Pachori,J.)