



2026:AHC:99318

HIGH COURT OF JUDICATURE AT ALLAHABAD**APPLICATION U/S 528 BNSS No. - 21342 of 2025**

Inderpal Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Abhinav Gaur, Ankit Shukla, Mohd.
Rashid SiddiquiCounsel for Opposite Party(s) : G.A.

Court No. - 80**HON'BLE VIVEK KUMAR SINGH, J.**

1. Heard learned counsel for the applicant and learned A.G.A. appearing for the State.
2. Learned counsel for the applicant is permitted to make necessary correction in the prayer clause.
3. Present application has been filed for setting aside the order dated 2.6.2025 passed by Session Judge, Rampur in Session Trial No. 415 of 2016 arising out of Case Crime No. 339 of 2016, under Sections 302, 342, 506, 34 IPC and Section 25/27 of Arms Act, Police Station Swar, District Rampur.
4. It is submitted by learned counsel for the applicant that he is facing criminal trial under Sections 302, 342, 506, 34 IPC and Section 25/27 of Arms Act, wherein maximum punishment upto death penalty is provided. Admittedly, in the present case, the applicant was not acquitted under Section 232 Cr.P.C. and thus he moved an application under Section 233 Cr.P.C. / 256 B.N.S.S. on 21.4.2025 to adduce defence evidence but the same was wrongly rejected by the learned trial court vide order dated 2.6.2025. Therefore, present application under Section 528 B.N.S.S. has been filed by the applicant.
5. It is further submitted that the alleged incident is stated to have been taken place on 26.7.2016 at 2330 hours and the first information report

was lodged on 27.7.2016 at 0230 hours. The applicant was nominated in the first information report and certain allegations were levelled against him. The case of the applicant was that at the time of alleged incident he was not in India and he boarded a flight on 26.7.2016 and reached Bangkok on the same day. The applicant has filed the copy of the passport, wherein the entry of arrival at Bangkok on 26.7.2016 is mentioned and he returned to India on 30.7.2016. The applicant filed several details and receipts between 26.7.2016 to 30.7.2016 regarding shopping made by him in Thailand.

6. It is further submitted that the applicant, on his return to India, was arrested by the Investigating Officer without considering the above aspect. Thereafter, he moved bail application and he was released on bail. The prosecution examined nine witnesses between 22.2.2018 to 10.12.2024. Thereafter, the statement of the applicant was recorded under Section 313 Cr.P.C. After recording statement of the applicant, in order to adduce his evidence and to prove his alibi he preferred an application dated 21.4.2025 along with documents thereby requesting the learned trial court to summon the concerned officer from the Passport Office Dehradun and concerned Officer from the Bureau of Immigration, Ministry of Home Affairs, East Block VIII, Level-5, Sector-1, Ram Krishna Puram, New Delhi. The applicant pleaded before the learned trial court that the above witnesses be summoned as defence witnesses to prove the validity of the entries made in the passport of the applicant and to prove the stamp of the Immigration Department establishing the departure of the applicant from India to Thailand. The aforesaid application was wrongly and illegally rejected by the learned trial court vide order dated 2.6.2025.

7. It is further submitted by the learned counsel for the applicant that fundamental right of fair trial would be violated if proper opportunity for adducing defence evidence is not provided by the learned trial court. The contents of the documents are necessary required to be proved before the learned trial court and as such summoning of the Passport Officer was *sine qua non*. Not only this, the factum of the applicant going abroad on the date of incident can be proved by summoning the relevant records and Officer of Bureau of Immigration, Ministry of Home Affairs, mentioned

above.

8. Per contra, learned A.G.A. opposed the prayer and submitted that the application dated 21.4.2025 was moved in order to cause delay in the trial and the trial has been pending since the year 2016. The application dated 21.4.2025 was rightly rejected by the learned trial court vide order dated 2.6.2025. The applicant himself may prove the contents and the stamp of his passport. There is no requirement to summon the witnesses mentioned in the application dated 21.4.2025.

9. The prayer has been made by the applicant under the provisions of Section 233 Cr.P.C. and it was contended by the learned counsel for the applicants that if the summons are not issued to call those persons, mentioned in the application dated 21.4.2025, as defence witnesses, the applicant-accused shall be highly prejudiced in his defence and his valuable right as regard fair trial shall stand defeated.

10. In the present matter, the application has been moved under Section 233 Cr.P.C. and as per the provisions of Section 233 Cr.P.C., if the accused applies for the issue of process for compelling the attendance of witness, the court shall issue such process unless it considers, for reasons to be recorded, that such application should be refused on the ground that it was moved for the purpose of vexation or delay or for defeating the ends of justice, therefore, in view of specific embargo under Section 233 (3) Cr.P.C., except on the aforesaid three grounds as stated therein, the learned trial court would not reject the application for summoning defence witness. It would be appropriate to reproduce Section 233 Cr.P.C. as hereunder:-

"233. Entering upon defence. (1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for

compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

11. Section 233 Cr.P.C. finds place under Chapter XVIII titled as 'trial before a court of session'. This provision is essential part of session trial and is applicable when the prosecution evidence is complete and the accused is given an opportunity to produce the evidence in its defence. Undoubtedly, this right has been given to the defence to produce its witnesses as part of fair trial and as part of legal principle of hearing both the sides. In my opinion, here the right belongs to the accused and not to the court concerned, in the sense that the court concerned shall ordinarily issue process and can decline to summon the witness only for the reason that the request is made for the purpose of vexation or delay or for defeating the ends of justice. The difference between the powers of the court and the right of the accused is too obvious. Under section 311 Cr.P.C., the power lies in the courts only and under section 233 Cr.P.C., the right lies with the accused and the court's interference is limited. The court can only refuse to issue summons on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice only.

12. In my considered opinion, the refusal to examine defence witness can only be made when the accused applies for the issue of process for compelling the attendance of witness for the purpose of vexation or delay or for defeating the ends of justice. However, on none of the aforesaid grounds the application dated 21.4.2025 for examining the defence witness was rejected by the learned trial court vide order dated 2.6.2025.

13. Therefore, the impugned order dated 2.6.2025 rejecting the application dated 21.4.2025 is wholly unjustified and unsustainable in the eye of law and is hereby set aside.

14. The application stands allowed.

15. In view of the above, the applicant shall move a fresh application

before the learned trial court within a period of 15 days from today for issuance of process for compelling attendance of defence witness (mentioned in earlier application dated 21.4.2025) for recording their evidence, which shall be considered/decided by the learned trial court in accordance with law without granting any undue adjournment in the trial to either of the parties.

(Vivek Kumar Singh,J.)

May 1, 2026
Lalit Shukla