



HIGH COURT OF JUDICATURE AT ALLAHABAD
TRANSFER APPLICATION (CRIMINAL) No. - 50 of 2026

Shyam Sundar and another

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s) : Niraj Tiwari, Rohit Tiwari

Counsel for Opposite Party(s) : G.A.

Court No. - 53

HON'BLE SAMIT GOPAL, J.

- 1.** List revised.
- 2.** Heard Sri Niraj Tiwari, learned counsel for the applicants, Sri Bade Lal Bind, learned counsel for the State and perused the material brought on record.
- 3.** The present transfer application under Section 447 BNSS has been filed by the applicants- Shyam Sundar and Om Prakash, with the prayer to transfer the Complaint Case No. 15951 of 2024 (Hari Shankar Vs. Shyam Sundar and another), under Sections 387, 323, 504 & 506 I.P.C., Police Station Navabad, District Jhansi, pending in the court of Additional Civil Judge (S.D.), Court No.1 / Additional Chief Judicial Magistrate, Jhansi, with a further prayer that proceeding of the aforesaid case be stayed.
- 4.** The facts of the case are that the applicants are accused in a case in which a complaint was filed by the opposite party no.2 and the applicants were summoned vide order dated 06.08.2025 passed by the Additional Civil Judge (Senior Division), Court No.1 / Additional Chief Judicial Magistrate, Jhansi which was subjected to challenge before this Court in Application U/S 528 BNSS No. 40792 of 2025 (Shyam Sundar and Another Vs. State of U.P. and Another). The said petition was heard by a co-ordinate Bench of this Court and in so far as the prayer for quashing was concerned, it was declined but in the interest of justice the

court directed the applicants to move an application for discharge through counsel at the appropriate stage and the same was directed to be disposed of by the trial court concerned after giving liberty of hearing to both the parties by a reasoned and speaking order within six weeks from the date of the application, if there is no other legal impediment. As an interim measure it was directed that till disposal of the discharge application no coercive measures shall be taken against the applicants in the aforesaid case. The said order is extracted herein under:-

"Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

No one has appeared on behalf of opposite party no. 2

The present application under Section 528 BNSS has been filed with a prayer to allow this application and to quash/stay the impugned summoning order dated 06.08.2025 passed by Additional Civil Judge (Senior Division) Court No.1/Additional Chief Judicial Magistrate, Jhansi also the entire proceedings of Complaint No. 15951 of 2024 (Hari Shankar versus Shyam Sundar and another) under sections 387, 323, 504 & 506 I.P.C. Police Station Navabad, District Jhansi, pending in the Court of Additional Civil Judge, (Senior Division) Court no. 1/Additional Chief Judicial Magistrate, Jhansi.

From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court. Only in cases where the Court finds that there has been failure of justice or abuse of procedure, this power may be exercised to prevent the abuse of process to secure the ends of justice.

Accordingly, prayer for quashing is declined.

However, in the interest of justice as the matter pertains to warrant case instituted on private complainant, it is provided that in case the applicants move an application for discharge through counsel at an appropriate stage, the same shall be disposed of by the Trial Court in accordance with law after giving opportunity of hearing to both the parties by a reasoned and speaking order within six weeks from the date of the application, if there is no other legal impediment.

Till the disposal of the discharge application, no coercive measures shall be taken against the applicants in the aforesaid case.

With the aforesaid direction, this application is disposed of."

5. Learned counsel for the applicant submits that the trial court is acting in a haste and under pressure of Sri Pushpendra Richhariya the brother of opposite party no.2 who is a practicing Advocate in the District Court Jhansi and he has influenced the trial court and got N.B.W. issued against the applicants vide order dated 05.11.2025, paragraph 14 of the transfer application has been placed before the Court and it is vehemently submitted that the real brother of the complainant namely

Pushpendra Richhariya who is a practicing Advocate met the Presiding Officer in his Chamber and thus on his persuasion the court concerned vide order dated 05.11.2025 issued N.B.W. against the applicants, the said paragraph reads as under:-

"14. That against the impugned summoning order dated 6.8.2025 the applicants have filed Application (under section under section 528 BNSS 2023) No. 40792 of 2025 Shyam Sundar and another versus State of U.P. and Another where the complainant counsel appear and despite the undertaking did not appear on the fixed date and on the other hand persu the concerned court to issue coercive major against the applicants because of the reason the real brother of complainant namely Pushpendra is practicing Advocate and who meet the concerned Presiding Officer in his Chamber thus on his persuasion the concerned court vide order dated 5.11.2025 has issued Non-Bailable Warrant against the applicants. A true and xerox copy of order dated 5.11.2025 passed by Additional Chief Judicial Magistrate Jhansi in Complaint Case No. 15951 of 2024 Hari Shankar versus Shyam Sundar and another issuing Non-Bailable Warrant against the applicants fixing 11.12.2025 for execution of arrest warrant is enclosed herewith and marked as Annexure-7 to this affidavit."

The affidavit shows that the said paragraph has been sworn on the perusal of records in its swearing clause. The order dated 05.11.2025 has been annexed as Annexure-7 to the affidavit.

6. This Court has perused the same. The said order shows that N.B.W. has been issued against the accused.

7. Learned counsel for the applicants could not show and demonstrate from the said order that the said order also reads that the same has been issued as Pushpendra Richhariya met the Presiding Officer in his Chamber and thus on his persuasion N.B.W. is being issued as the said paragraph with the said pleading has been sworn on perusal of records but the records do not show such. The said order passed by the trial court is at page 57 of the paper-book.

8. This Court shall address the issue of the said order in the later part of this order.

9. It is further submitted while placing order dated 11.12.2025 that the trial court has ordered filing of discharge application by the accused by the next date which is also illegal in as much as the High Court has directed filing of discharge application at the appropriate stage but at this stage the trial court under compulsion is coercing the applicant to file a discharge application. It is submitted that thus the case be transferred.

10. Thus the present transfer application has been pressed with regard to the prayers made therein.

11. *Per contra*, learned counsel for the State opposed the arguments and prayer vehemently. It is submitted that the petition for transfer is totally without substance and an effort to delay and drag the trial. It is submitted that in so far as the stage of moving application for discharge is concerned, the same is at present since the accused-applicants have been summoned and the summoning order was within their knowledge as they had challenged the same before this Court in an application u/s 528 BNSS in which their prayer for quashing was declined but liberty was granted to move an application for discharge at the appropriate stage and directions were issued for its disposal and in the meantime interim protection was granted to them but till date the applicants have not chosen to file the application for discharge despite the fact that the stage for moving application for discharge is the current stage in the trial. It is submitted that even after the order of the High Court dated 15.11.2025 it is more than 02 months since then but application for discharge has not been filed and thus the trial court was well within its powers to issue N.B.W. against the applicants as in the order dated 11.12.2025 passed by it reference of the order of the High Court was given and the accused were directed to file discharge application but still no discharge application has been filed by them as is further apparent from the order dated 18.12.2025 of the trial court. It is submitted that the present application for transfer is wholly without substance and the contents of paragraph 14 of the affidavit are contemptuous in as much as it is based on perusal of records which states that the brother of the opposite party no.2 met the Presiding Officer in his Chamber and thus on his persuasion the court issued N.B.W. vide order dated 05.11.2025, there is nothing in the said order to show that the same was based on the persuasion of the brother of the opposite party no.2 after he met the Presiding Officer in his Chamber. Thus this is the specific objection and argument of learned State Counsel. It is submitted that the present transfer application be dismissed by imposing heavy cost on the applicants for making reckless allegations against the Presiding Officer and for making an effort to prolong and delay the trial.

12. After hearing the learned counsel for the parties and perusing the records, it is evident that the applicants are the accused in the matter who were summoned vide order dated 06.08.2025. The said order was subjected to challenge before this Court in Application U/S 528 BNSS. The prayer for quashing of the order of summoning dated 06.08.2025 and the entire proceedings was declined by a co-ordinate Bench of this Court vide order dated 15.11.2025 but it was provided that the applicants shall file discharge application at the appropriate stage which was

directed to be decided within six weeks from the date of such application and as an interim measure it was directed no coercive action shall be taken against the applicants. An order dated 05.11.2025 was passed by the trial court issuing N.B.W. against the applicants. The said order was passed prior to the disposal of Application U/S 528 BNSS by this Court. Subsequently the applicants vide order dated 11.12.2025 were directed to file discharge application and the trial court observed as such and took cognizance of the order dated 15.11.2025 of the High Court. The discharge application was not filed and thus again on 18.12.2025 they were directed to file discharge application by the next date since discharge application was not filed. The said order thus shows that the stage of the trial was at the appropriate stage of filing discharge application and at the stage of framing of charge. On 18.12.2025 an application of the said date was filed by the accused-applicants before the trial court with the prayer that the High Court has passed an order directing filing of discharge application at the appropriate stage for which time may be granted to them.

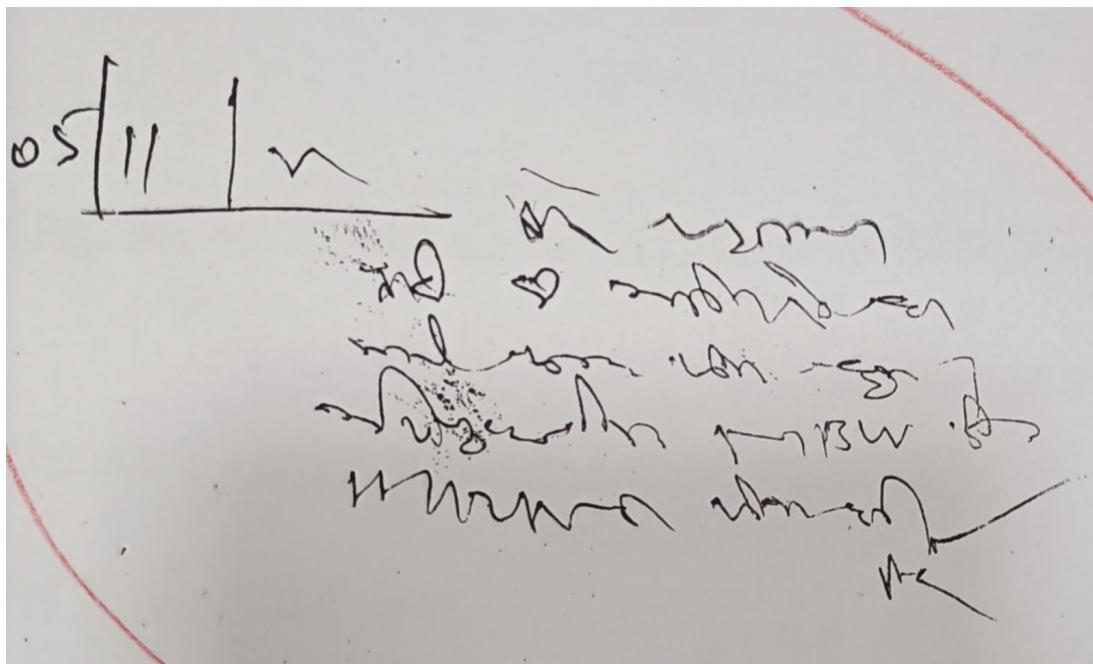
13. In so far as the stage of trial is concerned, the same is at the stage of filing an application for discharge / claiming discharge and framing of charge. The applicants have not chosen to file their discharge application till date. Now the present transfer application has been filed levelling allegations against the Presiding Officer specifically in paragraph 14 of the affidavit. The allegations in paragraph 14 which has been quoted above are without any basis and substance. The said paragraph is sworn on perusal of records by its deponent Om Prakash the applicant no.2. The records do not substantiate any such allegation. Thus the allegations are totally reckless and without any basis.

14. The present transfer application thus is dismissed by imposing exemplary cost of Rs. 1,00,000/- on the applicants which shall be deposited before the trial court concerned within 10 days to be transmitted to the District Legal Services Committee for its utilization therein. They shall then file the receipt thereof before the trial court concerned.

15. If the same is not deposited, the trial court shall issue directions to the District Magistrate concerned to recover the said amount as land revenue forthwith from them and the trial court concerned shall then transmit it to the account of District Legal Services Committee for its utilization.

16. This Court has come across an order dated 05.11.2025 which is Annexure-7 to the affidavit and is at page 57 of the paper-book, the

perusal of the said order shows that it is an order of five lines but the only word which can be read in the said order with difficulty is 'N.B.W.' along with date and the month in it. The said order in a scanned form is as under:-



Nothing can be read as to what is written in the said order except for the date, month of the said order and the word 'N.B.W.' Even the year in which it has been passed is illegible.

17. This Court repeatedly on the Judicial side and the Administrative side have been issuing directions and circulars to the trial courts to draw orders in legible manner but the trial court in this matter appears to be totally ignorant about the same and has signed the said order without even looking into it as to whether it is legible or not.
18. The District & Sessions Judge, Jhansi is directed to bring this order to the notice of the trial court and ensure that orders in files are passed which are legible and not like the said one.
19. The Registrar (Compliance) to communicate this order to the District & Sessions Judge, Jhansi and the trial court concerned within a week for compliance and necessary action.
20. A report of the District & Sessions Judge, Jhansi and the trial court shall be sent to this Court within two weeks thereafter after which this matter shall be placed in the Chamber at 4:30 PM on **25.02.2026** for further orders.

February 4, 2026

AS Rathore

(Samit Gopal,J.)