



2026:AHC:70622

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
APPLICATION U/S 528 BNSS No. - 12417 of 2025**

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite

Party(s)

---

Counsel for Applicant(s)	:	Raj Kumar Tripathi
Counsel for Opposite Party(s)	:	G.A., Suraj Kumar Singh

---

**Along with :**

**1. Criminal Revision No. 1738 of 2021:**

Versus

State of U.P. and 3 others

**2. Application U/s 482 No. 42067 of 2022:**

Versus

State of U.P. and another

---

**Court No. - 85**

**HON'BLE MANOJ BAJAJ, J.**

Petitioner-Complainant has filed the above three separate petitions, i.e. two petitions under Section 528 B.N.S.S. and 482 Cr.P.C. to challenge the orders dated 23.10.2024 and 25.8.2022 respectively, passed by Additional Sessions Judge/ FTC-2, Ghaziabad in Session Trial No. 776 of 2018, titled *State Vs. Shashi Bhushan Gupta*, arising out of Case Crime No. 188 of 2018, under Sections 376, 313, 506 I.P.C., registered at Police Station Kavi Nagar, District Ghaziabad, whereby the application moved by the accused-opposite party no.2 under Section 311 Cr.P.C. was allowed, whereas vide order dated 25.8.2022 the application by the prosecutrix for DNA test of the accused with his daughter born from the forcible physical relation has been dismissed. Criminal Revision Petition challenges the order dated 22.3.2021, whereby the application by petitioner under Section 319 Cr.P.C. seeking summoning of additional accused-relatives of the accused-opposite party no.2 has been dismissed.

Learned counsel for the petitioner-prosecutrix has argued that the prosecutrix lodged the subject F.I.R. against the accused-opposite party no.2 and his relatives, who had allegedly raped her on 27.9.2015 in her house by use of force, and after committing the crime he threatened her not to disclose it to anyone, and accused had also promised that he would perform marriage with her. Learned counsel submits that as per the allegations, the prosecutrix turned pregnant, but the accused forced abortion of her pregnancy on 29.7.2016 in the clinic of Dr. Nisha Khurana, and thereafter, he continued to forcibly set up physical relations with her on the strength of her obscene videos prepared by him. As a result, the prosecutrix again turned pregnant and again the accused-opposite party no.2 requested for abortion and also threatened to kill her, if, she refuses for abortion. Broadly, on these allegations, the F.I.R. was registered for the alleged commission of offences punishable under Sections 376, 313, 506 I.P.C.

Learned counsel for the petitioner submits that after completion of investigation, the charge sheet was filed only against the accused-opposite party no.2, whereas other accused persons-his close relatives were exonerated. Learned counsel submits that after commencement of trial, the testimony of prosecutrix was recorded in the year 2020 and during her cross-examination, the accused had confronted her with a document-a letter in the handwriting of the prosecutrix, but she categorically denied the said document to be written by her. Learned counsel submits that once the prosecutrix had denied the said document set up by the accused-opposite party no.2, the trial court could not have ordered the examination of the handwriting of the said letter by an expert vide impugned order dated 23.10.2024 by accepting the application.

Learned counsel for the petitioner has further argued that another application was moved by the prosecutrix-petitioner for conducting DNA test of the accused with the minor daughter of the prosecutrix alleged to be born as a result of forcible physical relations set up by him and the said application has been dismissed by the trial court vide impugned order dated 25.8.2022 on the ground that the investigating officer was not informed about such a test and the charge sheet filed against the accused is silent in this regard.

That apart, the application is dismissed on another ground that the trial has reached at an advanced stage. He submits that both these orders call for interference by this Court in exercise of inherent powers.

The prayer is opposed by learned counsel for the accused-opposite party no.2, who has argued that the trial court has rightly allowed the application under Section 311 Cr.P.C. moved by the accused-opposite party no.2 as the accused has set up a defence that the letter written in the handwriting of the prosecutrix-petitioner to the accused would reveal her consent in setting up physical relations. He submits that the said letter is in the handwriting of the prosecutrix, and if, the said document which would have a direct bearing on the prosecution case, is not allowed to be analyzed by expert, it would result in prejudice to the accused. He prays that the petition challenging the impugned order dated 23.10.2024 be dismissed.

Learned counsel for the accused-opposite party no.2 has argued that the trial court vide order dated 25.8.2022 has given valid reasons while refusing DNA test as the request was made by the prosecutrix at a belated stage, therefore, the said order does not call for any interference by this Court.

However, learned counsel for the petitioner-prosecutrix does not press the revision petition challenging the impugned order dated 22.3.2021 dismissing her application under Section 319 Cr.P.C. to summon the additional accused persons-opposite party nos.2 to 4.

The prayer for withdrawal of the revision petition seeking summoning of additional accused under Section 319 Cr.P.C. is not opposed by the learned counsel for the opposite party no.2.

After hearing the learned counsel for the parties and considering their submissions, this Court finds that merely because the prosecutrix had denied the handwriting in the subject letter to be in her handwriting when she was confronted during her cross-examination cannot be treated as a valid ground to deny the exercise of jurisdiction under Section 311 Cr.P.C. It is the case of the prosecutrix herself that she was allegedly raped on 27.9.2015 by use of force and subsequently also the accused

exploited her resulting in her turning pregnant on two occasions. Though, according to prosecutrix, the first pregnancy was terminated, but the second pregnancy resulted in delivery of a child, therefore, if, the accused is making an attempt to rebut the prosecution evidence to prove consent by the prosecutrix, the examination of the handwriting in the subject letter by an expert would be a crucial piece of evidence for effective and proper adjudication. Even otherwise, if, the application under Section 311 Cr.P.C. filed by the accused-opposite party no.2 is rejected, it would be amounting to depriving him of his right to fair trial. A perusal of the impugned order dated 23.10.2024 would show that the trial court has given valid reasons while accepting the application moved by the accused-opposite party no.2 under Section 311 Cr.P.C., therefore, the order dated 23.10.2024 does not call for any interference by this Court in exercise of inherent powers.

As far as the issue of conducting the DNA test of the accused-opposite party no.2 with the daughter delivered by the prosecutrix is concerned, the said report would also be a crucial piece of evidence having a direct bearing on the prosecution case, and the reasons given by the trial court that the trial has reached at an advanced stage or the investigating officer had not conducted the test, as a good ground to reject the prayer. Thus, the order dated 25.8.2022 is not sustainable.

As a result, the application filed by the petitioner-prosecutrix for comparison of DNA of the accused with the daughter of the prosecutrix is allowed and it is directed that the accused-opposite party no.2 shall give the requisite samples for the said purpose as and when directed by the trial court.

Resultantly, the Application U/S 528 BNSS No. 12417 of 2025 is dismissed; the Application U/S 482 No. 42067 of 2022 stands allowed and the Revision Petition No. 1738 of 2021 is dismissed as withdrawn.

**(Manoj Bajaj,J.)**

**April 2, 2026**  
P.S.Parihar