Neutral Citation No. - 2026:AHC:148524

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No.-44666 of 2025

Rahul Sharma & Others .....Applicants

Versus

State of U.P. & Others .....Respondents/ Opposite Parties

Counsel for Petitioners(s)	:	Vidit Narayan Mishra, J.B. Singh
Counsel for Respondent(s)	:	Gautam Srivastava, A.G.A.

Reserved on 15th July, 2026
Delivered on 21st July, 2026

A.F.R.
Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Gopal Chaturvedi, learned Senior Advocate assisted by Mr. V.N. Mishra and Mr. J.B. Singh, learned counsel for the applicants, Mr. Sagir Ahmad, learned Senior Advocate assisted by Mr. Gautam Srivastava, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The instant application under Section 528 B.N.S.S. has been preferred by the applicants with a prayer to quash the charge-sheet dated 8th October, 2024, cognizance/summoning order dated 6th November, 2024 as well as the entire proceedings of Criminal Case No. 4461 of 2024 (State Vs. Seema & Others) arising out of Case Crime No. 579 of 2023 under Sections 420, 409, 467, 468, 471 and 120-B I.P.C. Police Station-Sector-24, District-Gautam Budh Nagar pending in the Court of Additional Chief Judicial Magistrate-I, Gautam Budh Nagar.

3. The prosecution case, in brief, is that Renjith R. Nair, the Deputy

approximately Rs. **28.07 crore** belonging to **M/s Associated Electronics Research Foundation (AERF)**. It is alleged that although applicant no.1 Rahul Sharma initially complained to the Bank as well as the local police that he was being threatened by the directors of AERF and that they were involved in illegal financial transactions, an internal vigilance inquiry conducted by the Bank disclosed that he himself had manipulated the banking system and carried out unauthorised transactions.

4. The Bank alleges that applicant no.1 Rahul Sharma altered the customer details in the Core Banking System (CBS), linked AERF's Customer Identification File (CIF) with another account, unauthorisedly closed several fixed deposits, and diverted the proceeds to different bank accounts through RTGS/NEFT/UPI/IMPS transactions. The inquiry further revealed that the account opening forms and banking records contained serious irregularities and that several transactions were verified by applicant no.1 Rahul Sharma himself in abuse of his official position. It is also alleged that fictitious entries were made to create an impression that the fixed deposits were still intact by crediting interest amounts to AERF's account.

5. The investigation further disclosed that the diverted funds were routed through multiple bank accounts maintained in nearly twenty different banks. Out of the defalcated amount, substantial sums were allegedly transferred to the accounts of **Bhumika Sharma (**applicant no.2 herein) (wife of applicant no.1 Rahul Sharma) and **Seema Rani** (mother of Rahul Sharma), besides other beneficiaries. The Bank also alleged that Rahul Sharma had been suspended from service, was absconding, and had allegedly obtained a duplicate passport, giving rise to an apprehension that he intended to leave the country. On these allegations, the present F.I.R. was registered for offences relating to cheating, forgery, criminal breach of trust and criminal conspiracy.

6. After lodging of the above first information report, the investigation proceeded and since the applicants left the Indian territory, as is admitted by the applicants themselves and they are unapproachable for the Investigating Officer, after completion of statutory investigation under Chapter XII Cr.P.C.,

7. It is pertinent to mention here that when after passing of the order of summoning the applicants did not appear before the court below thereafter, for ensuring their presence, bailable and non-bailable warrants have been issued against the applicants. Despite the non-bailable warrants having been issued against the applicants, they did not appear and thereafter proceedings under Sections 82 and 83 Cr.P.C. have been initiated against the applicants and they have been declared as proclaimed absconder.

8. The contention of the learned counsel for the applicants is that in the aforesaid case concerned police after completing investigation, submitted 3 charge sheets in different dates against different accused persons but so far as the charge sheet against the applicants is concerned, they were neither charge sheeted in the aforesaid 3 charge sheets and the investigating officer of the said case after initiated proceeding under Sections 82/83 Cr.P.C. submitted charge sheet in absconding against the applicant No. 1 in under Section- 420,409,467,468,471,120 B IPC & applicant No.2 in under Section- 420, 467,468,471,120-B IPC.

9. It is further contended that since the applicants are presently not residing in Indian territory, as such, the proceedings under Sections 82 Cr.P C. and 83 Cr.P.C. have been initiated against the applicants and thereafter charge-sheet dated 08.10.2024 has been filed by the investigating officer against the applicants. In the charge-sheet dated 08-10-2024, it has been mentioned by the Investigating Officer that the KYC documents and sample signatures of the fake account numbers, have already been obtained and sent to F.S.L Niwadi, Ghaziabad and results of which have not been received and at this stage it can't be proved that the applicants have committed said offence, as alleged by the prosecution.

10. It is then contended that before lodging present first information report dated 18-12-2023 applicant no.1 himself filed a complaint against the directors of Associated Electronics Research Foundation (AERF) before higher authorities of the bank on 03-12-2023 and also moved complaint before concerned police station on 04-12-2023 for lodging the first information report against the directors of Associated Electronics Research

company Associated Electronics Research Foundation(AERF) and transferred the same in the said saving account bearing No 1013053000000165, 1013053000000267 and current account No. 1013073000000088 and thereafter huge amounts were transferred to 96 different beneficiaries after closing fixed deposits without seeking any permission from AERF.

11. It is also contended that it is surprising that a detail investigation was conducted but who was misappropriated the funds and in whose name and favor, dummy account was opened and from that account different amounts were transferred to different accounts holders have even not been charge-sheeted, though the entire alleged misappropriation of funds was transferred from the account of Mr. Gaurav Agarwal to the different beneficiaries. At the time of alleged incident, one Sri Gaurav Devgan was the Branch Manager and applicant No.1 was Assistant Manager in South Indian Bank and the applicant no.1 has no authority to open or close the fixed deposits of Associated Electronics Research Foundation (AERF) and after the transfer the Branch Manager Sri Gaurav Devgan, Ms. Annu Arora joined in the said branch as Branch Manager and in her tenure, some fixed deposits of Associated Electronics Research Foundation(AERF) were also opened and closed and transferred the amount in the account of company.

12. So far as the allegations made in the first information report are concerned, it has been contended by the learned counsel for the applicants that neither the applicant no.1 has opened any such type of Saving Bank/ Current account bearing No. 1013053000000165, 1013053000000267 and current account No. 1013073000000088 in the name of AERF & Gaurav Agrawal nor any amount has been credited in the account of applicant no. 1 form the said Saving Bank/ Current account of AERF & Gaurav Agrawal and not even a single penny has been credited in the account of applicant No. 1 form the bank itself.

13. It is next contended that after lodging complaint regarding threat faced by the applicant no.1 dated 03.12.2023 and before lodging present first

and another) and Writ-C No. 1597 of 2025 (Smt. Bhumika Sharma Vs. Union of India and another) which are pending for its disposal.

14. It is further contended by the learned counsel for the applicants that infact a joint account of saving account 1013053000000165 & 1013053000000267 and one current account No. 1013073000000088 was opened in the name of AERF & Gaurav Agrawal by the said Gaurav Agrawal, who is one of the director of aforesaid company, and with the help of branch manager of said bank, closed the FD of 28.07 Crore of the company Associated Electronics Research Foundation (AERF) and transfer the same in the aforesaid 03 accounts on different dates and the said Gaurav Agrawal and his associates has making pressure upon the applicant no. 1 to help in their illegal activities, and when the applicant no. 1 has made complaint against the directors of aforesaid company Associated Electronics Research Foundation (AERF) before the higher officer of the bank and concern police station, then the directors of aforesaid company with the collusion of bank concerned, implicated the applicants in the instant case while the applicant no.1 has never committed any such type of offence as alleged in the present first information report. The applicant no.1 is only an Assistant Manager in the aforesaid South Indian Bank and he has no authority to open/close fixed deposit accounts of AERF but on the basis of statements recorded of informant and other witnesses, the applicants have been charge sheeted in the aforesaid matter, whereas applicant no.1 has no authority either to change the password or closed the fixed deposits accounts of the aforesaid company. The applicant no.2 has no concern with fraud of the bank as alleged by the informant but she has only been implicated in the aforesaid matter due to wife of the applicant no.1

15. So far as the preliminary objection raised by the learned Senior Counsel appearing on behalf of opposite party no.2 with regard to the maintainability of present application at the behest of the applicants as they are absconder because after initiating proceedings Under Sections 82/83 Cr.P.C./ Sections 84/85 of BNSS, concerned police has submitted charge

of Impounding the passports of the applicants, they challenged same before the Hon'ble High Court, which are pending for its disposal and the applicants are not deliberately absconding in the present case.

16. Learned counsel for the applicants submits that co-accused, namely, Seema Rani (mother of applicant no.1) has been granted anticipatory bail on 25th April, 2024, whereas other co-accused persons, namely, Jairijeshan, Bibinsebastian and Vicky Kumar against whom first information report has been lodged as unknown persons, who are class-III and Class-IV employees of the Bank have also been enlarged on bail.

17. It is lastly contended that applicants are humble, innocent and law abiding persons having no criminal antecedent upon them nor they are prior convicts but they have been falsely implicated in the present case, when as a matter of fact they have not committed any offence as alleged by opposite party no.2.

18. On the above premise, learned counsel for the applicants submits that the present criminal proceedings against the applicants may be quashed.

19. On the other-hand, learned counsel for opposite party no.2 and the learned A.G.A. have opposed the submissions made by the learned counsel for the applicants.

20. The learned counsel for the opposite party no.2 submits that applicant no.1 was posted as Assistant Manager, South Indian Bank, Branch Sector -22, Noida, Gautam Budh Nagar, who had fraudulently and dishonestly withdrawn an amount of Rs. 28.07 crores from the account of customer of the Bank, namely M/s. Associated Electronics Research foundation (AERF) in collusion with other accused persons. Applicant no.2 is the wife of applicant no. 1, and several huge amounts, which the applicant no.1 had fraudulently and dishonestly withdrawn, had been transferred by him in the account of Applicant no. 2.

Investigating Officer even his best efforts could not succeed to apprehend the applicants, when as a matter of fact such arrest of the applicants was necessary according to Section 157 (1) of CrP.C. When all the best efforts made by the Investigating Officer to arrest the applicants went in vain, proceedings under Sections 82/83 of Cr.P.C. were initiated against them and at last, applicants were declared as proclaimed absconder. The Investigating Officer after being legal and logical end of the investigation forwarded a police report against the applicants in a capacity of a proclaimed absconder, before the learned concerned court according to Section 173 (2) of CrPC. On 08.10.2024. and 06.11.2024, the learned Magistrate has taken cognizance of offence upon a police report in an abscondence of the applicants according to Section 190 (1) (b) of Cr.P.C. The applicants are still proclaimed absconder, as they do not believe in the majesty of the Hon'ble Court.

22. It is then submitted that the applicants through Smt. Annu Rani (sister of applicant no.1) have filed the instant application under Section 528 B.N.S.S. for quashing of the entire proceedings of the instant criminal case by invoking the extra ordinary power of this Hon'ble Court. However, the instant application under Section 528 B.N.S.S. is not maintainable, as the applicants are proclaimed absconder. The present application filed under Section 528 of BNSS by a Proclaimed Absconder is not maintainable. In support of his case, learned counsel for opposite party no.2 has relied upon the judgment of the Apex Court in the case of ***Srikant Upadhayay and others Versus State of Bihar and another (Special Leave Petition (CRL.) No. 7940 of 2023***, wherein it has been held that any relief cannot be granted to proclaimed absconder (accused).

23. To highlight the aforesaid issue, learned counsel for the opposite party no.2 has also referred to the judgments of the Punjab & Haryana High Court in the case ***B. Lovejot Kaur Versus Harbhinder Singh reported in A.I.R. online 2022 P & H 1029 and Uttrakhand High Court in the case of C. Rakesh Mehra Versus State of Uttrakhand and others passed in Criminal Misc. Application No. 135 of 2024, decided on 17th June, 2026***.

Court in exercise of powers under Section 528 B.N.S.S. cannot exercise its powers to interfere in the matter at this stage of the proceedings. At this stage of the criminal proceedings, only prima faice case has to be seen.

25. To buttress the aforesaid submission, learned counsel for the opposite party no.2 has relied upon the judgment of the Apex Court in the case of ***D. Central Bureau of Investigation Versus Aryan Singh etc. reported in AIR online 2023 SC 252,*** wherein the Apex Court has held that at the stage of discharge and / or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the court has a very limited jurisdiction, and the court is not required to conduct the mini trial, as the charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.

26. On the cumulative strength of the aforesaid, it has been urged by the learned counsel for the opposite party no.2 that in view of the aforesaid facts and judgments quoted herein above, it is evident that the aforesaid case is liable to be dismissed outrightly, on the ground that (i) the present application has been filed by the proclaimed absconder (applicants), (ii) the High Court in exercise of powers under Section 528 Cr.P.C., cannot evaluate the evidence collected by the Investigating Officer during course of investigation, according to Section 2 (h) of Cr.P.C, meticulously and also the High Court cannot not conduct a mini trial, (iii), since the applicants are residing in U.A.E i.e. United Arab of Emirate, the proceedings initiated under Sections 82/83 of CrPC, has attained its finality as the applicants have not sought any relief against order passed under Sections 82/83 of CrPC. Therefore, the applicants until and unless, not surrendered before the learned concerned court, till then the applicants cannot seek any remedy.

27. On the above premise, it has been urged by the learned counsel for the applicants that since the applicants have been completely failed to make out any case for interference by the Hon'ble High Court in order to exercised its power under section 528 of BNSS, therefore, the instant application being

29. Two issues are up for consideration before this Court, the first is whether the present criminal application under Section 528 B.N.S.S. filed by the applications (through sister of applicant no.1), who are declared to be proclaimed absconder is maintainable or not and second is that at this stage, this Court while exercising its extra ordinary power can quash the impugned charge-sheet, summoning order as well as the entire proceedings of the aforementioned criminal case at the pretrial stage or not.

30. First Issue i.e. whether the present application under Section 528 B.N.S.S. filed by proclaimed absconders like the present applicants is maintainable or not?

31. In **Abhishek Vs. State of Maharashtra and Ors., r**eported in (*2022) 8 SCC 282*, Hon'ble Supreme Court has held as follows:

> *"68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence……"*

32. **In Srikant Upadhyay (Supra)** relied upon by the learned counsel for opposite party no.2, the Apex Court in paragraph nos. 24 and 25 has held as under:

> *"We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the*

> *power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.*
>
> *25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non- bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 482 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail."*

33. Similarly, in the case of **Rakesh Mehta (Supra)**, which has also heavily relied upon by learned counsel for the opposite party no.2, the Uttarakhand High Court in paragraph no. 39 has held as under:

> *"…..it is settled principle of law, as has been held by the Hon'ble Apex Court as well as by different High Courts in the catena of decisions that an accused, who is declared to be a proclaimed offender cannot seek leave for quashing of an FIR or any such proceeding arising thereof without surrendering, the court will not exercise its extraordinary or inherent jurisdiction in favour of an individual, who is intentionally evading the process of law and is absconding, or has been declared a proclaimed offender and such an accused person cannot execute a power of attorney in favour of a power of attorney holder to invoke the jurisdiction of the High Court under Section 482 of the Cr.P.C.*
>
> *"As viewed from another angle, neither the lookout circular nor the declaration of proclaimed offender put to challenge,*

has been stated that after lodging of the complaint regarding threat faced by the applicant no.1 dated 3rd December, 2023 and before lodging of the instant first information report dated 18th December, 2023, the applicant no.1 left the Indian territory and started residing in United Arab Emirates along with his wife i.e. applicant no.2.

35. From the aforesaid statement it reveals that when the applicants left the Indian territory and did not cooperate with the investigation, the authorities have no other option but to pass an order for impounding the passports of the applicants against which they filed civil writ petition before this Court wherein no interim protection has been granted in their favour.

36. The applicants deliberately left India after making complaint by the Bank and before lodging of the first information report against them, knowing that they could be arrested in this case. This act of the applicants appears that they are deliberately flouting the process of law of India. When the passports of the applicants have been impounded by the Indian Government, they approached the High Court challenging the said order of impounding of passports and citing that impoundment as the reason, they contend in this applicantion that they did not deliberately evade the due process of law.

37. In view of the aforesaid facts and settled principles of law, this Court finds substance in the submission made by the learned counsel for the opposite party no.2 that the present application filed on behalf of the applicants (through sister of applicant no.2), who have been declared to be proclaimed absconder is not maintainable.

38. Now this Court comes on the second issue whether this Court in exercise of powers under Section 528 B.N.S.S. can quash the impugned charge-sheet, summoning order as well as entire proceedings of aforementioned criminal case at the pretrial stage.

39. From the perusal of the material on record and looking into the facts

40. Position of law for invoking the jurisdiction of inherent power of High Court has been settled by the Apex Court in following judgments:-

1. **R.P. Kapur Vs. State of Punjab**, *A.I.R. 1960 S.C. 866*;

2. **Kurukshetra University Vs. State of Haryana**, *(1977) 4 SCC 451;*

3. **State of West Bengal Vs. Swapan Kumar Guha**, *(1982) 1 SCC 561;*

4. **Dhanalakshmi Vs. R. Prasanna Kumar**, *1990 Supp SCC 686;*

5. **State of Haryana & Others Vs. Bhajan Lal**, *1992 Supp (1) SCC 335;*

6. **State of Bihar Vs. P.P. Sharma**, *1992 Supp (1) SCC 222;*

7. **B.S. Joshi Vs, State of Haryana,** *(2003) 4 SCC 675;*

8. **Sanapareddy Maheedhar Seshagiri & another Vs. State of Andhra Pradesh & another**, *(2007) 13 SCC 165;*

9. **State of Telangana Vs. Habib Abdullaha Jilani & others**, *(2017) 2 SCC 779;*

10. **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others**, *2021 AIR SC 1918.*

41. **Apart from the above, in Priyanka Jaiswal Vs. State of Jharkhand reported in** 2024 SCC Online SC 685, Hon'ble Supreme Court observed that the Court exercising extraordinary jurisdiction under Section 482 of Cr.P.C. cannot conduct a mini trial or enter into appreciation of evidence of a particular case. The following observations were made:

> *"This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. "*

42. In **Central Bureau of Investigation Vs. Aryan Singh Etc. (Supra)** relied upon by the learned counsel for the opposite party no.2 the Apex Court in

> *limited powers under Section 482 Cr.P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.*
>
> *4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".*

43. After considering the totality of facts of the case and keeping in mind the position of law, there is no merit in the present application. Apart from that there is no material to show that the complaint/FIR is malafide, frivolous and vexatious. The version as unfolded in the first information report is supported by the witnesses including the informant and independent witnesses and also by the police papers. It is also cropped up from the records that the public money have been transferred in the accounts of the applicants and other named accused persons, which needs a detail inquiry. The issue as to why such public money has been transferred in their accounts can be more appropriately examined during the course of trial. The interference at the

44. In the result, the prayer for quashing of entire proceeding, charge sheet and cognizance order is refused. The second issue is also decided against the applicants.

45. The present application under Section 528 of B.N.S.S is devoid of merits and is accordingly, **dismissed.**

(Madan Pal Singh, J.)

Order Date:-21/07/2026
Sushil/-