

**Court No. - 70**

**Case :-** APPLICATION U/S 528 BNSS No. - 11697 of 2025

**Applicant :-** Dharmendra And 2 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Tribhuwan Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Om Narayan Dwivedi, Advocate holding brief of Mr. Tribhuwan Singh, the learned counsel for applicants and the learned AGA for State-opposite party-1.

2. Perused the record.

3. Applicants- Dharmendra, Ramu and Sarwan, who are charge-sheeted accused and facing trial before Court below have approached this Court by means of present application under Section 528 BNSS with the following prayer:

**"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the application and Quash the Order dated 07.03.2025 passed by the Court of Additional Session Judge/F.T.C. (Crime against women), Kanpur Dehat in Session Case No. 97 of 2021 (State Vs. Dharmendra and others), arising out of case crime no. 546 of 2019, under section 147, 323, 435, 342, 307 & 302 I.P.C. Police Station Rura, District Kanpur Dehat, pending in the Court of Additional Session Judge/F.T.C. (Crime against women), Kanpur Dehat.**

**It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceeding of Session Case No. 97 of 2021 (State Vs. Dharmendra and others), arising out of case crime no. 546 of 2019, under section 147, 323, 435, 342, 307 & 302 I.P.C. Police Station Rura, District Kanpur Dehat, pending in the Court of Additional Session Judge/F.T.C. (Crime against women), Kanpur Dehat, during the pendency of the present Application.**

**And/or may pass such other and further order or direction, which this Hon'ble Court may deems fit and proper under the facts and circumstances of the otherwise case; the Applicants shall suffer irreparable loss and injury."**

4. Learned counsel for applicants submits that initially charges were framed under Section 302 IPC against accused applicants. However, in view of the statements of witnesses who had deposed before court below and also the dying declaration of the deceased, an application under Section 216 BNSS was filed for alteration of charge. This application filed by accused applicants before court below has been rejected by means of order impugned dated

07.03.2025. Thus feeling aggrieved by above order dated 07.03.2025 applicants have approached this Court by means of present application under Section 528 B.N.S.S.

5. Learned counsel for applicants submits that order impugned in the present application is manifestly illegal and is liable to be set aside by this Court. According to the learned counsel for applicants, all the accused have neither been charge-sheeted under Section 149 nor under Section 34 IPC. As per the dying declaration of the deceased, the role of pouring petrol upon deceased has been assigned to co-accused Sanjay.

6. On the above premise, the learned counsel for applicants contends that since no role has been assigned to the other accused regarding commission of any such act which may lead to the death of deceased, therefore the charge under Section 302 IPC framed against other accused was liable to be altered. The court below has thus committed a jurisdictional error in passing the order impugned.

7. Per contra, the learned AGA for State-opposite party-1 has vehemently opposed the present application. However, he could not dislodge the legal and factual submissions urged by the learned counsel for applicants with reference to the record at this stage.

8. Having heard the learned counsel for applicants, the learned AGA for State-opposite party-1 and upon perusal of record, this Court finds that matter requires consideration.

9. Notice on behalf of State opposite party-1 has been accepted by the learned A.G.A.

10. Issue notice to opposite party-2.

11. Notice issued to opposite party-2 shall be made returnable on 30.04.2025. Notice shall further indicate that matter shall appear before this Court as fresh on 30.04.2025.

12. All the opposite parties may file their respective counter affidavits on or before the next date fixed.

13. Put up again for admission as fresh on **30.04.2025**.

14. Considering the facts and circumstances of the case and also the submissions urged by the learned counsel for applicants in support of this application as noted herein above, as an interim

measure, it is hereby provided that the court below shall deffer the proceedings of the case to a date subsequent to 30.04.2025.

**Order Date :-** 9.4.2025/R.S. Tiwari