



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 1599 of 2026

Vishal Vishwakarma @ Vishal

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Naveen Kumar Upadhyay, Rajesh Kumar Dubey, Sachin Kumar Upadhyay
Counsel for Opposite Party(s)	: G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Sri Naveen Kumar Upadhyay, learned counsel for the applicant and Sri Pankaj Kumar, learned State Law Officer for the State.

2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The relief which has been mentioned in the application is delineated below:-

"It is, therefore most respectfully prayed that this Hon'ble court may graciously be pleased to allow the instant application and quash the summoning order dated 13.11.2025 passed by the court of learned Special Judge (SC/ST) Act, Bhadohi at Gyanpur as well as entire proceedings of Criminal Complaint Case No. 24 of 2025 (Meera Gautam Vs. Vishal Vishwakarma), under Sections 75, 76, 352 of B.N.S. & Section 3(1)(Da), 3(1)(Dha) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Police Station Bhadohi,

District Bhadohi, pending in the court of learned Additional Sessions Judge/Special Judge SC/ST, Act, Bhadohi at Gyanpur.

It is further prayed that this Hon'ble Court may be pleased to stay the further proceedings of Criminal Complaint Case No. 24 of 2025 (Meera Gautam Vs. Vishal Vishwakarma), under Sections 75, 76, 352 of B.N.S. & Section 3(1)(Da), 3(1)(Dha) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Police Station Bhadohi, District Bhadohi, pending in the court of learned Additional Sessions Judge/Special Judge SC/ST, Act, Bhadohi at Gyanpur, during the pendency of the instant Criminal Misc. Application before this Hon'ble Court, otherwise the applicant shall suffer irreparable loss and injury. And/or may pass such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for the applicant submits that initially an FIR was lodged by O.P. no.2 against the applicant under section 75, 76, 352 BNS and section 3(1) (द) and 3(1)(ख) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as 'the SC/ST Act') wherein after completion of investigation, the Investigating Officer submitted final report(closure report) exonerating the accused. He further submits that as per judgment of Hon'ble Supreme Court passed in **Bhagwant Singh vs. Commissioner of Police and Another, (1985) 2 SCC 537**, learned Special Judge, SC/ST Act invited protest petition/application from the informant/O.P. No.2 and after filing of the protest petition, the protest petition was treated as a complaint.

4. Learned counsel for the applicant further submits that the concerned Court has recorded statement of complainant and witnesses under Section 200 and 202 Cr.P.C. respectively and thereafter vide order dated 13.11.2025 summoned the applicant for the offences

under section 75, 76, 352 BNS and section 3(1)(द) and 3(1)(ख) of the SC/ST Act. Learned counsel for the applicant submits that though summoning has been passed under the sections of Bharatiya Nagarik Suraksha Sanhita, 2023 but the learned Additional Sessions Judge/ Special Judge, SC/ST Act, Bhadohi at Gyanpur has mentioned section 200 and 202 Cr.P.C. instead of Section 223 and 225 BNSS while recording statements of the complainant and the witnesses, hence, he has ignored the provisions of First Proviso of Section 223 (1) BNSS which says that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. The provisions of Section 223 BNSS are being delineated below for ready reference :-

Section 223 BNSS

223.Examination of complainant.—(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

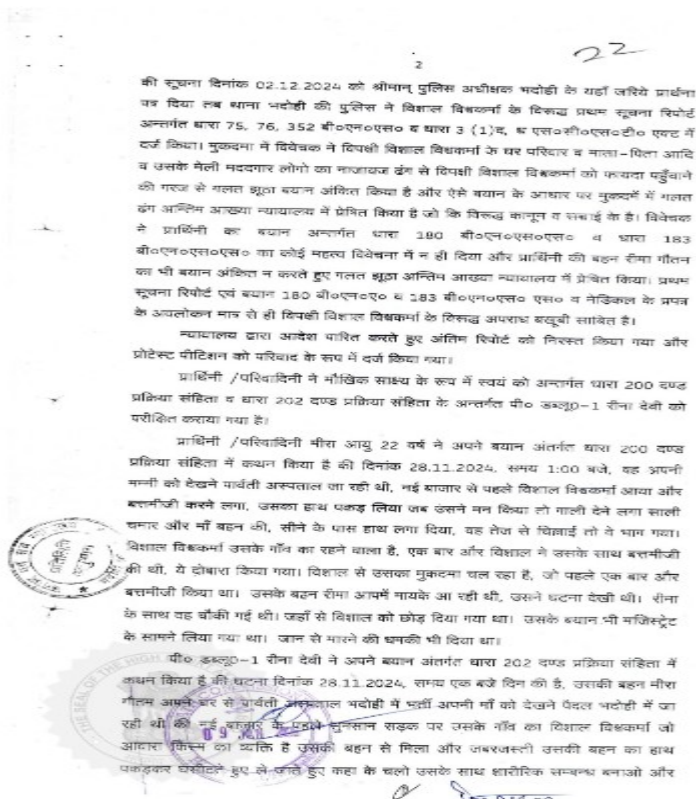
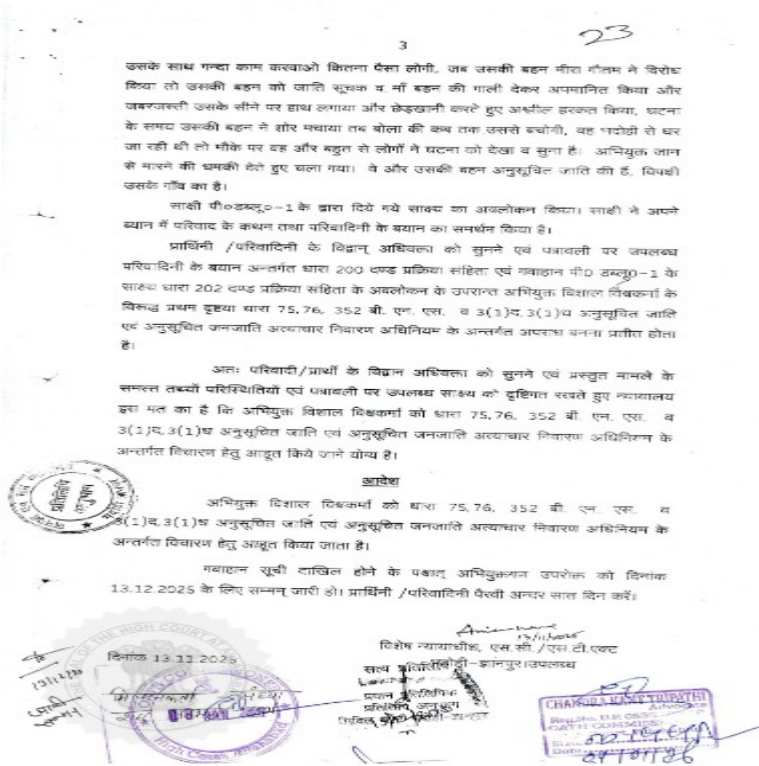
(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

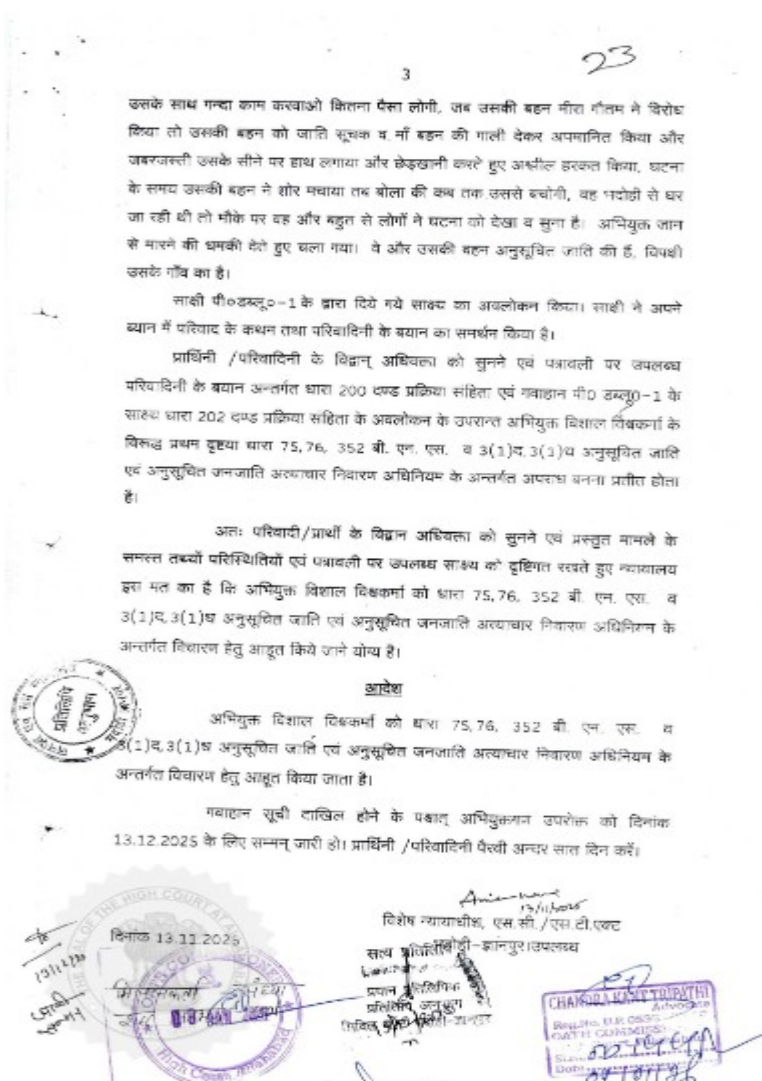
5. Learned counsel for the applicant further submits that in the present case, no opportunity of hearing was ever afforded to the applicant prior to passing of the impugned summoning order, therefore, the same is not sustainable in the eyes of law and the same is violative of Article 21 of the Constitution of India, as no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law.

6. Sri Pankaj Kumar, learned State Counsel submits that Bharatiya Nagarik Suraksha Sanhita has come into effect from 01.07.2024, therefore, before taking cognizance or summoning accused in a complaint case under section 75, 76, 352 BNS and section 3(1)(२) and 3(1)(३) of the SC/ST Act, the procedure provided in First Proviso of Section 223 (1) BNSS must be followed.

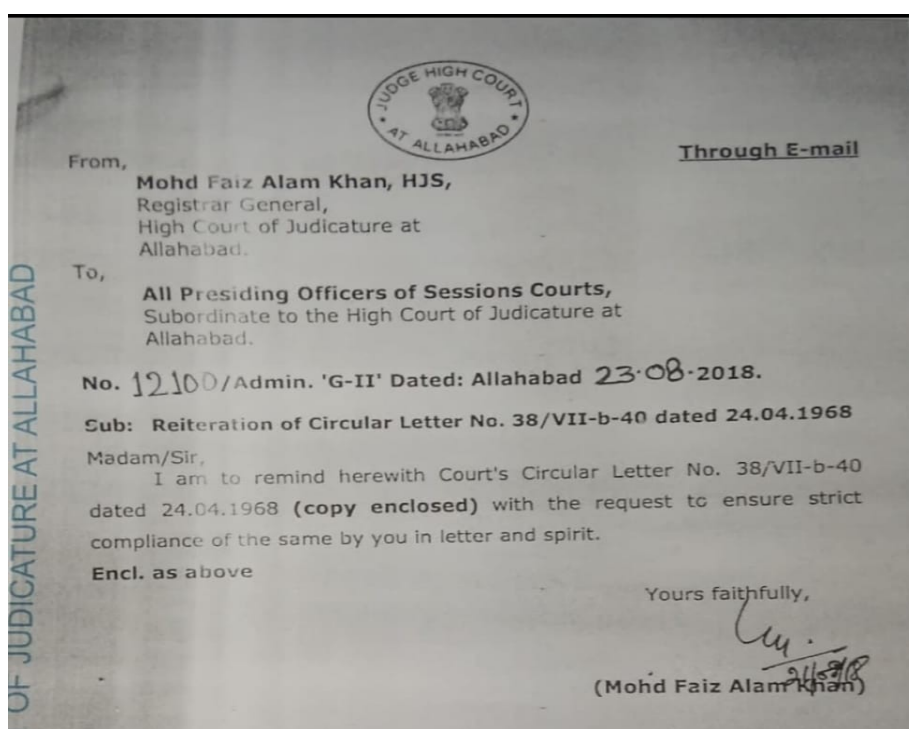
7. This Court has perused the summoning order dated 13.11.2025 and on perusal thereof, it appears that no opportunity of hearing has been given to the accused in accordance with First Proviso of Section 223 (1) BNSS. On further perusal of order dated 13.11.2025, it transpires that the Special Judge, SC/ST Act, Bhadohi at Gyanpur has not mentioned his name and judicial ID at the place of his signature, which is against the Circulars of High Court dated 24.04.1968 (Reiterated on 23.08.2018) and 19.07.2023 issued in pursuance of order

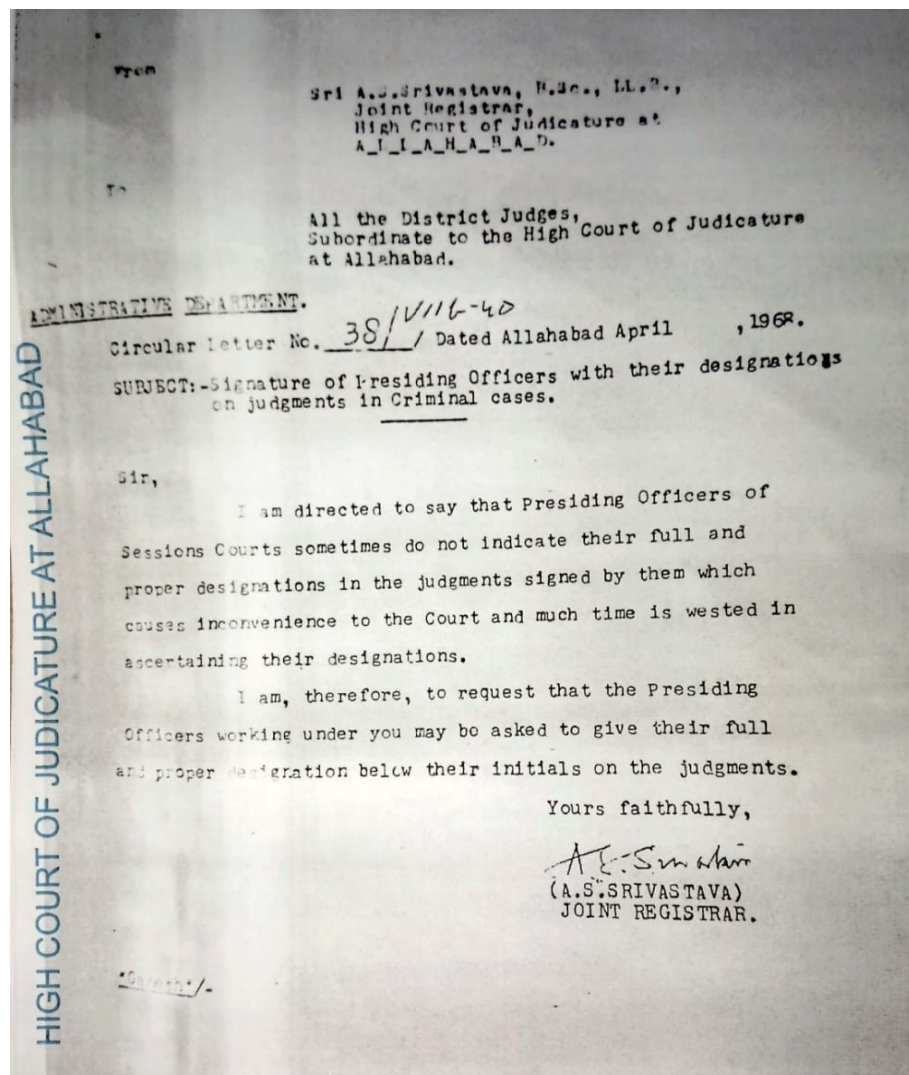
dated 30.05.2023 passed in **Crl Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.1304 of 2023 (Khalil Ahmad alias Khalil Pradhan Vs State of U.P. Thru. Prin. Secy. Home Deptt. Lko and 2 Others)**. The summoning order dated 13.11.2025 is pasted hereinbelow for ready reference :





8. The **Circulars** dated 24.04.1968 (Reiterated on 23.08.2018) issued by this Court are being pasted below for ready reference:



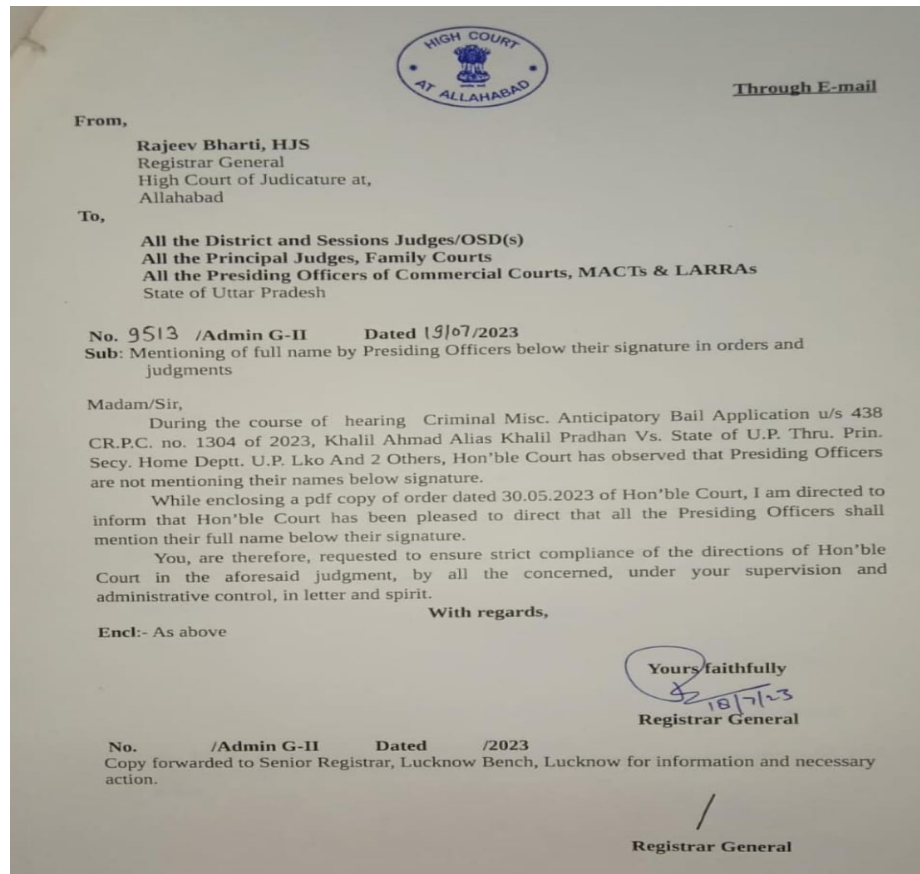


9. A Co-ordinate Bench of this Court at Lucknow has passed order dated 30.05.2023 in Crl Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.1304 of 2023 (**Khalil Ahmad alias Khalil Pradhan Vs State of U.P. Thru. Prin. Secy. Home Deptt. Lko and 2 Others**) wherein it has been held as under :-

"12. However, before parting with the judgement, this Court finds it constraint to note here that in most of the cases, Presiding Officers are not mentioning their names, like in the present case the bail of applicant was rejected by the Presiding Officer on 31.03.2023, but he has not mentioned his name above his signature.

16. Registrar General is also directed to issue necessary directions to ensure that all the Presiding Officers shall mention their full name below their signature."

10. In pursuance of aforesaid order, this Court has issued a Circular on 19.07.2023, which is being pasted below :



11. This Court has also issued certain directions in aforesaid regard as well as in regard to providing an opportunity of hearing prior to issuance of summons in a complaint case in compliance with the First Proviso to Section 223(1) of the BNSS, while passing the order dated 26.11.2025 in **Application U/S 528 BNSS No.1624 of 2025 (Prempal and 3 others vs. State of U.P. and another)**. The relevant paragraph i.e. paragraph nos.16 and 55 are being quoted below:

"16. With effect from July 1, 2024, the Judicial Magistrate is required to afford the accused an opportunity of hearing prior to the issuance of summons in a complaint case, in compliance with the First Proviso to Section 223(1) of the BNSS.

“55. Further, all Magistrates/Presiding Officers shall scrupulously comply with the directions issued by this Court, particularly those mandating that their name, designation, and judicial ID be clearly mentioned below their signatures on every order passed by them, in conformity with the Circulars dated 23.08.2018 and 19.07.2023 issued by the Registrar General of this High Court pursuant to orders passed in judicial proceedings.”

12. Despite that, the concerned Special Judge, SC/ST Act, Bhadohi at Gyanpur has not mentioned his name and judicial ID in the order dated 13.11.2025, which is clear cut violation of the Circulars issued by this Court on administrative side and also the directions of this Court on judicial side.

13. Therefore, the concerned Special Judge, SC/ST Act, Bhadohi at Gyanpur is directed to submit an explanation to this Court, on or before next date, through Registrar (Compliance) as to why this matter shall not be referred for initiation of criminal as well as civil contempt proceeding against him, as being a judicial official having full knowledge of law, he has ignored the provisions of law intentionally and he has not complied with the directions given in order dated 26.11.2025 passed by this Court in **Application U/S 528 BNSS No.1624 of 2025 (Prempal and 3 others vs. State of U.P. and another)** taking reference of Circulars as mentioned above.

14. Issue notice to O.P. no.2 through the Chief Judicial Magistrate, Bhadohi for filing counter affidavit.

15. Put up this case on 20.02.2026 as fresh for further hearing.

16. Registrar (Compliance) is directed to communicate this order to the concerned Presiding Officer for necessary compliance.

17. Sri Pankaj Kumar, learned State Counsel is to sent a copy of this order to the Station House Officer, Police Station-Bhadohi, District-Bhadohi for communication to O.P. No.2.

(Praveen Kumar Giri,J.)

February 12, 2026

Manish Himwan