



2026:AHC-LKO:35815

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR

APPLICATION U/S 528 BNSS No. - 1880 of 2026

Shatrughan Kumar

.....Applicant(s)

Versus

Narcotics Control Bureau Thru. Its Regional Office Lko.

.....Opposite Party(s)

Counsel for Applicant(s) : Syed Tamjeed Ahmad, Adil Abbas , Saurabh
Sharma
Counsel for Opposite Party(s) : Sajeet Singh

Court No. - 15

HON'BLE BRIJ RAJ SINGH, J.

1. The present application has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") seeking following reliefs:-

(i) Setting aside of the impugned cognizance order dated 14.07.2025 passed by the Special Judge, NDPS Act, Lucknow (hereinafter referred to as "Special Judge") in Sessions Case No. 1078 of 2025, arising out of NCB Case No. 01 of 2025 dated 14.07.2025, under Sections 8(c), 20, 27A and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"), on the ground that at the pre-cognizance stage, the applicant was not afforded opportunity of hearing as envisaged under Section 223(1) of BNSS.

(ii) Quashing of the entire proceeding of Session Case No.1078 of 2025 (Supra) pending before the Special Judge.

2. At the outset, learned counsel for the applicant has submitted that he does not want to press the present application insofar as it relates to relief no.(ii) seeking quashing of the entire proceeding of Session Case No.1078 of 2025.

3. Learned counsel for the applicant has submitted that the impugned

cognizance order dated 14.07.2025 has been passed in violation of the statutory mandate contained in the first proviso to Section 223 of BNSS.

4. He has further submitted that BNSS came into force with effect from 01.07.2024 and the first proviso to Section 223 of BNSS categorically mandates that no Court shall take cognizance of an offence upon a complaint without affording the accused an opportunity of hearing.

5. He has further submitted that, in the present case, it is undisputed that the opposite party instituted a complaint on 14.07.2025, i.e., on a date when the provisions of Section 223 of BNSS were in force. Consequently, the Special Judge was under a statutory obligation to adhere to the mandate contained in the first proviso to Section 223 of BNSS before taking cognizance.

6. He has further submitted that, in terms of Section 36A(1)(d) of NDPS Act, in matters arising under the said Act, the trial court may take cognizance either upon a police report in the nature of a charge-sheet or upon a complaint instituted by an authorized officer. According to learned counsel, in the present case, the proceedings emanate from a complaint instituted by Narcotics Control Bureau (hereinafter referred to as “NCB”) and, therefore, strict compliance of the provisions contained in Section 223 of BNSS was mandatory.

7. He has invited attention of this Court towards Section 36A(1)(d) of NDPS Act, which provides that a Special Court may, upon perusal of police report of the facts constituting an offence under NDPS Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

8. He has further submitted that Section 36A(1)(d) of NDPS Act is at par with enacted provision of Section 44(1)(b) of Prevention of Money-Laundering Act, 2002 (hereinafter referred to as “PMLA”) which also provides that a Special Court may, upon a complaint made by an authority authorised in this behalf under PMLA take cognizance of an offence under section 3, without the accused being committed to it for trial. Provided that after conclusion of investigation, if no offence of money-

laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court.

9. Learned counsel for the applicant has placed reliance on following judgments :-

I. Kushal Kumar Agarwal v. Enforcement Directorate, , reported in 2025 SCC OnLine SC 1221;

II. Pushpraj Bajaj v. Union of India, reported in 2025 SCC OnLine Pat 3148; and

III. Tutu Ghosh v. Enforcement Directorate, reported in 2025 SCC OnLine Cal 5924

10. On the other hand, Shri Sajeet Singh, learned counsel for the NCB has submitted that accused-applicant was remanded on 14.07.2025 and on that date, impugned cognizance order was also passed wherein the Special Judge has observed that "सुना तथा परिवाद के साथ संलग्न समस्त प्रपत्रों का अवलोकन किया".

11. He has further submitted that charges were framed vide order dated 08.08.2025, a copy whereof has been taken on record. According to him, the applicant did not challenge the impugned cognizance order even prior to framing of charges, though he had the opportunity to do so before the charges were framed. It has thus been submitted that, after framing of charges, it cannot be construed that the applicant was not afforded an opportunity of hearing.

12. I have heard Shri Syed Tamjeed Ahmad, Shri Adil Abbas, and Shri Saurabh Sharma, learned counsel appearing for the applicant, and Shri Sajeet Singh, learned counsel for the NCB.

13. Before proceeding further, it would be appropriate to reproduce certain relevant provisions of the BNSS, PMLA and NDPS.

14. Section 223(1) BNSS is reproduced herein-below:-

“223(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."

15. Section 36A(1)(d) NDPS is reproduced herein-below:-

"(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial."

16. Section 44(1)(b) NDPS is reproduced herein-below:-

"(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial.

Provided that after conclusion of investigation, if no offence of moneylaundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court."

17. In the case of **Kushal Kumar Agarwal (Supra)**, which pertains to PMLA, Hon'ble Supreme Court has held that the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. Relevant paras are extracted herein-below:-

"4. Section 223 of the BNSS corresponds to Section 200 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the CrPC'). However, a proviso similar to the proviso to sub-section (1) of Section 223 does not find place in Section 200 of the CrPC.

*5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of *Yash Tuteja v. Union of India* and *Tarsem Lal v. Enforcement Directorate*. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint."*

18. Similarly, in the case of **Pushpraj Bajaj (Supra)**, Patna High Court

has observed as follows:-

"Now the contention of the Directorate of Enforcement for not affording opportunity of hearing to the petitioner is merely an irregularity for taking cognizance under Section 210 of BNSS and in support thereof Section 506(e) of BNSS has been referred. But Section 210 of BNSS is not a stand alone provision. It has to be read in conjunction with Section 223 of BNSS."

19. In the case of **Tutu Ghosh** (Supra), observations of Calcutta High Court are relevant, which are extracted herein-below:-

"30. Upon hearing learned counsel, it transpires that several important questions have been raised by the parties, which can be summarised as follows:

(i) Whether violation of the first proviso to Section 223, BNSS vitiates the order of taking cognizance and consequential proceedings.

(ii) Whether absence of the words "including any complaint filed by a person authorised under Special Law", as enumerated in Section 210 (1) (a) of the BNSS, in Section 223, BNSS excludes operation of the first proviso to Section 223 to cognizance in respect of such complaints.

(iii) Whether the accused has a burden to show "prejudice" and "miscarriage of justice" to vitiate an order taking cognizance on the ground of depriving the accused of pre-cognizance opportunity of hearing.

(iv) Whether complaints under the PMLA are in the nature of charge sheets and not "complaints" under Sections 210 and 223 of the BNSS.

(v) Whether the concessions given by the ED and divergent stands taken by it in previous cases can be taken note of while deciding the issues involved herein.

(i) Whether violation of the first proviso to Section 223, BNSS vitiates the order of taking cognizance and consequential proceedings.

42. Accordingly, this issue is answered in the affirmative, holding that the denial of opportunity of hearing to the accused persons/petitioners prior to taking cognizance under Section 210, BNSS, is fatal to such cognizance and vitiates the order of cognizance itself, along with the subsequent proceedings undertaken in pursuance thereof.

(ii) Whether absence of the words “including any complaint filed by a person authorised under Special Law”, as enumerated in Section 210 (1) (a) of the BNSS, in Section 223, BNSS excludes operation of the first proviso to Section 223 to cognizance in respect of such complaints.

50. Hence, this issue is held in the negative. The absence of the words “including any complaint filed by a person authorised under any Special Law” in Section 223 of the BNSS does not have the impact of exclusion of the operation of the first proviso to Section 223(1) in respect of complaints under Special Laws.

(iii) Whether the accused has a burden to show “prejudice” and “miscarriage of justice” to vitiate an order taking cognizance on the ground of depriving the accused of pre-cognizance opportunity of hearing.

65. Accordingly, this court is of the firm view that the denial of the right of prior hearing, as enumerated in the first proviso to Section 223 of the BNSS, is sufficient to vitiate the order taking cognizance, without any further requirement on the part of the accused to prove prejudice and/or miscarriage of justice. In fact, the very denial of the right constitutes the prejudice and miscarriage of justice."

20. After going through record, it appears that case of the applicant is squarely covered by the judgments of Supreme Court and High Courts as mentioned above for the reason that Section 36A(1)(d) of NDPS is *pari materia* with Section 44(1)(b) of PMLA.

21. A perusal of the impugned cognizance order indicates that "सुना तथा परिवाद के साथ संलग्न समस्त प्रपत्रों का अवलोकन किया" which means that opportunity of hearing was not granted to the applicant before taking cognizance. The applicant could have been afforded an opportunity of hearing by calling objection and thereafter, order could have been passed in a speaking manner. But in the present case, the impugned order does not indicate any such compliance, therefore, it cannot be said that compliance of Section 223(1) of BNSS has been made.

22. For the reasons aforesaid, the application is **allowed**. The impugned order dated 14.07.2025 is hereby set aside qua the applicant.

23. Applicant is directed to appear along with objections, if any, before the Special Judge on 29.05.2026, who will pass an order immediately, in accordance with law, after affording opportunity of hearing to both the

parties in terms of the proviso to Section 223(1) of BNSS.

May 19, 2026
Mohit Singh/-

(Brij Raj Singh,J.)