2026:AHC:221786

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 27503 of 2026

Raghvendra Pratap Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Amit Singh
Counsel for Opposite Party(s)	:	Akhilesh Kumar Mishra, G.A.

Court No. - 76

A.F.R.
Reserved on 11.08.2026
Delivered on 26.10.2026

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Mr. Amit Singh, learned counsel for applicant and Mr. Pawan Srivastava, learned AGA for State as well as Mr. Akhilesh Kumar Mishra, learned counsel for opposite party no.2.

2. The instant application has been preferred for seeking quashing of impugned order dated 04.06.2026 passed by learned Additional Session Judge, Court No.2, Basti in Session Trial No.478 of 2022 (State vs. Sukhpal Singh and Others) arising out of Case Crime No.96 of 2021, P.S. Gaur, District- Basti, whereby application preferred under section 216 Cr.P.C. at the behest of opposite party no.2 has been allowed and section 307 IPC has been added.

3. Brief facts of the case are that an FIR dated 19.05.2021 being Case Crime No.96 of 2021 has been lodged by opposite party no.2 against the applicant along with other accused persons in pursuance to sections 147, 148, 504, 506, 323, 307, 188 IPC along with section 3 of Epidemic Diseases Act, 1897 and section 51(b) Disaster Management Act, 2005 alleging that on 16.05.2021 at about 7 pm when he went to Sikari Chauraha for buying vegetables, accused persons, who are having political rivalry with him, started abusing and threatening him, upon which he objected and some people from the place managed the situation and thereafter opposite party

no.2 went to his house; when the opposite party no.2 reached near the house of one Ram Naresh, the accused persons catched him and assaulted him with laathi-danda and one accused Raghvendra (applicant herein) having fire arm in his hand shot fire upon the opposite party no.2 and when one Manoj Sharma tried to save the opposite party no.2, he was also being assaulted in the alleged incident.

4. In respect to the above allegation made in the FIR, the concerned Investigating Officer conducted detail investigation and submitted charge-sheet against the accused persons, upon which cognizance of offence has been taken up and five accused persons including the applicant herein have been summoned vide order dated 02.08.2021 in pursuance to sections 147, 323, 504, 506 IPC.

5. Being aggrieved with the fact that charge under section 307 IPC has been omitted against the accused persons, an application under section 216 Cr.P.C. dated 08.08.2022 has been preferred at the behest of opposite party no.2 for alteration of charges and adding section 307 IPC, which was rejected by learned Additional Session Judge, Court No.2, Basti vide order dated 08.09.2022 by way of stating that the said application is premature. Thereafter, charges have been framed against the accused on dated 22.09.2022 and trial has been commenced against the accused persons including the applicant.

6. During trial, statements of P.W.1 Bablu, P.W.3 Manoj and P.W.2 the doctor who treated the injured persons (P.W.1 and P.W.3) of the alleged incident has been recorded and thereafter, on dated 16.03.2023 opposite party no.2 again preferred an application under section 216 Cr.P.C. with the same prayer and this time, learned Additional Session Judge, Court No.2, Basti allowed the said application and added section 307 IPC vide order dated 04.06.2026 by way of altering charges, which impugned the instant application.

7. Learned counsel for the applicant submits that the impugned order passed by learned trial court is illegal, arbitrary and without application of mind. Learned counsel for applicant further submitted that earlier an application u/s 216 Cr.P.C. preferred at the behest of opposite party no.2 with the same prayer has already been rejected and thereafter the same was allowed in spite of any new facts and material evidences available on record and even if

whatsoever the material which is available with the learned trial court taken into consideration, the same does not corroborate any offence in respect of section 307 IPC against the applicant. On the aforesaid premise, the impugned order is liable to be set-aside.

8. Per contra, learned AGA and learned counsel for opposite party no.2 vehemently opposed the prayer sought through instant application and rebutted the stand taken up by learned counsel for the applicant and supported the impugned order passed by learned trial court. They sought the attention of Court over statement recorded by P.W.2/doctor who examined the P.W.1/injured/informant, wherein in respect of injury no.1 of injured/informant, namely, Bablu, he clearly stated that the said injury has been sustained with fire arm. For ready reference, the said injury has been mention as below :-

> *"Entry wound 1.0 X 0.9 cm with irregular and inverted margin with bleeding over lateral aspect of left thigh which is 24 cm above the left knee joint. Light blackening with through and through."*

9. For substantiating the above submissions and supporting the impugned judgement passed by learned trial court, provisions contained under **Section 216 Cr.P.C.** is produced herein below :-

> *"216. Court may alter charge.-*
>
> *1. Any Court may alter or add to any charge at any time before judgment is pronounced.*
>
> *2. Every such alteration or addition shall be read and explained to the accused.*
>
> *3. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*
>
> *4. If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.*

> *5. If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded".*

10. It is evident from the above-mentioned section that the same gives ample powers to the Court to alter or amend the charge at any time before judgment is pronounced. The question, which needs for consideration in the present case, is whether there is evidence to support the charge under Section 307 IPC. If the evidence of the P.W.2/doctor is read, who examined the P.W.1/injured/informant, it specifically stated that injury no.1 of injured/informant/P.W.1 is caused by fire arm and moreover, P.W.1 has already stated before learned trial court concerned that he had received a fire arm injury. Thus, there is prima facie evidence available to support the charge, which is the requirement under Section 216 Cr.P.C. for addition/alteration of the charge.

11. The core issue in the instant matter is that whether the second application under section 216 Cr.P.C. is maintainable or not once the first one has already been rejected at the initial stage? The same shall be dependent upon the stage since the power vests with the learned court concerned while considering the prayer under section 216 Cr.P.C. is available before pronouncement of judgement of concerned trial.

12. In view of the aforesaid discussions, the impugned order dated 04.06.2026 does not suffer from any illegality or perversity, which requires interference by this Court in exercise of jurisdiction vested under Section 528 BNSS.

13. Accordingly, the instant application is **dismissed**.

October 26, 2026
Saif

(Saurabh Srivastava,J.)

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad