

**Court No. - 9**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 4364 of 2023

**Petitioner :-** Fateuddeen Alias Fateuddeen Khan

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home, Civil Sectr. Lko.  
And Others

**Counsel for Petitioner :-** Abrar Ali

**Counsel for Respondent :-** G.A.,Mohd. Makkee,Pradeep Kumar Sen

**Hon'ble Rajnish Kumar,J.**

**Hon'ble Umesh Chandra Sharma,J.**

Vakalatnama filed by Sri Mohd. Kamal Khan, Advocate on behalf of the respondent no.4 is taken on record.

Heard learned counsel for the petitioner, learned AGA and perused the record.

This petition has been filed with the prayer to quash the First Information Report No.148 dated 20.05.2023, under sections 420, 504, 506 I.P.C. Police Station- Wazeerganj, District- West Lucknow (Commissionerate Lucknow).

Submission of learned counsel for the petitioner is that the petitioner has falsely been implicated in the case due to jealousy and malafide intentions. Even otherwise, the submission is that the offences alleged in the F.I.R. are having punishment below 7 years, therefore the petitioner is entitled for the benefit of Section 41-A of the Code of Criminal Procedure. Even then the police is trying to arrest the petitioner. Therefore the petitioner is constrained to approach this Court.

Learned A.G.A. does not dispute that the petitioner is entitled for benefit of Section 41-A in view of the offences alleged in the F.I.R.

Learned counsel for the respondent no.4 submits that there are nine criminal cases against the petitioner. However, he also does not dispute that the benefit of Section 41-A of the Code of Criminal Procedure is available to the petitioner.

The correctness or otherwise of the allegation made in F.I.R. need not be examined by us in view of the law settled inasmuch as such issues are required to be examined at the stage of investigation. The petitioner shall be at liberty to place all materials in support of his defence before the Investigating Officer.

Since the First Information Report prima facie discloses commissioning of cognizable offence, therefore, it cannot be quashed in view of the law laid down by the Supreme Court in the case of *State of Telangana Vs. Habib Abdullah Jellani*, (2017) 2 SCC 779 and *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others*; (2021) SCC Online SC 315. Prayer for quashing the F.I.R. is declined.

As the offences alleged in the F.I.R. provide for maximum sentence upto seven years, the provisions of Section 41-A of the Code of Criminal Procedure have to be complied with in view of *Satender Kumar Antil versus Central Bureau of Investigation and Another*; (2022) 10 SCC 51 and the same shall be complied.

With the aforesaid, the writ petition is **disposed of**.

**(Umesh Chandra Sharma,J.) (Rajnish Kumar,J.)**

**Order Date :- 7.6.2023**  
Akanksha