



2025:AHC:151813-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**Criminal Misc. Writ Petition No. - 15359 of 2025**

Shanky Kamboj

.....Petitioners(s)

Versus

State of U.P. And 3  
Others

.....Respondents(s)

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|----------------------------|---|--------------------------------------|
| Counsel for Petitioners(s) | : | Vijay Shaker Tripathi, Vinod Shankar |
| Counsel for Respondent(s)  | : | G.A.                                 |

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**Court No. - 47**

**Reserved On 26.8.2025**

**Delivered On 29.8.2025**

**HON'BLE SIDDHARTH, J.  
HON'BLE SANTOSH RAI, J.**

**(Delivered by Hon'ble Santosh Rai,J.)**

1. Heard Sri Vijai Shanker Tripathi, learned counsel for the petitioner and Smt. Manju Thakur, learned AGA-I for the State-respondents.
2. The present writ petition has been preferred with the prayer to issue writ, order or direction in the nature of mandamus for directing the Superintendent of Police, Saharanpur to initiate departmental inquiry against respondent nos.3 and 4 who disobeyed/violated the arrest guidelines provided in the case of Arnesh Kumar Vs. State of Bihar and to direct respondent nos.3 and 4 to pay compensation in favour of the petitioner.
3. The facts in brief as contained in the writ petition are that the First Information Report was lodged on 11.3.2025 in Case Crime No.84 of 2025 under Sections 61(2), 191(2), 193(3), 132, 352, 126(2), 196 B.N.S. and Section 7 Criminal Law Amendment Act, 1932, Police Station Sarsawa, District Saharanpur by respondent no.4 against petitioner and two other persons. Pursuant to the impugned FIR the petitioner was arrested without following the due process of law and the police person falsely implicated the

petitioner under section 61(2), 191(2), 193(3), 132, 352, 126(2), 196 BNS and 7 Criminal Law Amendment Act, 1932, Police station - Sarsawa, District- Saharanpur. The competent authority on the ground of criminal history initiated proceedings under Goonda Act which was stayed by this Court. The petitioner had moved bail application in Case Crime No.84 of 2025 under sections 61(2), 191(2), 193(3), 132, 352, 126(2), 196 BNS and 7 Criminal Law Amendment Act, 1932, Police station Sarsawa, District- Saharanpur before Sessions Judge, Saharanpur which was allowed. All the offences mentioned in the first information report are below 7 years and the present case is fully covered under the case of Arnesh Kumar Vs. State of Bihar. The competent authority without serving any notice under section 35(3) BNSS arrested the petitioner and thereafter Station House Officer, Saharanpur produced the petitioner before the concerned Magistrate and S.HO. moved an application for remand of the petitioner which was allowed by the concerned Magistrate and from 11.03.2025 to 24.03.2025 the petitioner is in judicial custody. In the arrest memo the police team has not mentioned the fact that it has given any notice to the petitioner under section 35(3) of BNSS and no G.D. entry has been mentioned in the arrest memo. The competent authority has not complied with the judgment passed by the Apex Court in (Arnesh Kumar vs. State of Bihar) and mandatory provision of Section 35(3) BNSS. The petitioner is peace loving and law abiding citizen of India and all the criminal case lodged against the petitioner are only due to the fact that the petitioner is a political person.

4. Learned counsel for the petitioner submits that the police authority has not complied with the mandatory provision of Section 35 B.N.S.S. He further relied upon the judgment of Hon'ble Supreme Court in the case of **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** wherein following guidelines have been laid down for arresting a person, which are being reproduced hereinbelow:-

*"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:-*

*(i) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity*

*for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.;*

*(ii) All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);*

*(iii) The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

*(iv) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;*

*(v) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;*

*(vi) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*

*(vii) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.*

*(viii) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

*We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."*

5. Learned counsel for the petitioner further submits that the petitioner Vishu Kamboj @ Shanky Kamboj was arrested by the police authority in violation of the mandatory provisions/guidelines of Hon'ble Supreme Court in **Arnesh Kumar (supra)** and **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021**, judgment dated 11.7.2022.

6. Learned AGA has vehemently opposed the argument of learned counsel for the petitioner and submits that the notice has already been served in compliance of Section 35 B.N.S.S.

7. Personal affidavit of Sub-Inspector Chandra Pal Singh and S.H.O., Police Station Sarsawa, Saharanpur has been filed wherein it is stated that the provisions of Section 35 B.N.S.S. has been complied with and the petitioner/accused has long criminal history of six cases. The notice has already been provided to petitioner but he refused to receive the notice issued under Section 35(3) B.N.S.S. Thereafter due to non-compliance of Section 35(3) B.N.S.S. the petitioner/accused Vishu Kamboj @ Shanky Kamboj was arrested. A photocopy of the same is available on record in which the facts/details of the case crime number, section, address of the petitioner/accused have already been mentioned therein and a check list has also been duly prepared bearing signature of the Officer In-charge of the police station.

8. The facts mentioned in the notice is that the petitioner/accused has denied to take the notice. In the affidavit prior conduct of the petitioner in detail has been mentioned.

9. Learned AGA further submits that the petitioner/accused has six criminal history which are mentioned below:-

*“i. Case Crime No.38 of 2021 under Sections 147, 332, 354, 427 IPC, Section 7 Criminal Law Amendment Act, Section 2/3 Public Property Damages Act.*

*ii. Case Crime No.202 of 2022 under Sections 147, 148, 323, 420, 467, 468, 471, 504, 506 IPC, Police Station Kotwali, District Saharanpur.*

*iii. Case Crime No.212 of 2020 under Sections 506 IPC, 3(1) (d) SC/ST Act and Section 67 I.T. Act.*

*iv. Case Crime No.244 of 2020 under Sections 323, 342, 354, 384, 504, 506 IPC and Section 3(1)(D), 3(1)(F) SC/ST Act.*

*v. Case Crime No.117 of 2022 under Sections 188, 353 IPC, Police Station Cyber Crime.*

*vi. Case Crime No.73 of 2024 under Section 66C I.T. Act.”*

10. Learned AGA submits that due to refusal to accept notice the petitioner/accused has been arrested by the competent police authority. The arrest memo is on record in which details have been mentioned and at the time of remand it was seen by the Magistrate. He further submits that petitioner has already been enlarged on bail in this case from the trial court.

11. Sections 35(1)(b)(ii), 35(3) and 35(4) of B.N.S.S. are quoted hereinbelow:-

*“35(1)(b)(ii). the police officer is satisfied that such arrest is necessary-*

*(a) to prevent such person from committing any further offence; or*

*(b) for proper investigation of the offence; or*

*(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*

*(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or*

*(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,*

*35 (3). The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

*35(4). Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.”*

12. Learned AGA forcefully urged that the notice sent to the accused but he refused to accept the same. The very purpose of Section 35 B.N.S.S. is to regulate the provision of arrest without warrant. The concept of refusal to accept notice is directly addressed in Section 35(3) B.N.S.S. This sub-section explicitly states that in all cases where the arrest of a person is not required under sub-section 1 the police officer shall issue a notice directing the person against whom a reasonable complaint has been made or credible information exists. The notice shall direct the person to appear before the police officer or at such other place as may be specified. Furthermore, as per section 35(5) B.N.S.S. where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offences referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. Furthermore the petitioner has already been enlarged on bail by the court of Sessions Judge, Saharanpur vide order dated 24.3.2025 passed in Bail Application No.1279 of 2025.

13. Thus from the perusal of the notice under Section 35(3) B.N.S.S. and the arrest memo, it appears that the competent police authority has duly tried to serve the notice but due to **‘denial to receive the notice’** in compliance of

Section 35(3) B.N.S.S., the petitioner was rightly arrested by the competent police authority in Case Crime No.84 of 2025 under Sections 61(2), 191(2), 191(3), 132, 352, 126(2), 196 B.N.S. and Section 7 of Criminal Law Amendment Act, 1932.

14. Thus, in light of the above observations, materials placed on record, submissions made by the parties, we are of the considered opinion that this writ has no merit and is liable to be dismissed.

15. Writ petition is, accordingly, **dismissed**.

(Santosh Rai,J.) (Siddharth,J.)

August 29, 2025  
RA