



2025:AHC-LKO:21901-124

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 11179 of 2025

Pinki Devi

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of Home
Lko. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sunendra Kumar, Santosh Kumar Pandey
Counsel for Respondent(s)	:	G.A.

Court No. - 11

**HON'BLE ABDUL MOIN, J.
HON'BLE MRS. BABITA RANI, J.**

1. Personal affidavit of the investigating officer filed today is taken on record.
2. Heard learned counsel for the petitioner, learned A.G.A. appearing for respondents No.1 to 3.
3. Instant writ petition has been filed praying for a writ of mandamus commanding the respondent No.2 to transfer the investigation of FIR No.315 of 2025 under Sections 109, 115(2), 118(1), 352, 351(3) of the B.N.S., 2023, Police Station Kheero, District Raebareli from the hands of respondent No.3 to any independent agency or other competent officer and to arrest the accused persons.
4. A detailed order has already been passed by this Court, which for the sake of convenience is reproduced below:-

"1. Supplementary affidavit filed today is taken on record.

2. Heard learned counsel for the petitioner and learned A.G.A. for the State.

3. Instant petition has been filed for issuing direction in the nature of mandamus commanding the respondent no.2 to transfer the investigation of Case Crime No.315 of 2025, under Sections 109, 115(2), 118(1), 352, 351(3) BNS, Police Station Kheero, District Raebareli to any other

independent agency.

4. At the very outset, learned A.G.A. on the basis of instructions sent by Sri Dinesh Singh, S.I, Police Station Kheero, District Raebareli, dated 03.12.2025 submits that although various sections are indicated in the FIR but Section 109 of BNS 2023 has now been modified to Section 117 (2) of BNS.

5. Contention of learned counsel for the petitioner is that the petitioner was already apprehensive of the investigation which is being made by the authority in pursuance of the FIR which has been lodged by the petitioner and he was apprehending that the offences would be reduced by the Investigating Officer. In this regard, learned counsel for the petitioner has placed reliance on the discharge summary of the victim which has been filed as SA-1 of the supplementary affidavit to indicate that serious injuries have been indicated by the doctor concerned which did not warrant dilution of Section 109 of BNS, 2023 which has been done by the Investigating Officer.

6. Considering the aforesaid, let personal affidavit of the Investigating Officer be filed within a period of two weeks indicating as to whether prior to doing away the Section 109 of BNS, 2023 and adding Section 117 (2) of BNS, the opinion of the concerned doctor had been taken or not, considering the nature of injuries as find place in the discharge summary of the victim which has been filed along with supplementary affidavit.

7. List this case on 17.12.2025 as fresh. In case personal affidavit of the Investigating Officer is not filed, he shall appear in person before this Court on the next date."

5. From perusal of the aforesaid order, it emerges that the petitioner was apprehensive of the fairness of the investigation, which was being made by the respondent No.3 in pursuance of the FIR dated 03.12.2025, which has been lodged by the petitioner, as he was apprehending that the offence would be diluted by the investigating officer.

6. Learned counsel for the petitioner has also placed reliance on the supplementary affidavit which contains discharge summary of the victim, a copy of which is Annexure-SA-1 to the supplementary affidavit, to indicate that despite serious injuries having been indicated by the doctor concerned, the respondents have altered Section 109 of the B.N.S., 2023 to Section 117(2) of B.N.S., 2023.

7. The argument of the learned counsel for the petitioner is that a perusal of the injury report as has been given by the hospital concerned, a copy of which is Annexure-SA-1 to the supplementary affidavit, it is clear that the injuries sustained by the petitioner are sharp cut injuries and are serious injuries.

8. Contention is that once the said hospital has already recorded injuries sustained by the petitioner as sharp cut injuries consequently Section 109 B.N.S., 2023 could not have been diluted to Section 117(2) of the B.N.S., 2023.

9. Responding learned A.G.A. on the basis of averments contained in the personal affidavit and on the basis of case diary, which has been produced before the Court, has argued that initially a report of the Community Health Centre, Kheero, District Raebareli dated 29.10.2025, which is part of the case diary, was seen which duly indicates about the injuries sustained by the petitioner to be contusion and abrasion. However, the petitioner was also advised x-ray of the left arm. The Community Health Centre had also referred the petitioner to District Hospital, Raebareli (D.H.R.B.) on the same date itself for further investigation and expert opinion. Placing reliance on the Bedhead Ticket of Rana Beni Madhav Singh District Hospital, Raebareli dated 29.10.2025, which is also part of the case diary, learned A.G.A. has argued that a perusal of the said report would only indicate that 'a/h/o assault c ? and fracture sharp left humerus'.

10. Placing reliance on the report dated 29.10.2025, the argument of the learned A.G.A. is that both the reports of the government hospitals do not indicate any injury having been sustained with a sharp edged weapon and thus the same would be contrary to the report of the private hospital over which reliance has been placed by the learned counsel for the petitioner and consequently the investigating officer has correctly proceeded to replace Section 109 of the B.N.S., 2023 to Section 117(2) of the B.N.S., 2023 as the injuries sustained are not fatal injuries.

11. Responding learned counsel for the petitioner states that it is the report of the private hospital which has to be given precedence over the two reports of the government hospitals as he was already apprehensive of the fact that the investigating officer would not investigate the matter

properly and would be diluting the offences as indicated in the FIR.

12. Having heard learned counsel for the parties and perused the records along with the case diary, it emerges that the petitioner has approached this Court praying for a mandamus commanding the respondents to transfer the investigation of FIR No.315 of 2025 under Sections 109, 115(2), 118(1), 352, 351(3) of the B.N.S., 2023, Police Station Kheero, District Raebareli being apprehensive that the investigation would not be done in a fair manner.

13. Thrust of the argument of the learned counsel for the petitioner is that the petitioner has sustained injuries by a sharp edged weapon, as emerges from perusal of the report of a private hospital dated 05.11.2025, which has been issued by Surya City Hospital, Raebareli, and consequently an offence under Section 109 of the B.N.S., 2023 is clearly made out against the accused. However, the report of the Community Health Centre dated 29.10.2025 as well as report of Rana Beni Madhav Singh District Hospital, Raebareli dated 29.10.2025 do not indicate anywhere about any cut injuries having been sustained by the petitioner which may have been caused by a sharp edged weapon. The report of the Rana Beni Madhav Singh District Hospital, Raebareli is categoric to the extent of indicating a fracture of the left humerus. The Court has also perused the statement of the doctor concerned, which is also a part of the case diary, who has also not given any opinion that the injuries sustained by the petitioner are fatal.

14. This Court while exercising the jurisdiction under Article 226 of the Constitution of India obviously cannot form a positive view that the injuries which have been sustained by the petitioner have been caused on account of sharp edged weapon being used and which are fatal keeping in view the aforesaid two reports given by the government hospitals.

15. At this stage, learned counsel for the petitioner states that Section 109 of the B.N.S., 2023 does not require any injury to be caused by sharp edged weapon and thus it is apparent that the respondents authorities have patently erred in law in reducing Section 109 to Section 117(2) of the B.N.S., 2023.

16. Aforesaid argument of the learned counsel for the petitioner is found to be patently fallacious and is rejected. The reason is that Section 109 of the B.N.S., 2023 pertains to attempt to murder. The injuries as indicated by both the Community Health Centre as well as Rana Beni Madhav Singh District Hospital, Raebareli only indicate about a fracture and even as per the statement of the doctor concerned, the said injury cannot be said of a nature or magnitude which can be said to be dangerous to life.

17. Keeping in view the aforesaid discussion, no case for issuance of a mandamus is made out. The writ petition stands ***dismissed***.

(Mrs. Babita Rani,J.) (Abdul Moin,J.)

December 17, 2025
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