



2025:AHC-LKO:84204-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 11546 of 2025

Anil Upadhyaya @ Dr. Mela

.....Petitioner(s)

Versus

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

.....Respondent(s)

Counsel for Petitioner(s) : Ashok Kumar Singh, Ashish Kumar
Tiwari
Counsel for Respondent(s) :

Court No. - 11

HON'BLE ABDUL MOIN, J.

HON'BLE MRS. BABITA RANI, J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the respondents-State.
2. Under challenge is the FIR No.885 of 2025 under Sections 308(5) of the B.N.S. and 66D of the Information Technology Act, 2008 (hereinafter referred to as 'Act, 2008') Police Station Akbarpur, District Ambedkar Nagar.
3. Contention of the learned counsel for the petitioner is that from a bare perusal of the impugned FIR, it emerges that the petitioner has been alleged to have resorted to extortion against the complainant by threatening to circulate his video on Facebook Whats-app, You tube etc.
4. Contention is that the FIR has been lodged under Section 308(5) B.N.S. and 66D of the Act, 2008. Section 66D of the Act, 2008 carries a maximum sentence of 7 years while Section 308(5) of the B.N.S. carries a maximum sentence of 10 years.
5. The arguments is that a bare perusal of the FIR does not disclose the commission of an offence so as to attract Section 308(5) B.N.S., as the essential ingredients of the said provision namely, commission of extortion by putting any person in fear of death or grievous hurt are clearly absent.

6. Further argument is that even if the allegations levelled in the FIR are taken at their face value, utmost an offence under Section 308(2) of the B.N.S., 2023 could be said to be made out. The said provision contemplates punishment for the offence of extortion with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Therefore, had the respondents rightly invoked Section 308(2) of the B.N.S., 2023 read with Section 66D of the Information Technology Act, 2008, the maximum punishment that could have been imposed upon the petitioner would have been imprisonment for a term up to seven years consequently the petitioner would have been entitled to the benefit of **Arnesh Kumar vs. State of Bihar and another - (2014) 8 SCC 273** and **Satender Kumar Antil vs. CBI and another- (2022) 10 SCC 51**.

7. On the other hand, learned A.G.A. on the basis of instructions sent by Shri Rajesh Kumar Singh, the Investigating Officer, Police Station Akbarpur, District Ambedkar Nagar date 16.12.2025 states that at this stage during the course of investigation no evidence of any extortion has emerged.

Aforesaid statement is recorded.

8. Considering the aforesaid, the writ petition stands ***disposed of*** with a direction to the respondent not to take any coercive action against the petitioner till any credible evidence emerges against him.

9. Needless to mention that the petitioner shall cooperate with the investigation, failing which, protection of this order may be withdrawn on the application being moved by the prosecution or the complainant.

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

December 16, 2025

prateek