2026:AHC-LKO:40178-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. WRIT PETITION No. - 5320 of 2026

Ashif Alias Mohd. Ashif

.....Petitioner(s)

Versus

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

.....Respondent(s)

Counsel for Petitioner(s)	:	Anupam Bajpai, Ambuj Bajpai, Puneet Kumar Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 10

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

1. Heard learned counsel for the petitioners and learned A.G.A. for the State.

2. In view of proposed order, notice to opposite party no.4 is hereby dispensed with.

3. Learned counsel for the petitioners, after arguing at some length, states that he does not intend to raise a challenge to the F.I.R. bearing Case Crime No.0058 of 2026, under Section 115(2), 352, 351(3) and 316(2) of the B.N.S., lodged at Police Station Dubagga, District Lucknow, but prays that the benefit of judgments rendered by Hon'ble Supreme Court in re; ***Arnesh Kumar vs. State of Bihar and another - (2014) 8 SCC 273*** and ***Satender Kumar Antil vs. CBI and another- (2022) 10 SCC 51*** may be given to him, considering that the offences indicated in the aforesaid F.I.R. carry maximum punishment of less than seven years' imprisonment.

4. Further, recently the Apex Court in the case of ***Satender Kumar Antil vs. CBI and another-2026 INSC 115*** has also held that for effecting an arrest, qua an offence punishable with imprisonment up to seven years, the mandate of Section 35(1) (b) (i) of B.N.S.S., 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the B.N.S.S, 2023 must be in existence and further if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under

Section 35 (1)(b) of the B.N.S.S., 2023, the arrest shall not be undertaken, unless it is absolutely warranted.

5. There is no dispute that the offences as indicated in the impugned F.I.R. carry maximum punishment for the term less than seven years imprisonment. Hon'ble Supreme Court in the cases of ***Arnesh Kumar (supra)*** and ***Satender Kumar Antil (supra)*** has categorically held that the investigating agencies and their officers are duty bound to comply with the mandate of Sections 41 and 41-A of Cr.P.C. (now Section 35(3) of BNSS 2023). As such, this petition is disposed of in view of the provisions of Section 35(3) Bhartiya Nagrik Suraksha Sanhita, 2023 and the law as laid down by the Apex Court in re; ***Arnesh Kumar (supra)*** and ***Satender Kumar Antil (supra)***.

6. However, it is directed that the petitioners shall appear before the Investigating Officer of the concerned police station whenever they are required to cooperate in the investigation. Thereafter, they shall continue to cooperate in the investigation till its completion, 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.)

June 4, 2026
Raj

Digitally signed by :-
RAJ NIGAM
High Court of Judicature at Allahabad,
Lucknow Bench