2026:AHC-LKO:41466-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. WRIT PETITION No. - 5647 of 2026

Dheeraj Jain

.....Petitioner(s)

Versus

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

.....Respondent(s)

Counsel for Petitioner(s)	:	Vimal Kishor Singh
Counsel for Respondent(s)	:	G.A.

Court No. - 2

HON'BLE SAURABH LAVANIA, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. The petition seeks issuance of a writ in the nature of certiorari quashing First Information Report dated 06.07.2023 bearing No.204 of 2023 under Section 379 of IPC, P.S.-Hazratganj, District- Lucknow.

2. We have heard learned counsel for the petitioner and learned counsel for the State and have gone through the contents of the impugned First Information Report. Petitioner is entitled for the benefit of provisions embodied under Section 35 of BNSS, which are akin to Section 41A Cr.P.C.

3. Learned counsel appearing for the State states that the offence(s) allegedly committed entail a sentence up to seven years and police would follow the mode, manner and procedure prescribed under Section 35 including Section 35(3) to Section 35(6) of BNSS. In such circumstances, the Investigating Officer shall ensure compliance of provisions of Section 35 of BNSS.

4. It would be apt to indicate that taking note of similar provision i.e. Section 41-A of the Code of Criminal Procedure the Hon'ble Supreme Court of India in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273, observed as under.

5. We have considered the stand of learned counsel for the State. In Arnesh Kumar's case (supra) the following (relevant portion) has been held:-

> *"9. Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:*
>
> *"41A. Notice of appearance before police officer.-*

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, 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.

(2) 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.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

"The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

6. Considering the aforesaid, as also the statement of counsel for the petitioner, which is to the effect that the petition may be disposed of in view of aforesaid stand taken by learned counsel for the State, the observation made in the judgment rendered by the Hon'ble Apex Court in the case of Arnesh Kumar's (supra), relevant portion from which has been extracted above, this petition is **disposed of** with direction to police authorities to proceed in the matter strictly in terms of provisions of Section 35 of BNSS, wherein the mode, manner and procedure has been prescribed for arrest, which are akin to the provisions of Section 41-A Cr.P.C. as explained by the Hon'ble Apex Court in the case of Arnesh Kumar (supra).

June 18, 2026
Haseenuddin

(Pramod Kumar Srivastava,J.) (Saurabh Lavania,J.)

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