2026:AHC-LKO:41506-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
CRIMINAL MISC. WRIT PETITION No. - 5899 of 2026

Pradeep Kumar

.....Petitioner(s)

Versus

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

.....Respondent(s)

Counsel for Petitioner(s)	:	Harish Chandra
Counsel for Respondent(s)	:	G.A.

Court No. - 2

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

1. Heard.

2. The instant petition has been preferred seeking following main relief(s):-

> *"(i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned First Information Report dated 11.06.2026 lodged by the complainant/opposite party no. 4 in Case Crime No. 0244 of 2026 Under Sections 3 (5) 115 (2), 352, 351 (3) B.N.S. 2023 Police Station- Satrikh, District-Barabanki. Annexure No.1 to this writ petition. contained in Annexure No.1 to this writ petition.*
>
> *(ii) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties not to arrest the petitioner in pursuance of the impugned First Information Report dated 11.06.2026 lodged by the complainant/opposite party no. 4 in Case Crime No. 0244 of 2026 Under Sections 3 (5) 115 (2), 352, 351 (3) B.N.S. 2023 Police Station- Satrikh, District-Barabanki. contained in Annexure No.1 to this writ petition."*

3. We have heard the learned counsel for the petitioner and learned AGA for the State and also 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.

4. Learned AGA submits 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.

5. 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.

6. We have considered the stand of learned AGA. 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."*

7. Considering the aforesaid and 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 AGA, the observations made in the judgment rendered by the Hon'ble Apex Court in the case of ***Arnesh Kumar's*** (supra), relevant portion of 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).

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

June 19, 2026
Arun/-

Digitally signed by :-
ARUN KUMAR GANGWAR
High Court of Judicature at Allahabad,
Lucknow Bench