2026:AHC:209649-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 24049 of 2025

Bhoora @ Banti

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Alok Kumar Srivastava, Rohit Shukla, Yogesh Kumar
Counsel for Respondent(s)	:	G.A.

Court No. - 47

HON'BLE RAJEEV MISRA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Mr. Alok Kumar Srivastava, the learned counsel for petitioner and the learned A.G.A. for State-respondents 1, 2 & 3.

2. Perused the record.

3. Petitioner-Bhoora @ Banti has approached this Court by means of present criminal misc. writ petition challenging the impugned FIR dated 22.09.2025 lodged by first informant-respondent-4 Smt. Rajeshwari and registered as Case Crime No. 0597 of 2025, under Sections 69, 352, 351(3) BNS, Police Station-Kotwali, District-Mathura.

4. Present writ petition came up for admission on 20.11.2025 and this Court passed the following order;-

"1. Heard learned counsel for the petitioner and learned AGA for the State.

2. This writ petition has been filed seeking the quashing of the First Information Report dated 22.09.2025 registered as Case Crime No.0597 of 2025, under Sections 69, 352, 351(3) of B.N.S., 2023, Police Station - Kotwali, District - Mathura.

3. Contention of learned counsel for the petitioner is that the first informant had made false allegations. It has been submitted that earlier also she had made some allegations of similar nature against one

Sonvir and that case had also culminated into a compromise. Learned counsel for the petitioner further submits that when the first informant was trying to get the FIR lodged and the same was not lodged then an application was filed before the Superintendent of Police and the Superintendent of Police submitted its report dated 18.06.2025 wherein it was stated that the case with regard to the victim having been taken to Saroj Guest House was incorrect. He further submits that FIR also discloses that the petitioner and first informant were having consensual relationship. He further submits that respondent no.4 is a married lady and she was having three children.

4. Matter requires consideration.

5. The respondents no.1 to 3 are represented by the learned AGA.

6. Issue notice to the respondent no.4.

7. The respondents may file counter affidavits within a period of three weeks. Rejoinder affidavit, if any, may be filed within a period of two weeks, thereafter.

8. List on the date indicated in the notice.

9. Till the next date of listing or till submission of police report, whichever is earlier, the petitioner shall not be arrested pursuant to the aforesaid impugned first information report subject to his cooperation in the investigation. In the event, the petitioner does not cooperate in the investigation, the police will be at liberty to move this Court."

5. Pursuant to above order dated 22.11.2025, notice was issued to first informant-respondent-4. However, office has submitted a report dated 06.10.2026 stating therein that neither acknowledgment nor undelivered cover has been returned yet. In view of above, the service of notice upon first informant-respondent-4 shall be deemed to be sufficient.

6. No counter affidavit has been filed by the learned AGA in opposition to present writ petition on behalf of State respondents.

7. At the very outset, the learned counsel for petitioner submits

that investigation of aforementioned Case Crime Number is still going on. The requisite police report in terms of Section 193(3) BNSS has not yet been submitted.

8. Learned counsel for petitioner, in challenge to the impugned FIR, submits that criminal prosecution of petitioner pursuant to the impugned FIR is not only malicious, but also an abuse of the process of Court. As such, the impugned FIR is liable to be quashed by this Court.

9. In furtherance of aforesaid submission, the learned counsel for petitioner invited the attention of Court to the impugned FIR, and on basis thereof, he submits that it is an admitted case of the prosecution/first informant that the incident giving rise to present criminal proceeding is alleged to have occurred on 12.04.2025. However, the impugned FIR was lodged on 22.09.2025 i.e. after an expiry of a period of 5 months. Though the FIR is highly delayed, yet no explanation has come forward in the impugned FIR itself explaining the delay/laches in lodging the FIR. On the above premise, the learned counsel for petitioner submits that criminal prosecution of petitioner pursuant to such a delayed FIR cannot be sustained.

10. To buttress his submission, the learned counsel for petitioner has relied upon the judgments of Supreme Court in **(i). P. Ramchandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, (ii). P. Rajagopal and others Vs. The State of Tamil Nadu, AIR 2019 SC 2866 (paragraph 8), (iii). Hasmukhlal D. Vora and Another Vs. The State of Tamil Nadu, 2022 SCC OnLine 1732 , (iv). Sekaran Vs. State of Tamil Nadu, (2024) 2 SCC 176, (v) Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and Others, 2024 SCC OnLine SC 938**, wherein the Apex Court has clearly held that if the FIR has been lodged with delay but no plausible explanation has come forward explaining the delay in lodging the FIR, then the criminal prosecution of an accused on the basis of such a delayed FIR cannot be sustained.

11. Much emphasis was laid upon the judgment of Supreme Court in **Shivendra Pratap Singh Thakur (Supra),** wherein the Apex Court quashed the criminal prosecution of accused therein on the ground that

there is an unexplained delay of 39 days in lodging the FIR.

12. Learned counsel for petitioner has then referred to the judgment of Apex Court in **Rajesh Patel Vs. State of Jharkhand, (2013) 3 SCC 791,** wherein the Apex Court quashed the conviction of accused therein on the ground that there is an unexplained delay of 11 days in lodging the FIR.

13. On the above conspectus, the learned counsel for petitioner thus submits that the criminal prosecution of petitioner on the basis of such a delayed FIR cannot be sustained and therefore, the same is liable to be quashed by this Court.

14. Per contra, the learned AGA for State-respondents 1, 2 & 3 has vehemently opposed the present writ petition. Learned AGA submits that since upon perusal of impugned FIR, commission of a cognizable offense is clearly disclosed, therefore, no interference is warranted by this Court in present writ petition. It is also submitted by the learned AGA that since as per the allegations made in the FIR, a prima-facie case is made out, and at this stage, it is only a prima-facie case, which is to be seen, therefore, no indulgence be granted by this Court in present writ petition. However, the learned AGA could not dislodge the factual and legal submissions urged by the learned counsel for petitioner in support of present writ petition as noted hereinabove with reference to the record at this stage.

15. Having heard the learned counsel for petitioner, the learned AGA for state-respondents 1, 2 & 3 and upon perusal of record, this Court find that it is an undisputed fact that the impugned FIR has been lodged with a delay of 5 months. The delay in lodging the FIR has not been explained in FIR itself. Moreover, in spite of service of notice, first informant has not appeared in present writ petition to oppose the present writ petition. Therefore, prima-facie, pleadings raised in present writ petition shall be deemed to be admitted to the first informant-respondent-4. Considering the facts and circumstances of the case, and also the law laid down by Apex Court as noted hereinabove, we are of the considered opinion that criminal prosecution of petitioner pursuant to the impugned FIR cannot be sustained.

16. As a result, this writ petition succeeds and is liable to be allowed.

17. It is, accordingly, **allowed**.

18. The impugned FIR dated 22.09.2025 lodged by first informant-respondent-4 Smt. Rajeshwari and registered as Case Crime No. 0597 of 2025, under Sections 69, 352, 351(3) BNS, Police Station-Kotwali, District-Mathura (Annexure-1 to the writ petition), shall stand quashed.

October 7, 2026
Vinay

(Jai Krishna Upadhyay,J.) (Rajeev Misra,J.)

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad