



2026:AHC-LKO:42270-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 5430 of 2026

Deepika Sharma And Another

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Home Lko.
And Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ravindra Pratap Singh, Rajendra Prasad
Counsel for Respondent(s)	:	G.A.

Court No. - 2

**HON'BLE MANISH MATHUR, J.
HON'BLE ZAFEER AHMAD, J.**

1. Heard learned counsel for petitioner and learned AGA for respondents no. 1 and 2.
2. In view of the order being passed, notice to opposite party no. 3 is dispensed with.
3. The petition seeks issuance of a writ in the nature of certiorari quashing impugned First Information Report dated 19.05.2026 registered in Case Crime No. 403 of 2026, under Sections 333, 352, 115(2), 109(1), 351(3) BNS (corresponding Sections 452, 504, 323, 504, 323, 307 and 504 IPC) at Police Station- Kotwali. District- Barabanki.
4. Learned AGA has been provided the written instructions dated 3.6.2026, which are taken on record and as per which Section 109(1) BNS has been deleted against the petitioners.
5. In view thereof, learned counsel for the petitioners submits that the remaining sections entail a punishment of maximum period of seven years, therefore, protection under Section 41-A Cr.P.C., corresponding Section 35 of BNSS, may be provided.
6. Learned counsel appearing for the State admits that the offence(s) allegedly committed entail a sentence up to seven years. In such circumstances, the investigating officer shall ensure compliance of provisions of Section 41 and

Section 41-A of the Code of Criminal Procedure (Section 35 of BNSS) as provided by Hon'ble Supreme Court of India in **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273**.

7. We have considered the stand of learned counsel for the State. In **Arnesh Kumar** (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." (emphasized by us)

8. Considering the stand taken by learned counsel for the State in context of judgment rendered by the Hon'ble Supreme Court of India in **Arnesh Kumar** case (supra), relevant portion from which has been extracted above, this petition is disposed of in view of the provisions of Section 41-A Cr.P.C. (corresponding Section 35 BNSS) and the law as laid down by Apex Court in the case of **Arnesh Kumar** (supra).

(Zafeer Ahmad,J.) (Manish Mathur,J.)

June 29, 2026

Fahim/-