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Reserved on 11.11.2025
Delivered on 09.02.2026



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 8263 of 2025

Mohd. Azeem Idrishi

.....applicants(s)

Versus

State Of U.P. Thru. Secy. Home Lko. And Another

.....Opposite Party(s)

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| Counsel for applicants(s) | : Ratnesh Kant Agnihotri, Ranjana Agnihotri |
| Counsel for Opposite Party(s) | : G.A., Sandeep Tewari |

Along with :

Application U/s 482 No. 8685 of 2025:

Om Prakash Vishwakarma

1.

Versus

State of U.P. Thru. Addl. Chief Secy. Home/Prin. Secy. Home Civil Sectt. Lko.

HON'BLE TEJ PRATAP TIWARI, J.

1. The present petitions have been filed under section 482 Cr.P.C. to quash the proceedings of S.T. No. 300/2025 arising out of supplementary charge sheet no. 2, dated 02.08.2024 relating to case crime no. 0041/2024 dated 28.01.2024, lodged under section 328, 376 D, 406 IPC and section 5(1) of the prohibition of Unlawful Religious Conversion Act, 2021 P.S. Gazipur, District Lucknow pending in the court of special judge POCSO Act- III, Lucknow titled as (State of U.P. versus Mohd. Azeem Idrishi) and in connected case also to quash the applicant's criminal prosecution in Criminal Case No. 312/2004, bearing FIR No. 114 of 2004 (State of U.P. versus Om Prakash) under Section 420, 504, 506 of Indian Penal Code, 1860 registered with Police Station Sidhauli, District Sitapur along with the Cognizance Order dated 17.11.2006 and

the Impugned Order dated 01.07.2025 and all the consequential proceedings as against the applicants connected with S.T. No. 300/2025 arising out of supplementary charge sheet no. 2, dated 02.08.2024 relating to case crime no. 0041/2024 dated 28.01.2024, lodged under section 328, 376 D, 406 IPC and section 5(1) of the prohibition of Unlawful Religious Conversion Act, 2021 P.S. Gazipur, District Lucknow pending in the court of special judge POCSO Act- III, Lucknow titled as (State of U.P. versus Mohd. Azeem Idrishi) and to stay the further proceedings.

Factual Matrix

2. Shorn of the details in Criminal case no. 312/2024, an FIR lodged on 25.09.2004 under section 154 of Cr.P.C. against Om Prakash, as per the version of FIR, the accused has dishonestly by fraudulent means obtained the sale deed dated: 06.02.1984 (Bainama) of the complainant Smt. Suhagwati who is an illiterate woman. Om Prakash used the sale deed as security/guarantee in a loan account amounting to Rs. 1,00,000/- (One Lakh Only) from Bhagirath Gramin Bank, Branch Sidhauri, District Sitapur.

3. As per the version of the F.I.R. in Case Crime No. 0041 of 2024, the informant alleged that she was raped by one Nihal, who also recorded a video of the incident. On the basis of the said video, he threatened and extorted a sum of ₹3,00,000/- and on one occasion he came along with one Azeem, whom the informant claims to have recognised by face, and that the said Azeem also committed rape upon her by blackmailing her.

Issue

4. Both the cases are dealt with the same issue that the police officer without ascertaining the true identity and verifying the identity of the real accused, arrested the innocent person due to factual mistake.

5. Whether the arrest in both the cases suffers from non-verification of the true identity of the accused, leading to the apprehension of an innocent person due to a factual error on the part of the police.

Submission on behalf of applicants

6. Learned Counsel for the applicants submits that the applicants doesn't know the complainant by any means. There was no interaction or contact between them. The bank at the request of the guarantor has granted or agreed to grant to the Om Beej Bhandar, Sidhauri District Sitapur (Borrower) banking facilities by way of overdraft and/or promote or loan account upto the aggregate limit of Rs. 1,00,000/-. Om Prakash was the real accused whereas the applicants is Om Prakash Vishwakarma, he is innocent and facing the malicious prosecution. Learned Counsel submits that the applicants is not the proprietor of the company nor has any bank account in his name, he is a clerk and falls under the category of indigent person(s).

7. Learned Counsel for the applicants submits that the investigating officer has failed to point out any specific act of commission or omission on the part of the applicants. During investigation, there is no evidence and material in the shape of statement under Section 161 Cr.P.C. against applicants. The allegations are untrue, misconceived and concocted as against the applicants.

8. Learned Counsel for the applicants submits that the Learned Magistrate has passed order dated 17.11.2006 and taken the cognizance in the most mechanical manner, without any application of mind and in utter disregard to the settled principles of law. He further submits that the innocent applicants places his reliance on the statements of P.W.-1 (Suhagwati, complainant) recorded on 09.01.2006, the complainant states "My Bainama got exchanged with Bhagauti Devi who was my neighbour and Bhagauti Devi further gave my Bainama to his son namely Om Prakash who further took loan on the basis of my Bainama". This statement clearly indicates that the real-accused namely Om

Prakash is the son of Sohan Lal & Bhagauti Devi, whereas the mother's name of the innocent applicants is Ramrati, which shows that the applicants is wrongly identified as the real accused.

Submission on Behalf of Opposite Party

9. Learned A.G.A. for the state submits that the investigating officer conducted a detailed inquiry regarding the named accused Om Prakash son of Sohanlal resident of Moh. Prem Nagar, police station Sidhauli, District Sitapur upon which it transpired that Om Prakash son of Sohanlal's mother's name is Bhagwati Devi, who is permanent resident of Moh. Prem Nagar, police station Sidhauli, District Sitapur, who had died about 01 year and 06 months ago and at present his family is residing in Lucknow and due to this reason the investigating officer could not get the correct information regarding the actual accused Om Prakash.

10. Learned A.G.A. further submits that the factual mistake was caused, as the father's name of the named accused/deceased Om Prakash and Om Prakash produced before the learned court below was same and on the basis of the information given by the residents of the address mentioned on the N.B.W, Om Prakash son of Sohanlal resident of Shambhunath Colony, Police station Sairpur, District Lucknow, permanent resident of Village Kashipur, police station Sidhauli, District Sitapur was arrested on 01.07.2025 and was produced before the learned court below.

Observation

11. Heard learned counsel for the applicants, learned counsel for opposite party no. 2, learned A.G.A for the State and perused the record.

12. At the first instance, it would be appropriate to reproduce the relevant provisions of law under which the present criminal misc. application has been preferred and the law relating to arrest (Section 482

Cr.P.C.- Saving of inherent powers of High Court, Article 21 of the Constitution of India and Section 35 of BNSS.)

Section 528 BNS/482 Cr.P.C:-

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

*Article 21. Protection of life and personal liberty.- "No person shall be deprived of his life or personal liberty **except according to procedure established by law**".*

"Section 35. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

*(ba) **against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;***"

13. The submissions advanced by the learned counsel for the parties emphasises though the name of the applicants are identical to that of the accused person, the applicants are not the real accused in the present case. The non-bailable warrant in question does not contain complete identifying particulars, such as the name of the mother. Owing to such deficiency in the warrant and lack of due verification, the police officials committed a factual mistake and apprehended the applicants, who are an innocent persons.

14. The record does not disclose any material establishing the identity of the applicants as the persons against whom the criminal proceedings were initiated. The deprivation of liberty of a person on account of mistaken identity is impermissible in law and strikes at the very root of the guarantee of personal liberty under Article 21 of the Constitution of India.

"45 In Rabindra Nath Ghosal vs. University of Calcutta reported in (2002) 7 SCC 478 the Supreme Court held:

The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

15. The Supreme Court in **Joginder Kumar vs. State of U.P. reported in (1994) 4 SCC 260**, (paragraph 20). Extracted and reproduced below are the suggestions appearing in the paragraph.

"20. In India, Third Report of the National Police Commission at p. 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terrorstricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....."

16. In the case of *Satendra Kumar Antil vs. Central Bureau of Investigation* reported in (2022) 10 SCC 51, the Supreme Court also declared on section 41 by paragraph 23 therein, reproduced below:-

"23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured."

On this aspect, the judgment in ***Arnesh Kumar vs. State of Bihar* reported in (2014) 8 SCC 273** was relied upon.

17. With reference to the suggestions in Third Report of the National Police Commission the Supreme Court in ***Joginder Kumar vs. State of U.P. (supra)*** said, the guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. An existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a

person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer, in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief, both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified.

18. Looking to the cases cited above, and taking reference of related legal provision as well facts and circumstances of the case, it is seen, that the Supreme Court has said that the constitutional Courts can grant compensation. Reliance to be placed on the judgment of the case **Rudul Shah vs. State of Bihar reported in (1983) 4 SCC 141**, paragraphs 1 and 11, reproduced below.

" CHANDRACHUD, C.J.- This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Session, Muzaffarpur, Bihar, on June 3. 1968 he was released from the jail on October 16. 1982, that is to say, more than 14 years after he was acquitted. By this habeas corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancillary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty- thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already

paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.”

19. In view of the discussion made hereinabove and having taken the references of the case laws and the legal provisions aforementioned, this court is of the considered view, that the impugned Order dated 01.07.2025, Cognizance Order dated 17.11.2006, and all the consequential proceedings as against the applicant in Criminal Case No. 312/2004 (State of U.P. versus Om Prakash) and the proceedings against the applicant in S.T No. 300 of 2025, relating to case crime no. 0041/2024 (State of U.P. versus Mohd. Azeem Idrishi) is liable to be set aside and the instant applications deserves to be allowed.

20. Accordingly, the impugned orders mentioned above are set aside and the applications stand allowed.

21. So far as the unlawful arrest of the applicants by the police is concerned, Police Commissioner, Lucknow and Superintendent of Police, Sitapur are directed to take appropriate and lawful action for such negligent act of the erring Police Officer/Officials and submit a compliance report before this Court within two months from today.

22. As regards the nature of harm suffered by the applicants, the applicants are at liberty to seek appropriate relief by way of invoking the writ jurisdiction under Article 226 of the Constitution of India, in the light of the legal aspects discussed above.

23. Let a copy of this order be send to the Police Commissioner, Lucknow and Superintendent of Police, Sitapur through Registrar (Compliance) of this Court.

(Tej Pratap Tiwari,J.)

February 09, 2026

PS