



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 26289 of 2025

Nitish Agrawal Alias Sona Pandey

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Sumit Goyal
Counsel for Opposite Party(s)	:	G.A.

Court No. - 92

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State-respondent and perused the material available on record.

2. Instant application under Section 528 BNSS, 2023 has been filed by the applicant with prayer to quash the chargesheet dated 18.03.2025, cognizance and summoning order dated 27.05.2025 passed by Nayaya Adhikari, Gram Nayayalaya, Dhampur, District Bijnor in Criminal Case No.563 of 2025, arising out of Criminal Case No. 20 of 2025, under Section 351(2) BNS, Police Station Dhampur, District Bijnor.

3. Learned counsel for the applicant submitted that said provision is analogous to Section 503 IPC, according to schedule appended to BNSS, 2023. The said offence is punishable up to maximum term of two years imprisonment, bailable and non-cognizable. It is trite law that chargesheet filed in a criminal case after initiation into a non-cognizable offence will be treated as complaint and the trial cannot proceed in such cases, as the case instituted on police report.

4. Learned counsel for the applicant further submitted that only allegation against the applicant is that he made a remark towards statement of Sri Chandra Shekhar Azad who is a member of Member of Parliament, regarding people visiting Kumbh fair to have holi bath "Unka illaj hi karna padega". The applicant has been falsely implicated in the case. It is wrong to say that applicant is inciting the people who are members of the whatsapp group to disseminate hatred in the society.

5. Learned counsel for the applicant placed reliance on a judgment of Hon'ble Supreme Court in **B.N. John Vs. State of U.P. and another in SLP (CrI) No.2184 of 2024**, wherein he observed paragraph No.9, which is reproduced as under:-.

" 9. Our criminal justice system, rooted in the rule of law, contemplates

different approaches for dealing with serious and non-serious offences. When complaints pertaining to serious offences are filed, which are generally categorized as cognizable offences under the [CrPC](#), the police, on receiving such information of the commission of a cognizable offence can immediately start the investigation as contemplated under [Section 156](#) of the CrPC. On the other hand, when it relates to non-serious offences which are generally categorized as non-cognizable offences, the law is more circumspect in letting the full force of the criminal justice system operate. When it is related to non-cognizable offence there are certain safeguards put in place so that the invasive, intrusive, and coercive power of the police is not immediately brought into operation, as enabled under [Section 156](#) of the CrPC. In such a situation any complaint alleging commission of non-serious offence(s) or non-cognizable offence(s) made before the police, has to be vetted by a legally trained person in the presence of a Judicial Magistrate before the police can initiate the investigation. Thus, even if the police receives any such complaint relating to non-cognizable offence, the police cannot start investigation without there being a green signal from the Magistrate. Further, when such non-cognizable offence(s) pertaining to officials who are obstructed from discharging their official duties, there is the additional safeguard before the Magistrate which permits the investigating authority to investigate. It must be preceded by a complaint filed by a public servant before the court/Magistrate. This is to ensure that only genuine complaints relating to non-serious offences or non-cognizable offences are entertained by the Magistrate. This is so for the reason that in a democracy, interactions of the citizen with the public servants is more frequent in wherein there may be instances where the members of the public cause obstruction to public servants preventing them from discharging public duties properly.

With these safeguards, the fine balance between the liberties of the citizens and the imperatives of the State endowed with coercive authority to maintain law and order is preserved."

6. Learned counsel for the applicant submitted that applicant is enlarged on bail. The applicant has assailed the FIR lodged in the present case in Criminal Misc. Writ Petition No. 3309 of 2025, which was disposed of with observation that the guidelines framed by the Apex Court in **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273** and other cases are equally applicable to the facts of the instant case.

7. Learned counsel for the applicant further submitted that an offence is made on the basis of FIR version.

8. Matter requires consideration.

9. Issue notice to respondent No.2, returnable at an early date, through CJM concerned.

10. Counter affidavit, if any, may be filed by the next date.

11. List this case on 30.10.2025.

12. No coercive process shall be adopted by the trial court against the applicant till the next date of listing.

(Ram Manohar Narayan Mishra,J.)

September 12, 2025

Ashish/-