

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 5918 of 2025

Petitioner :- Raj Yadav And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Srivastava, Poonam Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Lawyers are abstaining from judicial work. We have carefully perused the record.

2. Although, the prayer made in this writ petition is to quash the FIR dated 23.12.2024 registered as Case Crime No.483 of 2024, under Sections 61, 316(2), 352 of B.N.S.2023, Police Station-Kothibhar, District-Maharajganj but on perusal of record it reflects that the offences, complained of, are punishable only up to seven years and therefore, before effecting the arrest of the petitioners, specific provisions contained in Section 41(1)(b) and Section 41-A of Cr.P.C./Section 35(3) to 35(7) of Bhartiya Nagrika Suraksha Sanhita, 2023 be strictly complied with in view of law laid down by Hon'ble Apex Court in several judgments.

3. We have perused the FIR, which prima facie discloses cognizable offences against the petitioners and therefore, the prayer made to quash the FIR cannot be entertained in view of law laid down by Hon'ble Apex Court in the cases of **State of Telangana Vs. Habib Abdullah Jellani** reported in (2017) 2 SCC 779 and **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others** reported in (2021) SCC Online SC 315 and as such, we are of the view that no interference is warranted.

4. However, considering the fact that all the offences, complained of, in the impugned FIR, are punishable with a term up to seven years, therefore, in case of effecting the arrest of the petitioners in pursuance of the impugned FIR, it is directed that the respondents authorities shall ensure that the specific provisions contained in Section 41(1)(b) and Section 41-A of CrPC/ Section 35(3) to 35(7) of Bhartiya Nagrika Suraksha Sanhita, 2023 and the guidelines issued by Hon'ble Apex Court in the case of **Arnesh Kumar Vs.**

State of Bihar reported in **(2014) 8 SCC 273** as well as the directions issued in judgement and order dated 28.01.2021 of this Court passed in Criminal Misc. Writ Petition No. 17732 of 2020 (Vimal Kumar and 3 Others Vs. State of U.P. and 3 Others) reported in 2021 (2) ACR 1147, be strictly complied with.

5. With the aforesaid observations, the instant writ petition stands disposed of.

Order Date :- 28.3.2025

Manish Himwan

(Prashant Kumar,J.) (M.C. Tripathi,J.)