



2026:AHC-LKO:57909-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 198 of 2026

Durgesh Thru. His Stepsister Mrs. Rubi

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Home
Affairs Lko. And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Skand Bajpai, Abhyudaya Mishra, Shamim Arif, Shashank Tripathi
Counsel for Respondent(s)	: G.A., Shishir Jain

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE DIVESH CHANDRA SAMANT, J.**

1. Heard Sri Skand Bajpai and Sri Abhyudaya Mishra, learned counsel for the petitioner, Sri Aniruddh Singh, learned AGA-I and Sri Shishir Jain, learned counsel for the High Court.

2. Justice Divesh Chandra Samant is virtually connected from Allahabad.

3. This Court passed the order dated 16.07.2026, which reads as under:-

"1. Heard.

2. Justice Divesh Chandra Samant is virtually connected from Allahabad.

3. This Court has passed the order dated 3.7.2026 which reads as under :

"1. This case has been taken up where, Hon'ble Divesh Chandra Samant, J. is connected virtually from Allahabad.

2. This Court passed the order dated 04.06.2026, which reads as under:-

"1. Heard Sri Skand Bajpai, learned counsel for the petitioner and Sri Aniruddh Singh, learned AGA for the State.

2. Notice to opposite party No. 7 has been accepted by Sri Shishir Jain, learned counsel.

3. Issue notice to opposite party Nos. 5 & 6. Steps be taken within a week.

4. Sri Skand Bajpai, learned counsel for the petitioner has filed second supplementary affidavit today. The same is taken on record.

5. Sri Skand Bajpai, learned counsel for the petitioner has informed that he as already filed one supplementary affidavit on 29.05.2026, which may likely to put up before this Court tomorrow i.e. 05.06.2026.

6. By means of this petition, the petitioner has prayed the following relief:

"i. Allow this petition, pass an order(s) or direction(s) in the nature of writ of habeas corpus and direct the respondents to forthwith release the petitioner from judicial custody.

ii. Allow this petition, pass an order(s) or direction(s) setting aside the remand order dated 02.05.2026 passed by the learned Additional Chief Judicial Magistrate-V, Lucknow (8th respondent) authorising the petitioner's judicial custody as also set aside/quash all ancillary, incidental, and consequential actions, orders and warrants after summoning the record from the Court concerned.

iii. Pass an order(s) awarding Rs. 10,00,000/- (Rupees Ten Lakh) as compensation in favour of the petitioner, and direct the respondents to pay the same to the petitioner within such time as may be deemed fit by this Hon'ble Court.

iv. Pass an order(s) or direction(s) commanding the 1st & 2nd respondents to conduct disciplinary proceedings against the erring police personnel/officers in compliance with the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand within such time as may be deemed fit and proper by this Hon'ble Court.

v. Pass an order(s) or direction(s) commanding the 7th respondent to conduct disciplinary proceedings against the erring judicial officer(s) in compliance with the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand within such time as may be deemed fit and proper by this Hon'ble Court.

vi. *Pass an order(s) directing contempt of Court proceedings against the erring personnel/officials in compliance of the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand.*

vii. *Pass an order(s) awarding Rs. 100,000/- (Rupees One Lakh) as the cost of this litigation in favour of the petitioner and against the respondents, and direct them to pay the same to the petitioner within such time as may be fixed by this Hon'ble Court.*

viii. *Pass any other order(s) or direction(s) in favour of the petitioner to further the cause of justice, equity, and good conscience."*

7. *This is a peculiar case where one FIR bearing FIR No. 146 of 2026 has been lodged against four accused persons and the present petitioner is accused no. 1. The FIR has been lodged under Section 303(2) of B.N.S. wherein, the maximum punishment is three years. After arresting the petitioner, Section 317(2) of B.N.S. has been added wherein, the maximum punishment is five years.*

8. *The Hon'ble Apex Court in re; Satender Kumar Antil vs. CBI and another, Special Leave to Appeal (Criminal) No. 5191 of 2021 : (2022) 10 SCC 51 has been pleased to direct all police authorities of the country not to arrest the accused in an offence where the maximum punishment is up to seven years without concrete reason to believe that the accused will flee, tamper with evidence or fail to appear in court. At the same time, specific direction has been issued by the Hon'ble Apex Court to the Magistrates of the country not to grant remand on the application of the arresting officer to the accused, who has been produced before him in an offence where the maximum punishment is up to seven years without examining whether the arrest was legal and all statutory safeguards were met.*

9. *In the present case, undoubtedly, the allegation against the petitioner is relating to the offence wherein the maximum punishment is three years and five years respectively, therefore, he should have not been arrested by the police officers nor his remand application should have been filed before the Magistrate concerned. In any case, the police authorities arrest such person for any reason, may be on the basis of some extraneous consideration, the remand Magistrate must have carefully perused the sections for which the remand has been sought and if the learned Magistrate finds that the alleged offence is having punishment up to seven years, such Magistrate*

should avoid to grant remand and if there is any extreme circumstances granting the remand, the specific reason to that effect must have been indicated in such remand orders. In the present case, we have seen the remand orders which are absolutely mechanical and prima facie it appears that the concerning Magistrate has not applied his judicial mind.

10. Sri Skand Bajpai, learned counsel for the petitioner has shown his copy of the supplementary affidavit which was filed on 29.05.2026 showing the remand order, which is on the printed format and even this fact has not been taken into account as to whether the remand is being granted to one accused or more than one accused.

11. There is another peculiar fact in the present case that the present petitioner is juvenile inasmuch as attention has been drawn towards Annexure No. 11 of the writ petition which is transfer certificate of the petitioner which indicates his date of birth as 18.04.2009, meaning thereby, at the time of lodging the FIR i.e. on 27.04.2026 he was below 17 years. At the time of granting remand, the learned Magistrate did not verify the age of the present petitioner. Had the age of the petitioner been verified by the Magistrate, the minor could have not been sent for judicial custody allowing the remand application of the arresting authority and surprisingly, the arresting authority also not tried to verify the age of the present petitioner, whereas the perusal of the Annexure No. 2 of the writ petition reveals that along with the petitioner, there was one juvenile. If juvenality of that person was ascertained, as to why the age of the present petitioner has not been ascertained by the police authority is the question which would be asked from the arresting authority.

12. We have noticed one fact that the ground of arrest has not been intimated to the petitioner and that fact has not been disputed by the learned AGA. This writ petition was filed on 25.05.2026 and copies thereof has been given to the Office of Government Advocate. Thereafter, the copies of the writ petition must have been provided to the concerning police authorities, but the arresting authority has filed a last application seeking the remand of the petitioner on 02.06.2026 and the concerning remand Magistrate has granted remand for 14 days up to 16.05.2026. This is beyond comprehension as to how the 14 days remand was granted on 02.06.2026 till 16.05.2026.

13. All the aforesaid instances clearly shows that the concerning remand Magistrate has passed the order without application of mind even without perusing the order-sheet which might have been written by his Reader (Peshkar). Such order-sheet must

have been written by the Judicial Officer itself and not by the Reader or Peshkar, and, in any case, on account of pressure of work, such order-sheet is written by the Reader (Peshkar), at least before signing the order, the concerning Magistrate must have carefully perused the order.

14. Having considered the facts and circumstances and having heard the learned counsel for the parties, at this stage, we prima facie find that the detention of the present petitioner is illegal subject to contentions of the opposite parties being taken by filing their respective affidavits in the shape of counter affidavit. So, as an interim measure, we hereby direct that the present petitioner be released from jail forthwith.

15. On the next date, the opposite party Nos.2, 5 and 6 shall file their personal affidavits. On the next date, the opposite party No. 5 and 6 shall appear in person. Learned AGA shall intimate this order to opposite party No. 5 and 6 forthwith and after this order is uploaded, a copy thereof may be served to such opposite party i.e. opposite party No. 5 and 6 by the Registry of this Court within three days. The opposite party No.8 shall also file his personal affidavit explaining the reason as to why he has not followed the dictum of Apex Court in re: Satender Kumar Antil (supra) and also as to why he has not carefully looked into the details of the accused whose remand was sought from him. This Court would take it seriously that a juvenile has been sent for judicial custody granting remand to the arresting authority not once, but by means of three orders as on today and that too in a case where the maximum punishment is three years and five years respectively.

16. On the next date, this Court would decide as to whether the appearance of opposite party No.8 would be required or not. If the subsequent remand has been granted by other than opposite party No.8, such authority shall also file his/her explanation through Senior Registrar of this Court.

17. It is made clear that if this Court does not find the explanation of opposite party Nos. 5 and 6, plausible and proper, appropriate orders may be passed against them as they have also flouted ,prima facie, the dictum of Apex Court in re : Satender Kumar Antil (supra).

18. This order shall be intimated to the jail authorities by the Registry of this Court through Fax or Radiogram at the earliest so that the petitioner could be released from jail forthwith. A copy of this order shall also be provided to opposite party No.8 through District and Sessions Judge, Lucknow by Registry of this Court forthwith.

19. Since we have heard the matter at substantial length, therefore, list again on 03.07.2026 at 03:30 PM for further hearing after obtaining appropriate order from Hon'ble The Chief Justice to constitute the bench.

20. By the next date, parties may file their counter affidavit. "

3. Today, opposite party nos. 2, 5 and 6 have filed their personal affidavits, same are taken on record.

4. Sri Shishir Jain, learned counsel for the High Court has submitted that personal affidavit of opposite party no. 8 has been filed in the registry today itself though the same is not available on record.

5. Opposite party no. 5, S.I., Anil Kumar Singh and opposite party no. 6, Head Constable, Ashok Verma are present in person.

6. Sri Skand Bajpai, learned counsel for the petitioner has requested short time to file reply to the personal affidavits which have been filed today.

7. On being asked from the Government Advocate as to how the Police Officers, more particularly, opposite party nos. 5 and 6 have followed the directions of the Apex Court in re:- Arnesh Kumar V. State of Bihar and Satender Kumar Antil vs. CBI and another in the present case, he tried to explain the bonafide of opposite party nos. 5 and 6 but could not defend those Police Officers, inasmuch as this petition was filed on 25.05.2026, wherein, the annexure no. 11 has been enclosed which is the Transfer Certificate issued by the Principal, Primary School, Chinhath, Lucknow showing the date of birth and as per the aforesaid date of birth, the petitioner was juvenile at the time of arrest. However, the police authorities have sought remand of the present petitioner thereafter concerning Judicial Magistrate granted remand on such application.

8. Those Police Officers could not explain the reason as to how the present petitioner did not cooperate in the investigation as before his arrest the Police authorities did not proceed towards the house of the petitioner which was informed by the co-accused who were arrested on the first date, i.e., 28.04.2026. The case diary has been shown, wherein, no efforts have been indicated to convince the Court that the concerning Police Officers have approached the family members of the petitioner.

9. Admittedly, the petitioner arrested on 02.05.2026 at 02:53 PM as has been

indicated in the arrest memo and in the same arrest memo the reason of arrest has been indicated that the petitioner was not cooperating in the investigation. On being asked from the Police Officers as to how the petitioner has not cooperated in the investigation when he was arrested on 02.05.2026, they could not explain the reason. On being further asked from the Police Officers about the strong reason as to how the petitioner has been arrested when dictum of Apex Court in re:- Arnesh Kumar V. State of Bihar and Satender Kumar Antil vs. CBI and another clearly mandated that if any person is involved in an offence where the punishment is up to seven years, they should not be arrested, no proper reason could be explained. On being further asked as to whether the Police Officers tried to take bond from the petitioner or his family members regarding cooperation in the investigation, no such information has been shown by those Police Officers. Therefore, prima facie, the Police Officers have flouted and violated not only the direction of the Hon'ble Apex Court in re:- Arnesh Kumar V. State of Bihar and Satender Kumar Antil vs. CBI and another but did not follow the specific provision so provided in BNSS under Section 35. Further, if the reason of arrest and ground of arrest are perused carefully, there is apparent contradiction in both the documents and the aforesaid aspect would also be considered on the next date.

10. From the perusal of the personal affidavit of the Commissioner of Police, the conduct of Police Officers, i.e., opposite party nos. 5 and 6 may not be justified.

11. Since, the personal affidavit of Judicial Officer, i.e., opposite party no. 8 is not before us, therefore, any appropriate order may be passed on the next date considering the explanation of the affidavit of the Judicial Officer. Since, the copy of that affidavit has been received by Sri Bajpai, so he may file reply to that affidavit also by the next date of listing.

12. List this case on 16.07.2026 at 03:30 PM after taking appropriate order from the Hon'ble Chief Justice to constitute the Bench.

13. On the next date, both the Police Officers who are present in person today shall again remain present."

4. Sri Anil Kumar Singh, S.I., P.S. B.B.D., Lucknow and Sri Ashok Verma, H.C., P.S. B.B.D., Lucknow are present in person in compliance of the order of this Court.

5. Sri Skand Bajpai, learned counsel for the petitioner has stated that he has filed

reply to the affidavits filed by the opposite parties on 14.7.2026 and the same are likely to be put up before the Registrar of this Court on 17.7.2026.

6. Sri Anirudh Kumar Singh, learned AGA -I has informed that the Commissioner of Police, Lucknow initiated preliminary inquiry against the Sub-Inspector concerned namely Anil Kumar Singh but the outcome thereof is not known to him, therefore, he may be given some short time to seek specific instructions as to whether pursuant to the preliminary inquiry report any departmental inquiry has been initiated against him.

7. Sri Shishir Jain, learned counsel for the High Court has drawn attention of this Court towards the explanation of the judicial officers i.e. A.C.J.M.-IV and A.C.J.M.-VIII who have allowed remand application of the police in respect of the present petitioner time to time and the affidavit of A.C.J.M.-V, Lucknow by submitting that on the basis of police report and material, so placed the concerning judicial officers granted remand, without having any malafide or ill-intention. If there is any mistake on their part the same is bonafide and unintentional and they are tendering their unconditional apology. He has also submitted that in future the judicial officers shall remain careful.

8. The aforesaid unconditional apology of the judicial officers may be considered on the next date.

9. By the next date of listing, Sri Anirudh Kumar Singh shall seek specific instructions in terms of this order and shall apprise the Court about the legal steps, if any, taken against the Sub-Inspector concerned.

10. Office is directed to send and enclose copies of all affidavits and documents with the Bench Copy so that those documents can be perused properly by Justice Divesh Chandra Samant, who is sitting at Allahabad.

11. List this case on 17.8.2026 at 3.00 P.M. after seeking appropriate order from Hon'ble the Chief Justice to constitute the Bench.

12. On the next date, Sri Anil Kumar Singh, Sub-Inspector, B.B.D., Lucknow, who is present in person today, shall again remain present. Sri Ashok Verma, H.C., P.S. B.B.D., Lucknow who is also present today, need not appear unless his presence is again required by this Court. "

4. Sri Aniruddh Singh, learned AGA-I has filed an affidavit taking one document on record, the same is taken on record. The aforesaid affidavit has been filed by one Diksha Sharma, Deputy Commissioner of Police, Commissionerate Lucknow.

5. The then Investigating Officer, namely, Sri Anil Kumar Singh is present in person.

6. Sri Aniruddh Singh has drawn attention of this Court towards Annexure No. A-1 of the affidavit, which is a show cause notice dated 13.08.2026 issued against the then Investigating Officer by the Deputy Commissioner of Police (East), Commissionerate Lucknow for imposing minor punishment of censure entry. Sri Aniruddh Singh has stated that as soon as the Investigating Officer files his explanation, after considering the same, final order may be passed.

7. Sri Aniruddh Singh has further submitted that the present petitioner has been treated as juvenile, therefore, he shall be given such treatment for which any juvenile accused is entitled.

8. Sri Aniruddh Singh has further submitted on the basis of instruction so received that in the issue in question, the investigation has been completed and charge-sheet has been filed against all accused persons except the present petitioner.

9. On being asked as to why charge-sheet has not been filed against the petitioner, Sri Aniruddh Singh has informed that some minor exercise in the investigation is to be completed and as soon as such exercise is completed, the police report may be filed against the petitioner. However, he has clarified on the basis of instruction so received, for all practical purposes the investigation has been completed in the issue in question.

10. Notably, the Judicial Officers who have allowed the remand application of the Investigating Officer have submitted their bonafide submission and tendered their unconditional apology with the undertaking that they shall remain careful in future.

11. The aforesaid unconditional apology of the Judicial Officers is hereby

accepted with the caution that they shall remain careful in allowing such applications or other applications and their judicial application of mind should be reflected in such orders. This caution may not be treated as adverse remark in the service record of the Judicial Officers.

12. Having heard learned counsel for the parties, having perused the material on record and the affidavit so filed today, considering the fact that the investigation has been completed for all practical purposes and charge-sheet has been filed against accused persons except the present petitioner and the present petitioner has been treated juvenile and he shall be treated in a manner a juvenile accused is treated. So, we do not find any plausible reason to keep this writ petition pending any longer.

13. Accordingly, the same is disposed of finally, having expectation that the investigation would also be completed against the petitioner and police report, if any, may be filed strictly in accordance with law.

14. Before parting with, we find it appropriate to direct that in the cases where the offence under which the F.I.R. has been lodged, the maximum punishment is up to seven years, the dictum of Apex Court in **Re:- Satendra Kumar Antil vs. CBI and others in Special Leave to Appeal (Criminal) No. 5191 of 2021** and **(2014) 8 SCC 273: Arnesh Kumar vs. State of Bihar and another** shall be abide by in letter and spirit by the Police authorities and if any remand application is filed before the Judicial Officers, such Judicial Officers shall carefully examine the contentions of the Investigating Officer who has filed remand application to know as to why the remand has been sought for the accused person(s). Any careless or callous approach of either Police Officers or Judicial Officers may not be taken lightly. At the same time, the plea of juvenility, if it is raised, shall be taken into consideration by concerning authorities, strictly in accordance with law. Lastly, the factum of illegal confinement, if it is established, may be taken seriously and erring Official/Officers may not be spared. So, all the concerning Official/Officers shall not take up aforesaid issue lightly.

15. In view of the aforesaid term, the writ petition is **disposed of** finally.

(Divesh Chandra Samant,J.) (Rajesh Singh Chauhan,J.)

August 17, 2026

Anurag