VERDICTUM.IN

2026:AHC:209894-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1328 of 2026

Deepak

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arpit Malviya, Awadhesh Kumar Malviya
Counsel for Respondent(s)	:	Kapil Kumar, Sandhya Singh, G.A.

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.

1. Heard learned counsel for the petitioner and learned AGA for the State.

2. The present petition has been filed by the petitioner, Deepak, *inter alia*, challenging his arrest in connection with Crime No. 370 of 2026.

3. This case reflects the sordid state of affairs prevailing in the Uttar Pradesh Police. Repeatedly, cases have come before this Court in which the strict requirements of law, both procedural and substantive, have not been adhered to in letter and spirit. Documents appear to have been prepared and executed as a mere formality, replete with errors that raise serious doubts about the legality of the detention and arrest of the petitioner and others similarly situated. It appears that the police are a law unto themselves and believe that errors in the discharge of their duties, whether deliberate or unintentional, will go unquestioned and that they are untouchable under the law.

4. The brief citations of fact essential to appreciate the present case are as follows:

An FIR was registered being Crime No.370 of 2026 on 23.08.2026 for offences under Sections 109(1), 190, 191(2), 191(3), 115(2), 352,

VERDICTUM.IN

351(3) of the BNS in which the petitioner was arrested on 24.08.2026 at 2:57 pm. Item No.13, relating to the grounds of arrest has been perused by this Court, which finds that the same is perfunctory in nature, with the grounds having been set out in rows 13(1) to 13(6). The grounds of arrest have been stated to be the material based on the FIR and the evidence. The column relating to the signature of the arresting officer and the date reflects that the same has been signed by Mr. Anuj Kumar, S.I., who is the Investigating Officer as well as the arresting officer in the present case. The date mentioned therein is 23.08.2026; however, in the column where the date was required to be filled in, the date has been mentioned as 24.08.2026.

5. The Investigating Officer was present before this Court in person and was questioned on the last date of hearing, as well as today, with regard to the discrepancy between the date given beneath his signature which is 23.08.2026, and the date entered in the column specifically provided for that purpose where it is given as 24.08.2026. In response, he stated that the arrest was made on 24.08.2026 and that the date mentioned beneath his signature, i.e., 23.08.2026, had been erroneously filled in.

6. Thereafter, this Court drew his attention to his signature on the document relating to the search of the accused/petitioner, available at page 55, which also reflects that the search was conducted by Mr. Anuj Kumar, the Investigating Officer, on 23.08.2026. The grounds of arrest, which are stated to have been signed by the petitioner, were also prepared on 23.08.2026. Further, on page 55, the document relating to the search and seizure of articles from the person of the accused/petitioner, bears the signature of the Investigating Officer, with the date 23.08.2026 mentioned at two places.

7. If the discrepancy was merely the result of a bona fide mistake, there was nothing to prevent the Investigating Officer from correcting

VERDICTUM.IN

the date to 24.08.2026 forthwith and authenticating such correction by placing his initials against it. However, no such correction was made. Thus, the same purported "error" appears to have been committed by the Investigating Officer at five different places.

8. Before the arrest of the petitioner, it is also the case of the State that proceedings under Sections 126, 130 and 170 of the BNSS were initiated against the petitioner, who was taken into custody on 23.08.2026 itself under preventive action by the police. Gautam Buddha Nagar being a Police Commissionerate, the police exercised their magisterial powers under Sections 126, 130 and 170 of the BNSS. This Court examined the documents relating to the custody of the petitioner under the aforesaid provisions of the BNSS, including the notice under Section 130 of the BNSS, which is stated to have been served upon the petitioner and the other co-accused persons. The said notice forms part of the typed copy of the main petition at pages 45 and 46. The typed copy has been compared with the original, and the particulars therein have been found to be correct. The said notice under Section 130 of the BNSS was allegedly issued to the petitioner on 24.08.2026. However, before adverting to the relevance and fallacy of issuing such a notice, a brief reference to the provisions contained in Sections 126, 130 and 170 of the BNSS is necessary, which are reproduced hereinbelow:

> 126. **Security for keeping peace in other cases**- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
>
> (2) Proceedings under this section may be taken before any

VERDICTUM.IN

> Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.
>
> 130. **Order to be made**- When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.
>
> 170. **Arrest to prevent commission of cognizable offences**- (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.
>
> (2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Sanhita or of any other law for the time being in force.

9. From the above, it is evident that Section 126 of the BNSS provides for taking security for keeping the peace. Where an Executive Magistrate receives information that any person is likely to commit a breach of the peace, disturb public tranquillity, or do any wrongful act that may probably occasion a breach of the peace or disturb public tranquillity, the Executive Magistrate, upon forming an opinion that there are sufficient grounds for proceeding, is required to act in the manner prescribed under the subsequent provisions of the BNSS, commencing with Section 130 thereof.

10. Section 130 requires a Magistrate, while proceeding under Section 126, 127, 128 or 129 of the BNSS, who deems it necessary that any person should show cause under Section 130, to state the

VERDICTUM.IN

substance of the information received by the Executive Magistrate giving rise to the apprehension that such person, if not compelled to execute a bond for good behaviour, may pose a danger to public tranquillity. In other words, Section 130 of the BNSS provides for a notice to be issued to a prospective person against whom the Magistrate proposes to proceed under Section 126 of the BNSS.

11. Section 170 of the BNSS provides for arrest to prevent the commission of a cognizable offence. This provision, which finds its place in Chapter XII relating to preventive action by the police, authorises a police officer who has knowledge of a person's design to commit a cognizable offence, to arrest such a person without an order from a Magistrate and without a warrant, where it appears to the police officer that the commission of the cognizable offence cannot be prevented otherwise than by effecting such arrest. Sub-section (2) of Section 170 provides that such a person cannot be kept in detention for more than 24 hours from the time of his arrest, unless further detention is authorised under any other provision of the BNSS or any other law for the time being in force.

12. A combined reading of the three provisions makes it mandatory for the Magistrate proposing to proceed under Section 126 of the BNSS to first issue a show-cause notice to the person concerned, requiring him to show cause why he should not be directed to execute a bond for keeping good behaviour, specifying the amount of the bond and the period for which it is to remain in force. If such person is unable to furnish the bond on account of his financial incapacity, the Magistrate must consider the circumstances and determine whether the bond amount requires reduction to enable the person to furnish the same. The Magistrate must, therefore, exercise such power judiciously, ensuring that the proceedings do not result in undue hardship or detention merely on account of the person's

VERDICTUM.IN

inability to furnish the bond.

13. As regards Section 170 of the BNSS, in the facts and circumstances of the present case, the said provision was not applicable, as the cognizable offence had already been committed. The powers conferred under Section 170 of the BNSS are preventive in nature and may be exercised only where the police has knowledge of a design to commit a cognizable offence and considers such action necessary to prevent its commission. Once the offence has been committed, the preventive power under Section 170 of the BNSS cannot be invoked retrospectively, as the apprehended offence has been committed, and the purpose of preventing its commission no longer survives.

14. The police, however, are not helpless in cases where a cognizable offence has already been committed, as they are empowered to arrest a person without a warrant under Section 35(1)(c) of the BNSS. The same reads as under:

> 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—
>
> (c) 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.

15. It goes without saying that where an arrest is made under Section 35(1)(c) of the BNSS, the same must necessarily be followed by the registration of an FIR and the production of the arrested person before the Magistrate within 24 hours of such arrest. If, however, the arresting officer is of the opinion that no offence is made out, the person so arrested must be released on his personal bond or without

VERDICTUM.IN

requiring the same, as the case may be, in accordance with law, where no FIR is registered.

16. In the facts and circumstances of the present case, the police may have been empowered to proceed under Section 35(1)(c) of the BNSS; however, in the absence of sufficient material to proceed against the petitioner under the said provision, they instead resorted to preventive proceedings under Section 126 of the BNSS. However, the notice under Section 130 of the BNSS, as reflected in the document, was issued in the name of ACP-I but was actually signed by Mr. Kamlesh Kant, ACP-II. The said notice is, therefore, *otiose*, particularly as the petitioner had already been arrested under Section 126 of the BNSS on 23.08.2026 at around 4:00 p.m., whereas the notice under Section 130 of the BNSS ought to have been served upon the petitioner before taking any coercive action against him and not subsequent to his arrest.

17. The original records of the preventive proceedings were called for by this Court. The challan that was sent by the Police Station to the office of the ACP is dated 23.08.2026. The challan required the ACP to act on the apprehension of a breach of peace, *inter alia*, by the petitioner, whereas the offence had already been committed and the injured persons had already approached the police. The GD entry dated 23.08.2026, which records the time as 19:34 hours, reflects that the petitioner was taken into custody on 23.08.2026 itself at around 4:00 p.m.

18. The bail bond, upon a preliminary inquiry before the Magistrate, discloses the cavalier and "could not careless" manner in which the ACP has acted in this case. The bond, which required the person executing it to agree to the amount stipulated by the ACP for keeping good behaviour, does not even mention the amount of the bond, and in each of those papers, the space where the bond amount had to be

VERDICTUM.IN

written has been left blank. These are the original documents that have been perused by this Court, and this error is evident from the records. When the ACP was questioned as to how he could authorise the detention when he had not even filled in the amount of the bond required to be agreed to by the person sought to be detained under Section 126 of the BNSS, the ACP stated that it was an error on his part. These bonds also do not reflect that the ACP had passed any order rejecting or accepting them, as there is no signature, date or time indicating when such an order was passed.

19. Similarly, when Mr. Anuj Kumar was questioned about the incorrect mention of dates in all the documents at five places, which reflect that the documents were prepared on 23.08.2026, as signed and dated by Mr. Anuj Kumar himself, while in the same documents, the date of arrest is shown as 24.08.2026. Likewise, he was questioned with regard to the document relating to the personal search and seizure of the accused/petitioner herein, wherein the search is stated to have taken place on 23.08.2026, as clearly mentioned in the document, and thereafter, the date 24.08.2026 is also mentioned.

20. Mr. Anuj Kumar also stated that the same was an error on his part. The same answer was given by Mr. Anuj Kumar with regard to the grounds of arrest served upon the petitioner, which were signed by him and are at page No. 56 of the original record. The document is handwritten in Hindi by Mr. Anuj Kumar himself, setting out the grounds of arrest. In the body of the grounds of arrest, Mr. Anuj Kumar informs the petitioner that he is being arrested on 24.08.2026 at 14:57 hours in the case registered against him. At the bottom left-hand side of the document is the signature of the petitioner, Deepak, while on the right-hand side, Mr. Anuj Kumar has signed the document, and the date beneath his signature is 23.08.2026.

VERDICTUM.IN

21. From the above, what appears to this Court is a strong *prima facie* case in which document was filled up at a later stage and that the signature of the petitioner was obtained on a blank paper and countersigned by Mr. Anuj Kumar himself, leaving the portion above blank for the grounds of arrest to be filled in later. However, while filling in the grounds of arrest, he failed to take into account that his signature had already been affixed on 23.08.2026, whereas the date of arrest is shown as 24.08.2026 in the body of the grounds of arrest. The document itself reflects that Deepak was in the custody of Mr. Anuj Kumar even before the formal arrest was made, which, of course, is not disputed by the State, whose counsel has, however, stated that his detention was under the preventive powers conferred by Sections 126, 130 and 170 of the BNSS.

22. This Court questioned the worthy ACP, Mr. Kamlesh Kant, as to how he could issue a notice under Section 130 of the BNSS asking the petitioner to show cause why he should not be taken into preventive custody if he was unwilling to execute a bond for good behaviour, to which the officer answered that he had acted as per procedure. The Court then asked him where such procedure was laid down, whether in the BNSS, the Police Manual or any other law for the time being in force, to which the officer remained silent.

23. Thus, what strongly appears from the narrative of both sides is that the petitioner was initially taken into custody on 23.08.2026, as all the documents bear the signature and date of Anuj Kumar as 23.08.2026, whereas the same documents elsewhere show that the petitioner was taken into custody on 24.08.2026. These documents *prima facie* appear to have been prepared at a later stage. In this regard, it must be mentioned that the incident in question took place due to a property dispute between both parties, namely, the complainant side and the accused side. The period of detention

VERDICTUM.IN

commencing from 4:00 p.m. on 23.08.2026 is held by this Court to constitute unlawful detention, as the required procedure was not followed. Firstly, the notice under Section 130 of the BNSS was never given to the petitioner herein, as is reflected by the bail bond document, which does not even mention the amount of the bond required to be executed by the petitioner. If the procedure under Section 130 itself was incorrect and *otiose*, without any effect, the question arises as to how the petitioner was taken into custody even before he was formally arrested. The only power that authorised the authorities to proceed under the preventive provisions was Section 170 of the BNSS. Section 170 could only be exercised where the offence had not yet been committed but there was an apprehension that it would be committed if the suspect was not taken into custody. After the offence had been committed, as stated hereinabove, the police still had the power to make the arrest, but that was under Section 35(1)(c) of the BNSS, in which case the FIR should have followed promptly, along with the arrest memo, which should have been prepared on 23.08.2026 itself, specifying the grounds of arrest, and the petitioner should thereafter have been produced before a Judicial Magistrate within 24 hours.

24. The narrative of the facts herein reflects that the police are acting in a manner that demonstrates their lack of concern for the civil liberties of ordinary citizens and their propensity to make arrests without exploring the option of whether the case can proceed without such arrest or detention.

25. In this regard, the Court feels it essential to record the submission of the learned State Counsel, who sought to place on record photographs relating to the incident and stated that the situation on the ground was actually tense, with a huge crowd having gathered, and that, had the police not acted in good faith under the preventive

VERDICTUM.IN

provisions, the situation could have escalated to a point where public order and peace would have been at stake.

26. This Court is cognizant of the situation put forth by the learned State Counsel; however, the situation on the ground does not absolve the police of errors committed by them in failing to proceed strictly in accordance with law. It is for the police to understand that all the provisions in the Cr.P.C./BNSS providing protection to a person sought to be detained arise from the constitutional protection guaranteed under Article 22(1).

27. Section 38 of the BNSS provides that the person so arrested has to be informed of his legal right to engage a counsel of his choice, which must be disclosed by the police to the person who is arrested. This provision follows the constitutional imperative under Article 22(1), which makes it mandatory that a person so arrested is entitled to the assistance of an advocate. In this regard, it must be mentioned that Row 16 of the arrest memo requires an entry by the police as to whether the person so arrested has been informed of his right to engage a lawyer of his choice under Section 38 of the BNSS, to which the police has entered 'yes' in writing, indicating that such information has been given. However, the GD entry at page No. 43 of the petition bearing No. 55 of 24.08.2026 at 14:57 hours does not even remotely mention that the existence of such a right was communicated to the petitioner. Even in the grounds of arrest, there is only one line at the bottom stating that he has a right to apply for bail through his counsel. That intimation is totally different from an intimation that he has a right to legal assistance from the time of his arrest, which also includes advice by the lawyer before or during his interrogation, but not throughout the interrogation. The grounds of arrest, which have been separately prepared, do not mention this right, nor does the arrest memo given to the petitioner.

VERDICTUM.IN

28. However, the Magistrate erred gravely in failing to scrutinize the papers placed before it by the police in order to ascertain whether the law had been complied with in letter and spirit.

29. Therefore, in the present case, the Court's interaction with the ACP and the Investigating Officer reflects that they are highly ignorant of the procedures laid down in the BNSS and have acted in a cavalier manner on account of such ignorance.

30. The Director General of Police, U.P., is requested to ensure that better training modules are prepared for training the police and sensitising them to the civil liberties of citizens and the strict procedures to be followed before making an arrest or detention. The police also need to be sensitised to the manner in which they must deal with a suspect who is not an accused and a person against whom there is strong *prima facie* evidence to make him an accused. This Court has seen several cases where suspects are called to the police station, detained inordinately for more than 24 hours, and then set free. Henceforth, such action on the part of the police shall not be tolerated on the ground of lack of knowledge of procedure and shall be deemed to be malicious unless the police provide material enabling the Court to take a contrary view.

31. In the facts and circumstances of this case, and in view of what has been argued and considered by this Court hereinabove, the petition is **allowed**. The detention of the petitioner is held to have taken place on 23.08.2026 from 4:00 p.m., as has been stated by the State itself, but the same is rendered unlawful on account of the violation of the strict provisions under Sections 126 and 130 of the BNSS. The subsequent arrest of the petitioner on 24.08.2026 at 14:57 hours also fails judicial scrutiny, as the grounds of arrest are woefully inadequate and the documents relating to the arrest are so fabricated with regard to the date as to raise a strong suspicion, as

VERDICTUM.IN

already held hereinabove, that the petitioner was in continuous unlawful police custody from 23.08.2026 itself.

32. The petitioner shall be set at liberty forthwith, if not wanted in any other case.

33. The observations of this Court against Mr. Kamlesh Kant, ACP, and Mr. Anuj Kumar, Investigating Officer, regarding the manner in which they proceeded in the matter shall be recorded as an expression of displeasure by the Court in the service books of both officers.

34. A copy of this order be communicated to the Director General of Police, U.P. for necessary compliance.

35. A copy of this order be also communicated to the Judicial Magistrate concerned through the District Judge, Gautam Buddha Nagar.

36. With the above, the petition stands **disposed of as allowed**.

October 7, 2026
R.S. Tiwari

(Achal Sachdev,J.) (Atul Sreedharan,J.)