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2026:AHC:230511

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 45522 of 2026

Nageshwar Mishra and another

…..Applicant(s)

Versus

State of U.P. and another

…..Opposite Party(s)

Counsel for Applicant(s)	:	Aman Singh Visen, Satyendra Kumar Tripathi
Counsel for Opposite Party(s)	:	G.A.

AFR
Reserved on:- 16.10.2026
Delivered on:- 5.11.2026

Court No. – 55

HON'BLE VIKRAM D. CHAUHAN, J.

1. Heard Sri Satyendra Kumar Tripathi, learned counsel for the applicants and Sri Manish Goyal, learned Additional Advocate General for the State and perused the records.

2. The present application under Section 528 of BNSS, 2023 is preferred by the applicants challenging the order dated 9.7.2026 passed by Additional Sessions Judge, Court No 5, Varanasi in Criminal Revision No. 588 of 2025 (Nageshwar Mishra and another Vs. State of U.P. & another) and order dated 17.10.2025 passed by Additional Chief Judicial

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Magistrate, Court No. 4/M.P.M.L.A., Varanasi in Miscellaneous Application No. 3200 of 2024 (Nageshwar Mishra and another Vs. Rahul Gandhi) under Section 173(4) of B.N.S.S, 2023, Police Station Sarnath, District Varanasi.

3. The applicants initially preferred an application dated 26.9.2024 under Section 173(4) of B.N.S.S, 2023 before the court of Judicial Magistrate (Second), Varanasi for lodging a first information report against respondent no. 2 for offence under Sections 147, 148 and 152 of B.N.S., 2023 and investigation of same. In the aforesaid application preferred by applicants it is alleged as follows :-

3.1 The applicant(s) been deeply disturbed by reading news published across all news channels and newspapers, in which the leader of country's principal opposition party - respondent no 2, during his visit to Foreign Country, made an extremely objectionable statement. Respondent no. 2 has stated that there is an atmosphere of insecurity among Sikhs in India, and asked whether a Sikh, would be allowed to wear a turban or not, and whether he would be able to go to Gurudwara. Respondent no. 2 made this remark in his event after asking the name of a Sikh journalist present there, namely, Shri Bhalinder Singh. The aforesaid Shri Bhalinder Singh along with other Sikhs, also objected to it, because this statement is one that incites people against one another for his own political interests.

3.2 The statement of respondent no. 2 regarding Sikhs is so inflammatory that it can be gauged from the fact that one terrorist Gurpatwant Singh "Pannuu" has endorsed his remarks as correct. In a

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way, this has made the work of terrorists easier, and it is certain that terrorists will take advantage of this statement to try to spread violence and anarchy in India and run a propaganda campaign against India around the world.

3.3 Further, said statement of respondent no. 2 is a conspiracy to incite civil war against India. As proof, the recent statement by Sri Salman Khurshid, a Congress leader close to respondent no. 2 stated that “a situation like Bangladesh could arise in India too,” is a punishable offence under Sections 147, 148 and 152 of the Bharatiya Nyaya Sanhita, 2023.

4. The above-mentioned application of applicants under Section 173(4) of B.N.S.S., 2023 was rejected by Additional Chief Judicial Magistrate, Court No 4, Varanasi by order dated 28.11.2024. The aforesaid order dated 28.11.2024 rejecting the application filed by applicants on the ground that there was no prior sanction of Central Government in terms of Section 208 of B.N.S.S., 2023. Applicants being aggrieved by above-mentioned order dated 28.11.2024 preferred Criminal Revision No. 61 of 2025 (Nageshwar Mishra and another Vs. State of U.P. and another) before court of Additional Sessions Judge/Special Judge (MP/MLA), Court No 5, Varanasi. The revisional court by order dated 21.7.2025 allowed above-mentioned Criminal Revision No. 61 of 2025 and order dated 28.11.2024 passed by Magistrate was set aside and matter was remanded back to the court of first instance for decision afresh. The respondent no. 2 being aggrieved by above-mentioned order dated 21.7.2025 passed by revisional court preferred Criminal Revision No. 4946 of 2025 (Rahul Gandhi Vs. State of U.P. and another) before this

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Court. The above-mentioned Criminal Revision No. 4946 of 2025 was dismissed by judgment dated 26.9.2025. Paragraph nos. 50 to 56 of the above-mentioned judgment dated 26.9.2025 passed by this Court is quoted hereinbelow:-

> *"50. Therefore, it appears, it was incumbent upon lower revisional court to check the correctness and legality of the order dated 28.11.2024 passed by the learned magistrate concerned and as according to the revisional court the finding recorded by learned magistrate was erroneous, therefore, lower revisional court rightly set aside the order dated 28.11.2024 and remitted back the matter and therefore, it cannot be said that while passing the impugned order dated 21.7.2025 lower revisional court committed any illegality.*
>
> *51. Further, from the order dated 28.11.2024 passed by the learned magistrate, it reflects that while dismissing the application moved by opposite party no. 2 under section 173(4) BNSS no finding was recorded whether from the statement of revisionist given at U.S.A., any cognizable offence is made out or not and his application was dismissed mainly on the ground of requirement of sanction, therefore, in view of this Court, it was not required for lower revisional court to give such finding of facts on merit while passing the impugned order dated 21.7.2025.*
>
> *52. As already observed, there is no illegality in the impugned order and therefore, it can not be set aside. Thus, this Court after setting aside the impugned order dated 21.7.2025 cannot record any finding on its own whether from the application moved under section 173(4) BNSS any cognizable offence is made or not.*
>
> *53. In considered view of this Court, learned magistrate concerned before him the application under section 173(4) BNSS has been filed by the opposite party no. 2 is empowered to decide whether*

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from the application moved by opposite party no. 2 any cognizable offence is made out against the revisionist or not.

54. Needless to say that if any application under section 173(4) BNSS is moved against an individual then before giving direction to register the case and to investigate the matter, it is necessary for the magistrate concerned to record the finding whether any cognizable offence against said individual is made out or not as for registration of the FIR and to investigate the matter, it is necessary that a cognizable offence is made out.

55. Therefore, from the discussion made above, I find no illegality in the impugned order dated 21.7.2025 passed by the lower revisional court and therefore, the instant revision is devoid of merit.

56. Accordingly, instant revision stands ***dismissed.”***

5. A perusal of above-mentioned judgment dated 26.9.2025 passed by this Court would go to show that this Court observed that it is necessary for the Magistrate concerned to record finding whether any cognizable offence against respondent no. 2 is made out or not for registration of first information report and to investigate the matter.

6. In pursuance to above-mentioned order dated 21.7.2025 passed by first revisional court as confirmed by this Court by order dated 26.9.2025, the application under Section 173(4) of B.N.S.S, 2023 was considered afresh by the court of first instance and by order dated 17.10.2025 the said court has rejected the application preferred by the applicants. The Court of first instance has held in the order dated 17.10.2025 that except for suspicion applicants have not preferred any concrete ground which could demonstrate that alleged speech of respondent no. 2 endangers

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sovereignty or unity and integrity of India or the alleged speech is design to wage war against the Government of India. Further, court of first instance has held that application filed by the applicants does not disclose the date, time and place of alleged speech during the visit of respondent no. 2 to foreign country. The court of first instance has further recorded finding that no cognizable offence is said to have been made out from the application preferred by the applicants.

7. The applicants being aggrieved by above-mentioned order dated 17.10.2025 preferred Criminal Revision No. 588 of 2025 (Nageshwar Mishra Vs. State of U.P. and another) before Additional Sessions Judge/Special Judge (M.P./M.L.A.), Court No. 5, Varanasi. The revisional court by judgment dated 9.7.2026 has rejected the above-mentioned Criminal Revision No. 588 of 2025. The above-mentioned orders dated 17.10.2025 and 9.7.2026 is subject matter of challenge before this Court in the present case.

8. Learned counsel for the applicants submitted that court of first instance as well as revisional court committed error in law in passing the impugned orders. It is submitted that from the facts and circumstances stated in application under Section 173(4) of B.N.S.S., 2023 (preferred by applicants), cognizable offence under Section 152 of B.N.S., 2023 is made out against respondent no. 2. It is submitted that respondent no. 2 is elected representative (Member of Parliament and leader of opposition at present) who on his visit to foreign country have stated that there is an atmosphere of insecurity among Sikhs in India, and asked whether, a Sikh would be allowed to wear a turban or not, and whether he would be able to go to a

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Gurudwara. It is submitted by learned counsel for applicants that aforesaid circumstance and material were enough for issuing direction for lodging of first information report against respondent no. 2 as along with aforesaid application newspaper report were also filed before the court of first instance. It is further submitted that in the reply submitted by respondent no. 2 before revisional court in previous round of litigation being Criminal Revision No. 61 of 2025 (Nageshwar Mishra and another Vs. State of U.P. and another), respondent no. 2 has filed reply dated 15.5.2025 before the revisional court wherein in paragraph no. 6 of said reply, respondent no. 2 has admitted to have made the above-mentioned speech while he was on his visit to foreign country. It is further submitted that court concerned has incorrectly held that no cognizable offence is made out from above-mentioned allegation. Learned counsel for applicants has further stated that revisional court committed error in recording the finding that there is no newspaper or any other document, wherein there was a reference to the statement made by respondent no. 2. It is submitted that the newspaper report was on the record of the trial court. It is submitted that offence under Section 152 of B.N.S., 2023 is made out against respondent no. 2.

9. Learned Additional Advocate General for the State submitted that speech made by respondent no. 2 on his visit to foreign country was supported by separatist and in this reference learned Additional Advocate General has referred to page no. 64 of the paper book. The above-mentioned separatist is head of banned terrorist organization who has supported the statement of respondent no. 2 and stated that statement of respondent no. 2 justify the demand for separate state.

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10. In the present case, application under Section 173(4) of B.N.S.S., 2023 is preferred by applicants before the court of first instance for lodging of first information report against respondent no. 2 and for investigation in respect of alleged speech of respondent no. 2 while he was on his visit to foreign country. The above-mentioned application of applicants was rejected by the court of first instance by order dated 17.10.2025 and revisional court has affirmed the above-mentioned order dated 17.10.2025 by judgment dated 9.7.2026. It is further to be noted that learned counsel for applicants has pressed before this Court that offending speech of respondent no. 2 on his visit to foreign country constitutes a cognizable offence under Section 152 of B.N.S., 2023.

11. The principle of rule of law ensures protection of individual rights and ensures law and order. The democratic setup of country codified through legislature the behaviour and action of individuals which are considered harmful for society or country as well as to rule of law and as such declares as offence entailing punishment. All such declaration of offences by legislature are subject to provisions of Constitution.

12. One of the fundamental rights enshrined under Constitution is Freedom of Speech and expression embedded in Article 19(1)(a) of Constitution of India. The aforesaid fundamental right is subject to reasonable restriction in the interest of sovereignty and integrity of India, security of State, public order, decency or morality, in relation to contempt of court, defamation or incitement of offence as provided under Article 19(2) of Constitution of India. The aforesaid declaration of fundamental

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right by Constitution of India permits freedom of speech and expression to the citizens with above-mentioned reasonable restrictions.

13. In **Kaushal Kishor Vs. State of Uttar Pradesh and others, (2023) 4 SCC 1**, the Hon'ble Supreme Court has considered scope of freedom of speech and expression in paragraph no. 194 and the same is quoted hereinbelow: -

> ***"194.*** *The freedom of speech and expression under Article 19(1) (a) is a right with diverse facets, both with regard to the content of speech and expression, and the medium through which communication takes place. It is also a dynamic concept that has evolved with time and advances in technology. In short, Article 19(1)(a) covers the right to express oneself by word of mouth, through writing, pictorial form, graphics, or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views and opinions. The communication of ideas may be through any medium such as a book, newspaper, magazine or movie, including electronic and audio-visual media.***"**

14. It is to be seen that Section 152 of Bharatiya Nyaya Sanhita, 2023 declares an act endangering sovereignty, unity and integrity of India as an offence punishable with imprisonment. The aforesaid Section 152 of Bharatiya Nyaya Sanhita, 2023 is quoted hereinbelow:-

> ***"152. Act endangering sovereignty, unity and integrity of India.--*** *Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for*

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life or with imprisonment which may extend to seven years, and shall also be liable to fine.

*Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.***"**

15. The ingredient of offence under Section 152 of Bharatiya Nyaya Sanhita, 2023 are as follows: -

a) the act must be done purposely and knowingly.

b) by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise.

c) excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or

d) indulges in or commits any such act.

16. The importance of freedom of speech and expression is considered by Hon'ble Supreme Court in **Imran Pratapgadhi Vs. State of Gujarat and another, (2026) 1 SCC 721**. In this respect, Paragraph No. 48 of the said judgement is quoted hereinbelow :-

"48. *Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large*

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*number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful.***”**

17. In a democratic polity, the freedom of speech and expression constitute a foundational safeguard, enabling every individual to articulate and disseminate personal views without hindrance. The vitality of a democratic order depends upon the free and open exchange of views, unencumbered by fear of retaliation. Any unwarranted curtailment of this liberty compels the individual to conform to a state-sanctioned or otherwise prescribed narrative, thereby eroding the individual’s moral autonomy and impairing the ethical integrity of the body politic.

18. In **Shreya Singhal Vs. Union of India, (2015) 5 SCC 1**, the Hon’ble Supreme Court has considered the concept of freedom of speech & expression and observed there are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a) of the Constitution of India. It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) comes into play.

19. Once freedom of speech and expression is declared by Constitution as fundamental right then any proposal or lis before any court of law challenging the speech & expression or praying for initiation of criminal prosecution arising out of any speech & expression, then courts

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are mandated to examine the same very carefully. It is to be noted that Constitution of India is the grand norm and all statutes & executive action are required to be in consonance with constitutional mandate more particularly fundamental rights. The courts are required to uphold the Constitution. The fundamental rights provided under Part III of Constitution are sacrosanct. It is further to be noted that no individual, authority can act beyond or in violation of constitutional mandate. All persons are required to respect the mandate of Constitution in letter and spirit in a democratic setup.

20. The Hon'ble Supreme court has considered role of courts in protecting fundamental right of freedom of expression and speech in **Imran Pratapgadhi (supra)**. In this respect, paragraph no. 50 of the said judgment is quoted hereinbelow :-

> ***"50.*** *Courts, particularly the Constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.***"**

21. The Hon'ble Supreme Court in aforesaid judgement has mandated that it is bounden duty of courts to protect freedom of speech & expression

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and to thwart any attempt to undermine freedom of speech and expression. The aforesaid mandate therefore required each court to examine whether objection to any speech or expression would violate right of an individual to freedom of speech and expression. This mandate is required to be exercised by courts at all levels. Whenever an issue is raised objecting to a particular speech or expression, courts are required to be vigilant to ensure that fundamental right of an individual is not taken away lightly or restriction on speech and expression are reasonable.

22. In **Imran Pratapgadhi (supra)**, the Hon'ble Supreme Court has held that it is important to ascertain whether prima facie case is made out against individual to proceed under criminal law. In this respect, paragraph no. 53.5 of said judgment is quoted hereinbelow :-

> ***"53.5.*** *Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.****"***

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23. In view of above, it is duty of court to uphold the Constitution including the fundamental right of freedom of speech & expression and to thwart any attempt to undermine freedom of speech and expression. It is therefore necessary for courts to examine whether any objection to the speech or expression would violate fundamental right to freedom of speech and expression of an individual. It is therefore imperative that whenever an issue is raised objecting to a particular speech or expression, courts are required to ensure that fundamental right of an individual is not taken away lightly and that restriction on speech and expression is reasonable.

24. This Court in **Simran Gupta Vs. State of U.P. and another : 2026:AHC:99125** has held that whenever a speech is under challenge the courts are required to examine whether offence is made out and whether speech and expression comes within the term reasonable restriction, the court can proceed thereafter. In this respect, paragraph no. 22 of **Simran Gupta (supra)** is quoted hereinbelow :-

> **"***22. Where an application is preferred by an individual before any court of law for lodging of First Information Report under Section 152 B.N.S., 2023 in respect of any speech and expression, courts are required to examine and prima facie find whether any prima facie offence is made out, the said aspect gains more importance as the speech and expression are protected by Article 19(1)(a) of Constitution of India and only when it is shown that speech or expression comes within the term "reasonable restriction" provided under Article 19(2) of Constitution of India that the court can consider the issue whether any offence is made out. If any speech is protected by fundamental right of freedom of speech and*

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*expression, then court cannot proceed to initiate criminal prosecution. In view of above, when a person approaches any court of law challenging the speech or expression of another individual, the incidence of fundamental right under Article 19(1)(a) of Constitution is that speech and expression are considered protected under Constitution umbrella unless person approaching the court or authorities show that particular speech and expression comes within ambit of reasonable restriction envisaged under Article 19(2) of Constitution of India and is an offence declared by law. The burden of proof in this respect rest upon person approaching courts to show that alleged speech or expression comes within the term reasonable restriction and is not protected by Article 19(1)(a) of Constitution.***"***

25. Further this Court in paragraph no. 23 of judgment in **Simran Gupta (supra)** held that while examining whether a particular speech and expression is in violation of law or comes within the exception provided under Article 19 (2) of Constitution, courts are required to apply prudent person test. In law, prudent person is a hypothetical person, who in the facts and circumstances would conduct in a reasonable, just and fair manner. In order to apply aforesaid test, it is necessary that material particulars, circumstances and context are brought before Court to demonstrate that speech or expression violated Article 19(2) of Constitution of India and is an offence. Such material particulars and circumstance are also required to be placed before courts so that freedom of speech and expression of individual is not taken away lightly. Whenever fundamental right of an individual is being tested in terms of Article 19(2) of Constitution of India, strict interpretation is required to be made against taking away of such right and when a person approaches

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court of law to challenge speech or expression, burden should be placed on such person to demonstrate that such speech or expression is an offence or restricted by law. The insufficiency of ground for proceeding against an accused may also arise when material particulars and details in respect of alleged offence are absent in complaint/application.

26. The lodging of first information report has serious consequences on individual as the same may curtail liberty of an individual and therefore the courts are required to be very cautious while considering the application for lodging of first information report more particularly when lodging of first information report is sought on the ground of offending speech or expression. It is further to be noted that fundamental right protects any speech or expression except for reasonable restriction and therefore any law which declares any speech or expression as an offence must abide by the mandate of Constitution. In this context the sufficiency of material particulars and circumstances against an individual is of significant importance.

27. It is to be noted that once an application is filed for lodging of first information report before the court concerned for speech or expression being violative of law it is to be demonstrated by person approaching the court concerned to show that the alleged speech and expression comes within the ingredient of offence as well as that speech or expression is not protected by Article 19 of the Constitution.

28. It is admitted case of applicants that respondent no. 2 is an elected representative and Member of Parliament. In that capacity, elected

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representative may articulate public concerns through diverse mediums. Elected representatives are chosen to carry the voice of people into the institutions of governance. Raising public concerns is therefore not an optional courtesy but a core function. Representatives also act as channel of public concerns, ensuring that less powerful sections are heard in public debate. Quite apart from this, every elected representative is also entitled, in their personal capacity, to the fundamental right to freedom of speech and expression. When concerns are raised openly, in the legislature or in public forums, they enter the public record, inform citizens, and invite scrutiny of government action. This keeps democratic discourse alive and vibrant. Legislation and policy formed by such inputs tend to be more practical & responsive and such concerns are an aid for government for better governance and accountability. The concerns of elected representative or individual which keep government of the day informed turns an election from a one-time event into a continuing relationship of good governance and accountability.

29. There may be concerns that the elected representative or an individual may through their speech and expression may enter area of reasonable restriction carved out under Article 19 (2) of Constitution. The elected representative or an individual is therefore required to exercise the right of freedom of speech and expression considering the restriction of Article 19 (2) of Constitution. If there is any breach of Article 19(2) of Constitution by any any person then the law is required to take its own course.

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30. In the present case, the alleged offending speech of respondent no. 2 that there is an atmosphere of insecurity among Sikhs in India, and asked whether, a Sikh would be allowed to wear a turban or not, and whether he would be able to go to a Gurudwara (Place of worship). Perusal of the above-mentioned alleged speech of respondent no. 2 on face of it raising concerns about a community or section of society. The respondent no. 2 being an elected representative has a right to raise concerns in respect of section of society. Further, questioning the rights of minorities by elected representative by itself cannot be an offence and the said speech of respondent no. 2 will have protection of freedom of speech and expression under Article 19 of Constitution. It is further to be noted that certain sections of society or individuals may not agree with statement of respondent no. 2 however that itself would not be a cause for considering the said speech as an offence. Disagreeing with one's view is part of vibrant democracy. For bringing the alleged speech of respondent no. 2 in category of an offence under Section 152 of B.N.S., 2023, the applicants would have to demonstrate that the alleged speech comes within ambit of Article 19(2) of Constitution and further the ingredients of Section 152 of B.N.S., 2023 is attracted in the facts and circumstances of case.

31. It is the case of learned counsel for applicants that the above mentioned alleged speech on foreign soil by respondent no. 2 is provocative and can be understood from the fact that one terrorist from a separatist organisation has justified the statement of respondent no. 2 and has made easier the separatist movement. It is also stated that the aforesaid offending speech of respondent no. 2 will be used by terrorist to spread

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violence and anarchy by taking help of the statement of respondent no. 2 and spread propaganda against the country. Upon examination, the impugned speech of respondent no. 2 does not tend to incite violence or disturb public order. It merely articulates the concerns of a certain segment of society. If a third party misinterprets or appropriates the said speech to advance its own ends, the responsibility for any ensuing consequences lies exclusively with that party, which is amenable to the law for its own acts. No circumstances and material particulars have been shown before this Court to indicate that aforesaid speech has resulted in exciting, secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India. Further, applicants have also not shown before this Court as to how aforesaid speech is an attempt to excite, secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India. The applicants have not shown as to the date, time and place when the alleged speech is made. The application under Section 173(4) of B.N.S.S., 2023 was preferred by applicants before court of first instance in September, 2024 however even after two year it has not been shown before this Court that the aforesaid speech has resulted in any of the mischief covered by Section 152 of Bharatiya Nyaya Sanhita, 2023. The complete extract of the alleged speech has not been brought before this Court although learned counsel for the applicants has relied upon the newspaper report in this respect.

32. It is settled law that suspicion cannot be foundation for criminal prosecution. Suspicion is a belief that something *may* have happened.

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Proof is evidence showing that it *must* have happened. The grave suspicion however strong cannot take the place of proof. It is the suspicion of applicants (without there being any material foundation and circumstances), that the alleged offending speech of respondent no. 2 comes within the offence under Section 152 of B.N.S., 2023. It is further to be noted that raising concerns regarding security of certain segment of society by itself may not amount to an offence under Section 152 of B.N.S., 2023 more specifically when such concerns are raised by elected representatives. It is also true that certain sections of the society (including the majority) may disagree with statement of elected representative or disapprove the statement, however, the aforesaid section of society is permitted under law to respectfully disagree and give their own views rejecting the statement of elected representative. It is further to be noted that raising concerns by elected representative on foreign soil which may for some individuals be a question of impropriety or deviation from long standing tradition of parliamentary democracy, however, that by itself does not make the offending speech an offence. Even if statements made by an elected representative concerning an individual were to be found inaccurate or unsubstantiated, the appropriate recourse lies in subjecting such statements to scrutiny through parliamentary debate or open public discourse, so that the truth may be ascertained through the free contest of ideas or thoughts. Thus the alleged speech of respondent no. 2 is protected by Article 19 of Constitution.

33. The court of first instance by judgment dated 17.10.2025 has rejected the application under Section 173(4) of B.N.S.S., 2023 of

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applicants thereby held that no cognizable offence is made out. The said court has further held that no material ground or circumstances have been stated by applicants that respondent no. 2 speech endangers the sovereignty, integrity and unity of country. The aforesaid court has further recorded a finding that the application filed by applicants has not disclosed the date, time and place of alleged speech of respondent no. 2 on foreign soil. The revisional court by judgment dated 9.7.2026 has upheld the above-mentioned judgment dated 17.10.2025 passed by the court of first instance.

34. The present application under Section 528 of B.N.S.S., 2023 challenging the above-mentioned judgment dated 17.10.2025 and 9.7.2026 passed by the court of first instance and revisional court respectively is devoid of merits. In view of the above-mentioned reasoning, this Court is of the view that no cognizable offence is made out from the speech of respondent no. 2 which would require the lodging of the first information report and as such the impugned orders passed by the court concerned are not liable to be interfered by this Court. Accordingly, the present application under Section 528 of B.N.S.S., 2023 is hereby **dismissed.**

(Vikram D. Chauhan, J.)

November 05, 2026
VMA