

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 23614 of 2024

Petitioner :- Zia-Ur-Rehman Barq

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

Counsel for Petitioner :- Imran Ullah, Saiyad Iqbal Ahmed

Counsel for Respondent :- G.A.

Hon'ble Rajiv Gupta, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

1. Heard Sri Imran Ullah, learned counsel for the petitioner, Sri Manish Goyal, learned Additional Advocate General for the State and perused the record.

2. Although, the prayer made in this writ petition is to quash the FIR arising out of Case Crime No. 335 of 2024, under Sections 191(2), 191(3), 190, 221, 132, 125, 324(5), 196, 223(b), 326(f) of B.N.S., 2023 and Sections 3 & 5 of the Prevention of Damages to Public Property Act, 1984, Police Station Sambhal, District Sambhal, but when the matter has been taken up, learned counsel for the petitioner has submitted that all the offences, complained of, are punishable up to seven years and therefore, before effecting the arrest of the petitioner, specific provisions contained in Section 35 of B.N.S.S. 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 the cognizable offence against the petitioner 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 case 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 7 years, therefore, in case of effecting the arrest of the petitioner in pursuance of the impugned FIR, it is directed that the respondents/ authorities shall ensure that the specific provisions contained in Section 35 of B.N.S.S. 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 :- 3.1.2025

M. Tarik