



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 8913 of 2026

Amit Yadav

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Wali Nawaz Khan, Harsh Vardhan Kediya
Counsel for Respondent(s)	: G.A.

Court No. - 11

HON'BLE ABDUL MOIN, J.

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. Heard Sri Wali Nawaz Khan, learned counsel for the petitioner and learned AGA for the respondents no. 1 to 3. Learned AGA has also accepted the notice on behalf of respondent no. 4.

2. Instant criminal writ petition has been filed with the following main prayer:-

"(i). Issue a writ, order or direction in the nature of Certiorari quashing the impugned First Information Report bearing Case Crime No. 0319 of 2026, dated 24.08.2026, under Sections 223, 353, 356 Bharatiya Nyaya Sanhita (B.N.S.), 2023 at Police Station- Gosaiganj, District- Lucknow South (Commissionerate Lucknow), as contained in Annexure No. 1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the Opposite Parties not to proceed, prosecute or arrest the Petitioner on the basis of the impugned First Information Report bearing Case Crime No. 0319 of 2026, dated 24.08.2026, under Sections 223, 353, 356 Bharatiya Nyaya Sanhita (B.N.S.), 2023 at Police Station- Gosaiganj, District- Lucknow South (Commissionerate Lucknow), as contained in Annexure No. 1 to this writ petition.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the Opposite Party Nos. 1 to 3 to provide the benefit of Section 35(3) BNSS, 2023 with respect to the impugned First Information Report bearing Case Crime No. 0319 of 2026, dated 24.08.2026, under Sections 223, 353, 356 Bharatiya Nyaya Sanhita (B.N.S.), 2023 at Police Station- Gosaiganj, District- Lucknow South (Commissionerate Lucknow), as contained in Annexure No. 1 to this writ petition."

3. Under challenge is the First Information Report dated 24.08.2026 registered as Case Crime No. 0319 of 2026, dated 24.08.2026, under Sections 223, 353, 356 Bharatiya Nyaya Sanhita (B.N.S.), 2023 at Police Station- Gosaiganj, District- Lucknow South

(Commissionerate Lucknow), as contained in Annexure No. 1 to this writ petition.

4. Contention of learned counsel for the petitioner is that from a bare perusal of the impugned First Information Report it emerges that the petitioner, who was working as a journalist, had gone to a school, namely, Purva Madhyamik Vidyalaya, Begriya Mau, Gosaiganj, Lucknow, to report about the condition of the school where he found the toilets to be in a shabby condition, the drinking water was also not available and the overall condition of the school was not good. He had also taken interviews of certain teachers.

5. The said inspection had been conducted on 20.08.2026.

6. Subsequent thereto, the impugned First Information Report has been lodged on 24.08.2026 indicating that despite the school being in an excellent condition and even the toilets being very clean and the institution not having any difficulty whatsoever, the petitioner had entered the school premises without any permission and had interrupted the studies of the children and also compelled two lady teachers to talk about the condition of the school. It has also been indicated that on account of political prejudice, the said reporting has been done.

7. Contention of the learned counsel for the petitioner is that the provisions of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS, 2023") which have been invoked against the petitioner would not be applicable.

8. Elaborating the same, he contends that Section 356 of BNS, 2023 pertains to defamation.

9. Placing reliance on the judgment of the Apex Court passed in the case of **Subramanian Swamy Vs. Union of India reported in (2016) 7 SCC 221**, the argument is that the Apex Court has categorically held that in the case of criminal defamation, neither can an FIR be filed nor can a direction be issued under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."), and the proceedings have to be initiated by way of a complaint filed by the person aggrieved.

10. So far as Section 353 of the BNS, 2023 is concerned, the argument is that the same pertains to statements conducing to public mischief. However, he contends that the exception to Section 353 of the BNS, 2023 would be applicable to his case where the legislature has categorically provided that no offence under Section 353 of the BNS would be made out where the person making or publishing, or circulating any such statement, false information, rumour or report has reasonable grounds for believing that such statement, false information, rumour or report is true and publishes or circulates the same in good faith, without any such intent as aforesaid.

11. Argument is that once the petitioner was working as a reporter and has indicated

about the condition of the institution which appeared to be in an abysmal condition, which also emerges from a perusal of the coloured photographs annexed cumulatively as Annexure No. 4 to the writ petition, consequently, the authorities have patently erred in law in invoking Section 353 of the BNS, 2023 without even taking care to go through the exception as has been provided under the said section.

12. So far as Section 223 of the BNS, 2023 which has been invoked against the petitioner in the impugned First Information Report is concerned, the argument is that the same pertains to disobedience of an order duly promulgated by a public servant, meaning thereby that an order should have duly been issued by a public servant restricting the entry of the petitioner or any third person in the institution, per which, in case of a violation thereof, the said section could be invoked against the petitioner, which is not the case here. Placing reliance on Section 215 of BNSS, 2023, the contention is that the First Information Report cannot be lodged straightaway and it is only upon a complaint that proceedings are to be initiated.

13. On the other hand, learned A.G.A., on the basis of instructions sent by Sri Dharam Pal Singh, Sub-Inspector, Police Station Gosaiganj, District Lucknow, received in the office of the learned Government Advocate on 07.09.2026, submits that the school is clean in all aspects, the toilets are clean, and the school is not having any difficulty and is being cleaned regularly. He also states that a notice under Section 35(3) of the B.N.S.S., 2023 has also been issued to the petitioner. However, learned AGA fairly states that he is not having the order as promulgated by a public servant as provided under Section 223 of the BNS, 2023.

14. Heard learned counsels for the parties and perused the record.

From a perusal of the impugned First Information Report it emerges that the impugned First Information Report has been lodged under Sections 223, 353 and 356 of the BNS, 2023, against the petitioner, who is working as a reporter.

15. A perusal of the impugned First Information Report indicates that on 20.08.2026, the petitioner in the capacity of a reporter and for the purpose of reporting, had entered the premises of a school and had indicated that the school is in an abysmal condition, the premises being dirty, the toilets being dirty and there being no regular drinking water available for the students in the school. The other aspects of the matter had also been indicated by the petitioner in his report.

16. The impugned First Information Report indicates that despite the school being in an excellent condition and even the toilets being very clean and the institution not having any difficulty whatsoever, the petitioner had entered the school premises without any permission and had interrupted the studies of the children and also compelled two lady teachers to talk about the condition of the school, which prevailed upon the respondent authorities to lodge the impugned First Information Report under

the aforesaid provisions of the BNS, 2023.

17. So far as Section 356 of the BNS, 2023 is concerned, the Apex Court in the case of **Subramanian Swamy (supra)** has categorically held that in the case of criminal defamation, neither can an FIR be lodged nor can any direction be issued under Section 156(3) of the Cr.P.C., and the proceedings have to be initiated by way of a complaint by the aggrieved person.

18. It would also be pertinent to indicate Section 222 of the BNS, 2023, categorically provides that no Court shall take cognizance of an offence punishable under Section 356 of the BNS, 2023 except upon a complaint made by some person aggrieved by the offence.

19. Thus, in the instant case, the impugned First Information Report could not have been straightaway lodged under Section 356 of the BNS, 2023. Thus, it is apparent that the authorities have patently erred in law in lodging the impugned First Information Report so far as Section 356 of the BNS, 2023 is concerned.

20. So far as Section 353 of the BNS, 2023 is concerned, an exception is provided to the said section which categorically provides that it would not be an offence under the provisions of Section 353 of BNS, 2023 when the person publishing or circulating any such statement has reasonable grounds for believing that such statement is true and circulates it in good faith.

21. Prima facie, a perusal of the coloured photographs which have been annexed along with the petition indicates the abysmal condition of the toilets of the concerned school and the abysmal condition of the premises of the school. Thus, the authorities should have first considered the exception as provided under Section 353 of the BNS, 2023 prior to lodging of the impugned First Information Report, even if the First Information Report could have been lodged straightaway.

22. So far as Section 223 of the BNS, 2023 is concerned, the same categorically provides for an offence relating to disobedience of an order duly promulgated by a public servant.

23. As indicated above, learned A.G.A. fairly submits on the basis of the instructions as aforesaid that no order had been issued by any public servant per which there is a restriction with regard to the entry in the school premises. Consequently, it is apparent that the authorities have patently erred in law in straightaway lodging the impugned First Information Report under Section 223 of the BNS, 2023.

24. Here it is relevant to mention that the First Information Report under Section 223 of B.N.S, 2023 could not have been lodged considering the provisions of Section 215 of BNS, 2023, which specifically provides that no Court shall take cognizance of any offence punishable under Sections 206 to 223, **except** upon a complaint in writing

made by the public servant concerned.

25. Here it would also be pertinent to mention that as per records, the petitioner is an accredited journalist. He has prima facie exposed the shortcomings in an educational institution under the State Government. The Right of Children to Free and Compulsory Education Act, 2009 (In short "Act, 2009") has come into force on 01.04.2010. A period of sixteen years have lapsed since then. Section 18 of the Act, 2009 provides that no school has to be established without obtaining certificate of recognition. Section 19 of the Act, 2009 provides the norms and standards for school. Sub Section (1) of Section 19 of the Act, 2009 provides that no school shall be established or recognized under Section 18 of the Act, 2009 unless it fulfills the norms and standards specified in the schedule. The schedule gives the norms and standards for a school which indicates about number of teachers, number of special education teachers for children with special needs, building, minimum number of working days, teaching learning equipment, library, play material etc.

26. So far as the present controversy is concerned, the schedule stipulates about the building of school which should be all weather building consisting of-

(i) At least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;

(ii) barrier-free access;

(iii) separate toilets for boys and girls;

(iv) safe and adequate drinking water facility to all children;

(v) a kitchen where mid-day meal is cooked in the school;

(vi) playground;

(vii) arrangements for securing the school building by boundary wall or fencing.

27. Once the norms and standards for a school are read in accordance with the Act, 2009 it emerges that there is a mandate on the Government to provide a all weather building for a school comprising of safe and adequate drinking water facility to all children, separate toilets for boys and girls, play ground etc. Once as per the Act, 2009, a duty is cast on the Government to do so & in case the petitioner has highlighted the shortcomings in the school and its infrastructure, it was for the Government to have looked into it and to have initiated action for removal of the shortcomings instead of making it an ego issue and lodging the impugned First Information Report.

28. The Apex Court in the case of **Dr. Jaya Thakur Vs. Government of India and Ors- 2026 SCC OnLine SC 133** has considered Sections 18 & 19 of the Act, 2009

along with Schedule of the Act, 2009 and has observed that in so far as schools established, owned or controlled by the appropriate Government or a local authority are concerned, **non compliance with the norms and standards would amount to a contravention attributable to the State itself.**

29. When the controversy in the instant case is seen viz-a-viz the act done by the petitioner of reporting about the shortcomings of the school it is prima facie apparent that the First Information Report is retaliatory action to the shortcomings being exposed by the petitioner, a journalist and thus tantamounts to "killing the messenger" which clearly is not countenanced in the eyes of law. Once the shortcomings of the school have been brought out and the same do not conform to the provisions of the Act, 2009 consequently, prima facie it emerges that the petitioner has done no wrong by indicating the said shortcomings and thus impugned First Information Report appears to be a malicious act on the part of the authorities against the petitioner, a journalist.

30. In this regard, it would be apt to refer to an order of the Apex Court passed in **Writ Petition (Crl) No. 402/2024 Inre; Abhishek Upadhyay Vs. State of U.P and ors** dated 04.10.2024 wherein the First Information Report had been lodged against a journalist upon he having published an article with casteist tilt on the officers deployed in responsible positions in the State.

31. The Apex Court considering the fact that the said petitioner was a journalist observed that in democratic nations, freedom to express one's views are protected under Article 19 (1) (a) of the Constitution of India. The Apex Court further observed that merely because writings of a journalist are perceived as criticism of the Government, criminal cases should not be slapped against the writer.

32. It would also be apt to refer to the judgment of the Apex Court in the case of **Arnab Ranjan Goswami Vs. Union of India- (2020) 14 SCC 12** wherein the Apex Court has held as under:-

"38. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19 (1) (a) The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19 (1) (a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and

express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position."

33. From a perusal of the aforesaid judgment it emerges that the Apex Court has categorically held that the exercise of journalistic freedom lies at the core of speech and expression protected by Article 19 (1) (a) and that India's freedom will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. It has also been observed that free citizens cannot exist when the news media is chained to adhere to one position.

34. Considering the aforesaid, a prima facie case for interference is made out. As such, until further orders, the operation of the impugned First Information Report shall remain stayed and no action shall be taken against the petitioner in pursuance to the impugned First Information Report.

35. Further, once the abysmal condition of the school has been brought out before this Court by means of the instant petition while the authorities have indicated that the said school is not having any such difficulty, as such, let the Additional Chief Secretary, Basic Education, Government of U.P., file his personal affidavit indicating the present condition of the said school, duly annexing the photographs of the school premises and also indicating as to whether subsequent to report done by the petitioner on 20.08.2026, any construction/repair/alternations/modification/change has been done in the institution.

36. Let such an affidavit be filed within four weeks.

37. List this case after four weeks.

38. The Court records the assistance rendered by Mohd. Azam Siddiqui, Research Associate of this Court.

September 8, 2026
Pachhere/-

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)