

# **Irsad And Another vs State Of U.P. Thru. Secy. Deptt. Of Home ... on 16 July, 2024**

**Bench: Vivek Chaudhary, Narendra Kumar Johari**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2024:AHC-LK0:48183-DB

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 5018 of 2024

Petitioner :- Irsad And Another

Respondent :- State Of U.P. Thru. Secy. Deptt. Of Home Civil Sectt. Lko And Others

Counsel for Petitioner :- Brijesh Kumar Pandey, Satish Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Vivek Chaudhary, J.

Hon'ble Narendra Kumar Johari, J.

Heard learned counsel for the petitioners, learned A.G.A. appearing for the State/opposite parties and perused the record.

This petition seeks issuance of direction in the nature of certiorari for quashing the impugned F.I.R. dated 06.07.2024, bearing Case Crime No.0326 of 2024, for the offence under Sections 74,352,351(2) of Bharatiya Nyaya Sanhita, 2023 and Section 3(2)(va) SC/ST Act, 1989 and Section 7/8 POCSO Act, 2012, registered at Police Station Rupaideeha, District Bahraich.

Learned counsel for the petitioners has submitted that the offences as alleged in FIR have maximum punishment for the term less than seven years imprisonment, whereas, the police is trying to arrest them, which is against the mandates of Bhartiya Nyaya Sanhita, 2023.

Learned Additional Government Advocate appearing for respondent State has given a statement on behalf of investigating agency that because the offence allegedly committed by the petitioners, entails sentence of less than seven years, provisions of Section 35(3) of Bhartiya Nyaya Sanhita, 2023. shall be strictly followed in terms of judgment rendered by Hon'ble Supreme Court of India in a case reported in (2014) 8 SCC 273: Arnesh Kumar vs. State of Bihar and another.

Considering the stand of the investigating agency, learned counsel for the petitioners states that let this petition be disposed of in view of the above said facts.

Accordingly, this petition is disposed of in view of the provisions of Section 35(3) of Bhartiya Nyaya Sanhita, 2023. and the law as laid down by Apex Court in the case of Arnesh Kumar (supra).

(Narendra Kumar Johari,J.) (Vivek Chaudhary,J.) Order Date :- 16.7.2024 Arjun/-