



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 198 of 2026

Durgesh Thru. His Stepsister Mrs. Rubi
.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Home
Affairs Lko. And Others
.....Respondent(s)

Counsel for Petitioner(s) : Skand Bajpai, Abhyudaya Mishra,
Shamim Arif, Shashank Tripathi
Counsel for Respondent(s) : G.A., Shishir Jain

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE DIVESH CHANDRA SAMANT, J.**

1. Heard Sri Skand Bajpai, learned counsel for the petitioner and Sri Aniruddh Singh, learned AGA for the State.
2. Notice to opposite party No. 7 has been accepted by Sri Shishir Jain, learned counsel.
3. Issue notice to opposite party Nos. 5 & 6. Steps be taken within a week.
4. Sri Skand Bajpai, learned counsel for the petitioner has filed second supplementary affidavit today. The same is taken on record.
5. Sri Skand Bajpai, learned counsel for the petitioner has informed that he as already filed one supplementary affidavit on 29.05.2026, which may likely to put up before this Court tomorrow i.e. 05.06.2026.
6. By means of this petition, the petitioner has prayed the following relief:

"i.Allow this petition, pass an order(s) or direction(s) in the nature of writ of habeas corpus and direct the respondents to forthwith release the petitioner from judicial custody.

ii.Allow this petition, pass an order(s) or direction(s) setting aside the remand order dated 02.05.2026 passed by the learned Additional Chief Judicial Magistrate-V, Lucknow (8th respondent) authorising the

petitioner's judicial custody as also set aside/quash all ancillary, incidental, and consequential actions, orders and warrants after summoning the record from the Court concerned.

iii.Pass an order(s) awarding ₹ 10,00,000/- (Rupees Ten Lakh) as compensation in favour of the petitioner, and direct the respondents to pay the same to the petitioner within such time as may be deemed fit by this Hon'ble Court.

iv.Pass an order(s) or direction(s) commanding the 1st & 2nd respondents to conduct disciplinary proceedings against the erring police personnel/officers in compliance with the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand within such time as may be deemed fit and proper by this Hon'ble Court.

v.Pass an order(s) or direction(s) commanding the 7th respondent to conduct disciplinary proceedings against the erring judicial officer(s) in compliance with the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand within such time as may be deemed fit and proper by this Hon'ble Court.

vi.Pass an order(s) directing contempt of Court proceedings against the erring personnel/officials in compliance of the directions issued by Hon'ble the Apex Court in Criminal Appeal No. 1277 of 2014 titled as Arnesh Kumar v. State of Bihar reiterated in Criminal Appeal No. 2207 of 2023 titled as Md. Asfak Alam versus State of Jharkhand.

vii.Pass an order(s) awarding ₹ 100,000/- (Rupees One Lakh) as the cost of this litigation in favour of the petitioner and against the respondents, and direct them to pay the same to the petitioner within such time as may be fixed by this Hon'ble Court.

viii.Pass any other order(s) or direction(s) in favour of the petitioner to further the cause of justice, equity, and good conscience."

7. This is a peculiar case where one FIR bearing FIR No. 146 of 2026 has been lodged against four accused persons and the present petitioner is accused no. 1. The FIR has been lodged under Section 303(2) of B.N.S. wherein, the maximum punishment is three years. After arresting the petitioner, Section 317(2) of B.N.S. has been added wherein, the maximum punishment is five years.

8. The Hon'ble Apex Court in re; **Satender Kumar Antil vs. CBI and another, Special Leave to Appeal (Criminal) No. 5191 of 2021 : (2022) 10 SCC 51** has been pleased to direct all police authorities of the country not to arrest the accused in an offence where the maximum punishment is up to seven years without concrete reason to believe that the accused will flee, tamper with evidence or fail to appear in court. At the same time, specific direction has been issued by the Hon'ble Apex Court to the Magistrates of the country not to grant remand on the application of the arresting officer to the accused, who has been produced before him in an offence where the maximum punishment is up to seven years without examining whether the arrest was legal and all statutory safeguards were met.

9. In the present case, undoubtedly, the allegation against the petitioner is relating to the offence wherein the maximum punishment is three years and five years respectively, therefore, he should have not been arrested by the police officers nor his remand application should have been filed before the Magistrate concerned. In any case, the police authorities arrest such person for any reason, may be on the basis of some extraneous consideration, the remand Magistrate must have carefully perused the sections for which the remand has been sought and if the learned Magistrate finds that the alleged offence is having punishment up to seven years, such Magistrate should avoid to grant remand and if there is any extreme circumstances granting the remand, the specific reason to that effect must have been indicated in such remand orders. In the present case, we have seen the remand orders which are absolutely mechanical and prima facie it appears that the concerning Magistrate has not applied his judicial mind.

10. Sri Skand Bajpai, learned counsel for the petitioner has shown his copy of the supplementary affidavit which was filed on 29.05.2026 showing the remand order, which is on the printed format and even this fact has not been

taken into account as to whether the remand is being granted to one accused or more than one accused.

11. There is another peculiar fact in the present case that the present petitioner is juvenile inasmuch as attention has been drawn towards Annexure No. 11 of the writ petition which is transfer certificate of the petitioner which indicates his date of birth as 18.04.2009, meaning thereby, at the time of lodging the FIR i.e. on 27.04.2026 he was below 17 years. At the time of granting remand, the learned Magistrate did not verify the age of the present petitioner. Had the age of the petitioner been verified by the Magistrate, the minor could have not been sent for judicial custody allowing the remand application of the arresting authority and surprisingly, the arresting authority also not tried to verify the age of the present petitioner, whereas the perusal of the Annexure No. 2 of the writ petition reveals that along with the petitioner, there was one juvenile. If juvenality of that person was ascertained, as to why the age of the present petitioner has not been ascertained by the police authority is the question which would be asked from the arresting authority.

12. We have noticed one fact that the ground of arrest has not been intimated to the petitioner and that fact has not been disputed by the learned AGA. This writ petition was filed on 25.05.2026 and copies thereof has been given to the Office of Government Advocate. Thereafter, the copies of the writ petition must have been provided to the concerning police authorities, but the arresting authority has filed a last application seeking the remand of the petitioner on 02.06.2026 and the concerning remand Magistrate has granted remand for 14 days up to 16.05.2026. This is beyond comprehension as to how the 14 days remand was granted on 02.06.2026 till 16.05.2026.

13. All the aforesaid instances clearly shows that the concerning remand Magistrate has passed the order without application of mind even without perusing the order-sheet which might have been written by his Reader (Peshkar). Such order-sheet must have been written by the Judicial Officer itself and not by the Reader or Peshkar, and, in any case, on account of pressure of work, such order-sheet is written by the Reader (Peshkar), at least before signing the order, the concerning Magistrate must have carefully perused the order.

14. Having considered the facts and circumstances and having heard the learned counsel for the parties, at this stage, we prima facie find that the detention of the present petitioner is illegal subject to contentions of the opposite parties being taken by filing their respective affidavits in the shape of counter affidavit. So, as an interim measure, we hereby direct that the present petitioner be released from jail forthwith.

15. On the next date, the opposite party Nos.2, 5 and 6 shall file their personal affidavits. On the next date, the opposite party No. 5 and 6 shall appear in person. Learned AGA shall intimate this order to opposite party No. 5 and 6 forthwith and after this order is uploaded, a copy thereof may be served to such opposite party i.e. opposite party No. 5 and 6 by the Registry of this Court within three days. The opposite party No.8 shall also file his personal affidavit explaining the reason as to why he has not followed the dictum of Apex Court in re: **Satender Kumar Antil** (supra) and also as to why he has not carefully looked into the details of the accused whose remand was sought from him. This Court would take it seriously that a juvenile has been sent for judicial custody granting remand to the arresting authority not once, but by means of three orders as on today and that too in a case where the maximum punishment is three years and five years respectively.

16. On the next date, this Court would decide as to whether the appearance of opposite party No.8 would be required or not. If the subsequent remand has been granted by other than opposite party No.8, such authority shall also file his/her explanation through Senior Registrar of this Court.

17. It is made clear that if this Court does not find the explanation of opposite party Nos. 5 and 6, plausible and proper, appropriate orders may be passed against them as they have also flouted ,prima facie, the dictum of Apex Court in re : **Satender Kumar Antil** (supra).

18. This order shall be intimated to the jail authorities by the Registry of this Court through Fax or Radiogram at the earliest so that the petitioner could be released from jail forthwith. A copy of this order shall also be provided to opposite party No.8 through District and Sessions Judge, Lucknow by Registry of this Court forthwith.

19. Since we have heard the matter at substantial length, therefore, list again on 03.07.2026 at 03:30 PM for further hearing after obtaining appropriate order from Hon'ble The Chief Justice to constitute the bench.

20. By the next date, parties may file their counter affidavit.

(Divesh Chandra Samant,J.) (Rajesh Singh Chauhan,J.)

June 4, 2026
ADY/Karan