



2025:UHC:10380-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI G. NARENDAR
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY

20TH NOVEMBER, 2025

WRIT PETITION (CRL) No. 1389 OF 2025

Madan Mohan JoshiPetitioner
Versus
State of Uttarakhand and others. ...Respondents

Counsel for the petitioner. : Mr. Lalit Sharma and Ms. Anmol Sandhu, learned counsel.
Counsel for the respondents : Mr. J.S. Virk, learned Deputy Advocate General with Mr. R.K. Joshi, learned Brief Holder for the State.
Mr. Ayush Gaur and Ms. Mrinal Kanwar (through V.C.) for the caveator / complainant.

JUDGMENT : (per Sri G. Narendar, C.J.)

Heard Mr. Lalit Sharma, learned counsel for the petitioner and Mr. J.S. Virk, learned Deputy Advocate General for the State.

2. Learned Deputy Advocate General has filed into the Court the report of the Circle Officer dated 16.11.2025 and a copy of another report addressed by the Circle Officer, Ramnagar, District Nainital to the Joint Director (Law).

3. The petitioner, in the above petition, has sought for the following reliefs:-

“i) Issue a writ order or direction in the nature of certiorari quashing the impugned first information report dated 23-10-2025 being FIR No. 0382 of 2025, for the offences punishable under section 109 & 190 of Bhartiya Nyaya Sanhita, 2023, Police Station Ramnagar, District Nainital (contained as Annexure no. 1 to this writ petition).



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ii) Issue a writ order or direction in the nature mandamus commanding and directing the respondent no. 2 not to arrest the petitioner in connection with impugned first information report dated 23-10-2025 being FIR No. 0382 of 2025, for the offences punishable under section 109 & 190 of Bhartiya Nyaya Sanhita, 2023, Police Station Ramnagar, District Nainital (contained as Annexure no. 1 to this writ petition).

iii) Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. From a reading of the prayer, it is apparent that the petitioner seeks quashing of the FIR itself and the second relief, sought for, is not to arrest the petitioner in connection with the FIR registered for the offences punishable under Sections 109 and 190 of Bhartiya Nyaya Sanhita, 2023.

5. Section 109 of Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS') reads as under:-

"109. Attempt to murder. (1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life."



6. Section 190 of BNS reads as under:-

“190. Every member of unlawful assembly guilty of offence committed in persecution of common object.-If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

7. Learned counsel would contend that the petitioner received information about the illegal transportation of cow-meat; that he immediately informed the police and the forest officers at 09:05 A.M. and 09:07 A.M. and; that he being an animal lover, he rushed to the spot and states that he started live Facebook telecast of the incident by 09:12 A.M. It is his case that the video would demonstrate that he is requesting to the mob and trying to placate the angry mob not to assault the victim, i.e. the driver of the vehicle in which the meat was being transported; that he being an informant himself and he having attempted to placate and save the victim, the act of naming him in the FIR is mischievous and with an ulterior motive; that he had contested for the post of Chairman, Nagar Palika Ramnagar; that he is a law abiding citizen and; that the attempt by the police to arrest him is wholly illegal.

8. *Per contra*, leaned Deputy Advocate General would submit that the complainant, who is none other than the wife



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of the injured victim, has named the petitioner amongst others; that attempts have been made by the police to investigate the petitioner, but the petitioner has been successfully evading and avoiding the police; that earlier notice was issued to the petitioner to join for investigation and after he failed to join the investigation, the I.O. approached the jurisdictional Magistrate and an NBW was also issued; that despite the issuance of NBW, the petitioner failed to cooperate and left with no option and they have now initiated proceedings under Section 84 of the BNSS to proclaim him as an absconder.

9. In reply, learned counsel would submit that he was instrumental in placating the mob; that the complainant, i.e. the wife of the injured driver was not an eye witness and; that she has named him on hearsay.

10. Having heard the learned counsels, we have perused the reports submitted by the Circle Officer.

11. The report details the role of the petitioner. The report details that call was received from a person named Nasir on the Emergency No. 112 stating that certain activists had stopped the vehicle carrying buffalo meat and are assaulting the driver of the vehicle and; that reacting to the call on Emergency No. 112, the police rushed to the spot and saved the driver from being lynched. It is further stated that



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the petitioner was instrumental in instigating the mob through his false and unverified claims about the buffalo meat being cow meat and that a community was indulging in cow-slaughter; that the petitioner also went live with his social media face-book handle and; that the same led to the gathering of the mob and the police suspect him to be responsible for instigating the mob and doing live telecast near mob lynching; that the videos have been circulated by others leading to a situation where huge numbers from both communities arrived at the police station; that 16 accused have been identified, 13 have been arrested and 3 are evading arrest including the petitioner.

12. As regards the conduct of the petitioner, the Circle Officer has noted that he is continuously hiding from police and evading the arrest; that multiple raids at his house and other potential places have not yielded any result; that the NBW issued by the Courts have also not been respected; that if he is given freedom, he will use his clout to harass the victims and would try to derail the investigation and hence, the petition is vehemently opposed.

13. Learned Deputy Advocate General would place reliance on the ruling rendered by Hon'ble Apex Court in ***Neeharika Infrastructure Private Limited vs. State of Maharashtra and others*** reported in ***(2021) 19 SCC 401***.



14. Learned counsel for the third respondent places reliance on the ruling of the Hon'ble Apex Court in ***Srikant Upadhyay and others vs. State of Bihar and another*** reported in **(2024) 12 SCC 382**.

15. In ***Neeharika***'s case (supra), the three Judge Bench has ruled against interim orders being granted not to arrest accused pending investigation, more particularly when the Court is not inclined to grant the relief of quashment and; that the remedy would be to file an Anticipatory Bail Application.

16. The fact remains that the victim and his wife are localites and residents of the same town and have identified and named the petitioner as one of the perpetrators. The documents in the possession of the victim certify the meat as buffalo meat. The fact remains that the petitioner admits his presence in the place of occurrence. The fact also remains that the petitioner admits the live face-book telecast. His defense is that he acted as good-Samaritan and did not indulge in assaulting the victim.

17. The photographs clearly show bleeding injuries on the head and other parts of the body of victim.

18. Be that as it may, we do not pronounce it as a conclusive finding and it is a matter for investigation and trial. Where the petitioner has been named of a conginzable



offence, it would not be appropriate and legal for this Court to pronounce on the correctness of the allegations at the stage of FIR. The provisions of law, more particularly the provisions of Section 35 of the BNSS, 2023 clearly enumerate as to when a person can be arrested. In the event of any violation he can certainly approach the courts immediately. It would be preempting the fair investigation if the hands of the police are tied down, more so, when the petitioner himself admits his presence in the place of occurrence. That apart, the ruling of the Hon'ble Apex Court in **Srikant Upadhyay** (supra) clearly lays down that grant of Anticipatory Bail or protection to a person found in defiance of lawful orders is unsustainable. The instant petition is filed after NBW's were issued and after the application to declare him a proclaimed offender was filed by the police.

17. In view of the fact that the warrant has been issued on 03.11.2025 and the petitioner has not attempted to have the same addressed in a manner known to law, the ruling of the Hon'ble Apex Court in **Srikant Upadhyay** (supra) would squarely apply to the facts and circumstances of the instant case.

18. That apart the complainant has produced a copy of a post made by the petitioner on his FaceBook account. He claims that he is going to start a "Kranti" (revolution), not



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only here but across the country/other places. In other words he is deriding popular & democratically elected governments and the same is condemnable. In that view, the petition does not merit consideration and is, accordingly, rejected.

19. It is made clear that the observations herein above are made for the purpose of disposal of the instant petition only and are not to be construed as a conclusive finding. Pending application, if any, also stands dismissed.

G. NARENDAR, C.J.

SUBHASH UPADHYAY, J.

Dt: 20th November, 2025
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RATHOUR