

UPAD010012062026



**In the Court of Sh. Vinod Kumar Chaurasia, Additional Sessions
Judge/Special Judge (POCSO) Act, Prayagraj, Uttar Pradesh.**

**Present: Sh. Vinod Kumar Chaurasia, (Uttar Pradesh- HJS)
JO Code- UP 2641**

Criminal Miscellaneous No. 88/2026.

Disposal of application under Section 173(4) of the BNSS, 2023.

Sh. Ashutosh Brahmachari Maharaj and Others

vs.

**1. Avimukteshwaranand, r/o Paramhansi Ganga Ashram,
Narsinhapur, Madhya Pradesh.**

**2. Mukundanand Brahmachari, r/o Sheshnath Ashram,
Badrinath Dham, Uttarakhand.**

3. Other 2-3 unknown accused.

Date: 21.02.2026

1. The case file was produced today by the office. The applicant Shri Ashutosh Brahmachari Maharaj, the victim XXXX, and other applicants were personally present before the Court at the time of argument on previous dates of hearing. Learned Special Prosecutor for the State as well as learned *Amicus Curiae* for the applicants were also present. The Court had heard the parties at length on the previous date of hearing, and today the matter is fixed for pronouncement of order. This Court has also extensively perused the entire record, the material available on file and has duly considered the same while passing the present order.

2. The present application has been moved by the applicant under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which has been indexed as Paper No. 3A/1–3, seeking a direction for registration of a First Information Report against the opposite parties on the basis of the allegations contained therein. The applicant has specifically sought registration of FIR for offences punishable under Sections 69, 74, 75, 76, 79 and 109 of the Bharatiya Nyaya Sanhita, 2023, as well as under Sections 3/5/9 and 17 of the Protection of Children from Sexual Offences Act, 2012. The present application is supported by the affidavit of the applicant, indexed as Paper No. 4B, as well as by the affidavit(s) of the victim(s).
3. Hon'ble Supreme Court in **Bhupinder Sharma vs. State of Himachal Pradesh**, (2003) 8 S.C.C. 551 and **Nipun Saxena and another vs. Union of India and others**, AIR Online 2018 SC 826 and recently Hon'ble Allahabad High Court in **Ram Naresh vs. State Of U.P. and 3 others** on **19.12, 2025** and also in other cases, it has been propounded and reiterated that in order to stop further atrocities of the victim's related to sexual crimes, the victims or their family members names and addresses should not be published or circulated or be mentioned in the decisions by the Courts. **Sub-Section 7 of Section 33 of the POCSO Act**, a ban has been imposed on mentioning, publishing and circulating names and addresses of the victims or their family members. The relevant extract of the same is as below:

“7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation. -For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighborhood or any other information by which the identity of the child may be revealed.”

Therefore, in view of the above proposition and the law, the victim and family members, in the present case has been addressed hereinafter as ‘**Victim ABC**’/ ‘**Family Members of Victim ABC**’. In

the landmark judgement of **Nipun Saxena and another vs. Union of India and others**, AIR Online 2018 SC 826, at paragraph 43, the Hon'ble Supreme Court of India has observed and held that: "In view of the aforesaid discussion, we issue the following directions-

1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
3. FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.
4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinized in the public domain.
6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.
7. An application by the next of kin to authorize disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A (2) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A (2) and lays down a criterion as per our directions for identifying such social welfare institutions or organizations.
8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.
9. All the States/Union Territories are requested to set up at least one 'one stop center' in every district within one year from today."

As the identity of the minor '**Victim ABC**'/ '**Family Members of Victim ABC**' is to be protected, therefore, name, parentage and address of the victim and family members is withheld in the present case, in the light of aforesaid legal mandate.

4. Upon presentation of the present application, this Court deemed it appropriate to call for a report from the concerned Police Station. In compliance thereof, a report, indexed as Paper No. 12, has been submitted by the concerned Police Station, wherein it has been disclosed that *no crime/FIR has been registered in connection with the alleged incident at the police station concerned.*
5. The record further reveals that the applicant has annexed copies of a complaint/letter addressed to the Commissioner of Police, Prayagraj, indexed as Paper No. 7 as well as to the Station House Officer concerned, indexed as Paper No. 8, relating to the same alleged incident, asserting that despite such representations, no FIR has been registered.
6. The applicant has also filed detailed additional written submissions, indexed as Paper No. 20, in support of the present application and has placed reliance upon the judgment of the Hon'ble Supreme Court in **Lalita Kumari vs. Government of U.P. & Others**, (2014) 2 SCC 1, contending that registration of FIR is mandatory where information discloses commission of a cognizable offence. The applicant, alleging grievance on account of non-registration of a First Information Report at Police Station Jhunsi, District Prayagraj, and non-issuance of any direction by the Commissioner of Police, Prayagraj, has approached this Court seeking directions, inter alia, for registration of FIR and other consequential reliefs.
7. This court have heard the applicant/learned counsel, perused the application, affidavits, police report, annexures, and the written arguments filed on record. After hearing the applicant and learned *Amicus Curiae* for the applicant, this Court, vide order dated 07.02.2026, directed the Commissioner of Police, Prayagraj, to submit a detailed enquiry report regarding the factum of commission of the alleged incident(s) in the matter. In compliance thereof, the Commissioner of Police, Prayagraj, has submitted detailed enquiry reports, which have been indexed as Paper Nos. 18–19. This Court has also carefully and extensively perused and taken into consideration the aforesaid enquiry report while passing the present order.

ANALYSIS AND FINDINGS

8. After considering the rival submissions of the parties, having perused the entire records including law on the point, following points for determination under becomes relevant to be consider and decided by this court:

“Whether or not, in the facts and circumstances of the case, the allegations contained in the application under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, supported by affidavits of the applicant and the victim(s), and the material placed on record including the enquiry report submitted by the Commissioner of Police, Prayagraj, warrant issuance of a direction for registration of First Information Report, or whether the ends of justice would be met by treating the present application as a complaint and proceeding in accordance with law?”

9. In order to effectively adjudicate and dispose of the aforesaid point for consideration framed hereinabove, it would be appropriate, at the outset, to examine the relevant statutory provisions governing the field as well as the judicial pronouncements interpreting the same, which have a direct bearing on the issue involved in the present application.
10. The scope of consideration under Section 173(4) BNSS is limited to examining whether or not directions are required to be issued for registration of FIR or whether the matter can appropriately proceed in accordance with the procedure applicable to complaints.
11. Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides a statutory remedy to a person aggrieved by inaction on the part of the police in respect of information disclosing commission of a cognizable offence. The provision empowers the Magistrate/Special Court to apply judicial mind to the allegations made and the material placed on record and to pass appropriate orders in accordance with law. However, the said provision does not mandate that in every case the Court must mechanically direct registration of a First Information Report. The discretion conferred upon the Court is to be exercised judiciously, having regard to the facts and circumstances of each case.

12. It is well settled that while exercising jurisdiction under **Section 173(4) BNSS**, the Court is required to ascertain whether the information placed before it *prima facie* discloses commission of a cognizable offence and whether the interests of justice necessitate issuance of directions for registration of FIR, or whether the matter can appropriately be proceeded with as a complaint in accordance with the procedure prescribed under the Code. The Court is not expected to conduct a roving or detailed enquiry into the truthfulness of the allegations at this stage.
13. The Hon'ble Supreme Court in **Lalita Kumari vs. Government of Uttar Pradesh & Others**, (2014) 2 SCC 1, has held that registration of FIR is mandatory where information discloses commission of a cognizable offence. At the same time, the Hon'ble Court has also recognised that the Magistrate is required to exercise judicial discretion while dealing with applications seeking directions for registration of FIR and that such power is not to be exercised mechanically or routinely.
14. The Hon'ble Supreme Court in **Priyanka Srivastava & Another vs. State of U.P. & Others**, (2015) 6 SCC 287, has further cautioned that applications seeking directions for registration of FIR must reflect due application of mind by the Court, and that the Magistrate must be satisfied that the complainant has approached the Court with clean hands and that the matter requires invocation of police machinery at the threshold, rather than adoption of the complaint procedure.
15. The legal position that an application seeking direction for registration of FIR is not to be allowed mechanically and that the Court possesses discretion to treat such application as a complaint is well settled. In **Suresh Chand Jain vs. State of Madhya Pradesh & Another**, (2001) 2 SCC 628, the Hon'ble Supreme Court held that a Magistrate has discretion either to direct investigation under Section 156(3) CrPC (now corresponding provision under BNSS) or to take cognizance of the offence and proceed in accordance with the procedure prescribed for complaint cases. The choice of procedure lies within the judicial discretion of the Court.

16. In **Mohd. Yousuf vs. Afaq Jahan (Smt.) & Another**, (2006) 1 SCC 627, the Hon'ble Supreme Court reiterated that a Magistrate may either order investigation or may treat the application as a complaint and proceed under the complaint procedure. It was clarified that the power under Section 156(3) CrPC is discretionary and not mandatory.
17. Further, in **Ramdev Food Products Pvt. Ltd. vs. State of Gujarat**, (2015) 6 SCC 439, the Hon'ble Supreme Court held that even when allegations disclose a cognizable offence, the Magistrate is not bound to direct investigation under Section 156(3) CrPC and may instead take cognizance and proceed as a complaint case, depending upon the facts and circumstances.
18. The Hon'ble Allahabad High Court has also consistently held that an application under Section 156(3) CrPC (now analogous to Section 173(4) BNSS) may be treated as a complaint case where the Court deems it appropriate. In **Sukhwasi vs. State of U.P.**, 2007 (59) ACC 739 (All), it was held that it is not mandatory for the Magistrate to direct registration of FIR in every case and that the application may be treated as a complaint and proceeded with under Chapter XV CrPC (now corresponding provisions under BNSS). Similarly, in **Gulab Chand Upadhyay vs. State of U.P.**, 2002 (44) ACC 670 (All), the Hon'ble High Court observed that the Magistrate has discretion either to order investigation or to treat the application as a complaint, and such discretion must be exercised judiciously based on the nature of allegations and material available. The Hon'ble Allahabad High Court in **Ram Babu Gupta vs. State of U.P. & Others**, 2001 (43) ACC 50 (All), has authoritatively held that it is not obligatory for the Magistrate to direct registration of an FIR upon every application moved under Section 156(3) CrPC. It was categorically observed that the Magistrate has the discretion either to direct investigation by the police or to treat the application as a complaint and proceed in accordance with the complaint procedure. The Hon'ble Court further held that such discretion, when exercised judiciously, does not suffer from any legal infirmity. In the said decision, the Hon'ble Allahabad High Court further clarified that the power under Section 156(3) CrPC (now corresponding to Section 173(4) BNSS) is

enabling and discretionary, and that the Magistrate is required to apply judicial mind to the facts of the case to determine the appropriate course of action. The Magistrate is not bound to mechanically order registration of FIR merely because cognizable offences are alleged.

19. The Hon'ble Court in **Lalaram vs. State of U.P. and Ors. reported in 2021 (1) ADJ 145**, wherein it has been held that the Magistrate is not denuded of the power to take cognizance of the offence and proceed as a complaint case, even where allegations disclose commission of cognizable offences. The Hon'ble Court emphasized that directing investigation under Section 156(3) CrPC is only one of the permissible courses and not the sole or mandatory course. In this case it has been categorically observed and held that:

“...(40.06). In either case, i.e. issuing direction for investigation by the police officer under Section 156(3) Cr.P.C. or taking cognizance and registering it as a complaint case, the Magistrate has to apply judicial mind. There cannot be mechanical exercise of jurisdiction or exercise in a routine manner. Mere statement in the order that he has gone through the complaint, documents and heard the complainant will not be sufficient. What weighed with the Magistrate to order investigation or to take cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.

(40.07). The exercise of discretion by the Magistrate is basically guided by interest of justice, from case to case.

(40.08). However, where some investigation is required which is of a nature that is not possible for the private complainant and which can only be done by the police officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example: -

(i) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few example cases may be visualized where for production before Court at the trial-

- (a) sample of blood-soaked soil is to be taken and kept sealed for fixing the place of incident; or
- (b) recovery of case property is to be made and kept sealed; or
- (c) recovery under Section 27 of the Evidence Act; or
- (d) preparation of inquest report; or
- (e) witnesses are not known and have to be found out or discovered through the process of investigation.

(40.09). Where the complainant is in possession of the complete details of all the accused and the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted.

(40.10). Category of cases falling under para 120.6 in Lalita Kumari (Supra) i.e.

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases,
- (d) Corruption cases
- (e) Cases where there is abnormal delay in filling criminal complaint etc. may fall under Section 202 Cr.P.C .

(40.11). The Magistrate should also keep in view that primarily, it is the duty of the State/police to investigate the cases involving cognizable offence. Generally, the burden of proof to bring the guilt of the accused is on the State and this burden is a heavy burden to prove the guilt beyond all reasonable doubts. This burden should not unreasonably be shifted on an individual/complainant from the State by treating the application under Section 156(3) Cr.P.C. as a complaint case..." (emphasis added)

20. Recently, the Hon'ble Allahabad High Court in **Pradeep Kumar vs. State of U.P. and 2 Others, decided on 12.02.2026 in Application U/S 528 BNSS No. 18266 of 2025**, has held that the power exercised by the Court under the relevant provisions of the Bharatiya Nagarik Suraksha Sanhita is discretionary in nature, and that it is not obligatory in every case to direct registration of an FIR, particularly where the matter can appropriately be dealt with by adopting the complaint procedure in accordance with law.
21. Thus, the consistent judicial view emerging from the aforesaid precedents is that while registration of FIR is mandatory at the level of the police where information discloses a cognizable offence, the power of the Court under

Section 173(4) BNSS is discretionary in nature. The Court may, depending upon the facts and circumstances of the case, either direct registration of FIR or adopt the course of treating the application as a complaint and proceed in accordance with law.

22. The mandate emerging from the aforesaid judgments clearly establishes that the Magistrate/Special Court retains full discretion to choose between directing registration of FIR and adopting the complaint procedure, depending upon the facts, nature of allegations, material placed on record, and the overall interest of justice. Thus, the consistent judicial view emerging from the aforesaid precedents is that while registration of FIR is mandatory at the level of the police where information discloses a cognizable offence, the power of the Court under Section 173(4) BNSS is discretionary in nature. The Court may, depending upon the facts and circumstances of the case, either direct registration of FIR or adopt the course of treating the application as a complaint and proceed in accordance with law. It has also been consistently held that where the allegations are such that they can be examined by the Court by following the procedure prescribed for complaint cases, including recording of statements of the complainant and witnesses, the Court may legitimately choose such course instead of directing registration of FIR. The power under Section 173(4) BNSS is thus discretionary and enabling in nature, and not compulsory. Thus, the cumulative effect of the aforesaid statutory scheme and binding judicial precedents is that while registration of FIR is mandatory at the level of the police where information discloses a cognizable offence, the power of the Court under Section 173(4) BNSS is discretionary. The Court is legally empowered to adopt the course of treating the application as a complaint where the circumstances so justify.
23. In the present case, the allegations made by the applicant are supported by affidavits and have been subjected to a preliminary enquiry pursuant to the directions of this Court. A detailed enquiry report has been submitted by the Commissioner of Police, Prayagraj, which has been duly considered by this Court. While the allegations raised are undoubtedly serious in nature, the material placed on record, including the enquiry report.

24. **Briefly stated**, the applicant, on the basis of the purported application supported by affidavits, has approached this Court alleging that Victim 'A', aged about 14 years, and Victim 'B', aged about 17 years and 6 months, disclosed before him incidents of sexual abuse allegedly committed by the opposite parties during the period of Magh Mela, 2025–26, at Prayagraj. It is alleged that the acts complained of were committed under the guise of religious service and discipleship. The applicant has further categorically alleged that the acts so complained of amount to penetrative sexual assault upon the victims. It is further asserted that representations in respect of the said allegations were made before the police authorities, including written communications addressed to the Commissioner of Police, Prayagraj, and the concerned Station House Officer; however, no First Information Report was registered. On the aforesaid assertions, the applicant has invoked the jurisdiction of this Court seeking issuance of directions, inter alia, for registration of a First Information Report and for taking appropriate action against the opposite parties in accordance with law.
25. In pursuance of the aforesaid application moved under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, this Court deemed it appropriate to have a local enquiry conducted through the Commissioner of Police, Prayagraj. In compliance thereof, the Commissioner of Police, Prayagraj, has submitted an enquiry report, which has been brought on record and indexed as Paper Nos. 18 and 19.
26. The enquiry report submitted by the Additional Commissioner of Police, Prayagraj, further discloses that during the course of enquiry, independent witnesses as well as Victim 'A' and Victim 'B' were examined, and they have categorically stated before the enquiry officer regarding the alleged incident of sexual assault, including penetrative sexual assault, stated to have occurred on or about 18th January, 2026. The enquiry report of the Additional Commissioner of Police, Prayagraj, further discloses that the victims as well as the independent witnesses also had their statements recorded through audio-video medium, and the said recordings form part of the record of the enquiry. The enquiry report submitted by the Additional Commissioner of Police, Prayagraj, further discloses details relating to the

mobile number(s) and location pertaining to the alleged date of incident, and also refers to the statements of the victims and independent witnesses recorded by the enquiry officers, which form part of the enquiry record.

27. Upon a careful and comprehensive perusal of the aforesaid the purported application, the statements of Victim 'A' and Victim 'B', the statements of the independent witnesses, as well as the enquiry report submitted by the Additional Commissioner of Police, Prayagraj, this Court finds that it clearly emerges that:

- a) There are serious allegations against the opposite parties relating to aggravated penetrative sexual assault upon Victim 'A' and Victim 'B', as well as others.
- b) It is disclosed that the allegations, as pleaded, pertain to cognizable offences punishable under the Protection of Children from Sexual Offences Act, 2012, as well as under the Bharatiya Nyaya Sanhita, 2023.
- c) It is further reflected that the allegations involve penetrative sexual assault, and that issues relating to the medical examination of the victims as well as the opposite parties may arise in accordance with law.
- d) It is also reflected that recovery and collection of evidence, including recording of statements of the victims and other witnesses, may be required.
- e) It further appears that electronic, digital, and other forensic evidence, if any, may need to be collected and examined, and that such evidence may require verification of its authenticity through the Forensic Science Laboratory, in accordance with law.
- f) The application further discloses that, in addition to the named opposite parties, two to three unidentified persons are also alleged to be involved in the occurrence, and that their identity and role are stated to require investigation.
- g) It is further reflected from the application moved by the applicant and addressed to the Station House Officer, Police Station Jhunsi,

as well as to the Commissioner of Police, Prayagraj, that serious cognizable offences were alleged to have been disclosed therein; however, it is alleged by the applicant that neither the Station House Officer registered an FIR nor did the Commissioner of Police issue any direction for registration of FIR in respect of the present matter.

- h)** The report submitted by the Commissioner of Police, Prayagraj, in compliance of the order of this Court dated 07.02.2026, discloses that during the course of enquiry, independent witnesses as well as the victims, in their oral, written, and audio-video statements, have clearly alleged commission of cognizable offences of a serious nature. The record further discloses that Victim 'A' was aged about 14 years and Victim 'B' was aged about 17 years and 6 months at the time of the alleged commission of the offence, thereby attracting the provisions of the Protection of Children from Sexual Offences Act, 2012.

28. Upon a cumulative consideration of the tehrir addressed to the SHO/information, the statements of Victim 'A' and Victim 'B', the statements of independent witnesses, the enquiry report submitted by the Additional Commissioner of Police, Prayagraj, and the material collected during enquiry, this Court finds that the allegations disclose serious and specific accusations of aggravated penetrative sexual assault, which prima facie constitute cognizable offences punishable under the Protection of Children from Sexual Offences Act, 2012, as well as under the Bharatiya Nyaya Sanhita, 2023. It further emerges that the allegations involve aspects such as medical examination of victims and accused persons, collection and recovery of material evidence, identification and tracing of unidentified persons, seizure and forensic examination of electronic and digital evidence, verification of mobile location data, and recording of statements of witnesses, all of which squarely fall within the domain of police investigation and cannot be effectively undertaken by the complainant or through the complaint procedure. In view of the nature of allegations and the material on record, this Court is of the considered opinion that the present case is not one where the complainant can be relegated to pursue a private complaint. As held by the

Hon'ble Court in **Lala Ram @ Lala Ramteerth vs. State of U.P.**, 2021 (1) ADJ 145, investigation of cognizable offences, particularly offences of sexual assault upon children, is primarily the statutory obligation of the State through its police machinery. Leaving the victims or the complainant to collect evidence on their own, in a case involving allegations of aggravated penetrative sexual assault, unidentified accused persons, and forensic requirements, would be contrary to the object and spirit of the POCSO Act and the scheme of the Bharatiya Nagarik Suraksha Sanhita, 2023. Accordingly, this Court is satisfied that the present application under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, deserves to be allowed.

29. Ordered accordingly-

- 29.1** Accordingly, the present application under Section 175(3) read with Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, is disposed of in the light of the observations made hereinabove and *deserves to be allowed*, without expressing any opinion on the merits of the case.
- 29.2** The Station House Officer, Police Station Jhunsi, District Prayagraj, is hereby directed to register a First Information Report forthwith on the basis of the tehrir/information and material placed on record, under relevant provisions of the law, and to conduct investigation strictly in accordance with law.
- 29.3** The investigation shall be carried out fairly, independently, and expeditiously, and in compliance with the provisions of the POCSO Act, including those relating to protection of identity and dignity of the victims.
- 29.4** The office is directed to ensure compliance of this order forthwith. A compliance report shall be submitted before this Court within the time prescribed by law.
- 29.5** It is clarified that this Court has not expressed any opinion on the merits of the case, and all issues are left open to be decided during investigation and investigating agency shall act independently and strictly according to law.

Date: 21.02.2026

(Vinod Kumar Chaurasia)
J.O CODE- U.P. 2641
Additional Session Judge/
Spl. Judge POCSO Act,
Prayagraj.