



2026:AHC:99125

HIGH COURT OF JUDICATURE AT ALLAHABAD
MATTERS UNDER ARTICLE 227 No. - 14562 of 2025

Simran Gupta

.....Petitioner(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Petitioner(s)	: Dinesh Singh Yadav, Rohit Nandan Pandey
Counsel for Respondent(s)	: C.S.C.

Reserved on 8.4.2026
Delivered on 1.5.2026

Court No. - 73

HON'BLE VIKRAM D. CHAUHAN, J.

1. Heard Sri Rohit Nandan Pandey, learned counsel for petitioner-applicant and Sri Manish Goyal, learned Additional Advocate General for respondent-State.

2. The present petition under Article 227 of Constitution of India is preferred by Applicant-Petitioner challenging order dated 10.2.2025 passed by Civil Judge (Senior Division)/Special Judge, M.P./M.L.A. Court, Sambhal at Chandausi in Misc. Case No 10 of 2025 and order dated 7.11.2025 passed by Additional District and Sessions Judge Chandausi, Sambhal at Chandausi in Criminal Revision No 20 of 2025.

3. The applicant preferred an application dated 23.1.2025 under Section 173(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 before Chief Judicial Magistrate, Sambhal (Chandausi)/Special Judge M.P./M.L.A. Court, Sambhal (Chandausi) with allegation that opposite party no. 2, who is a Member of Parliament, on 15.1.2025 has made a statement that our fight is with an organization, political party as well as Indian State (more particularly detailed in the abovementioned application under Section 173(4) of Bharatiya Nagarik Suraksha Sanhita, 2023). It is alleged in said application that aforesaid statement of opposite party no. 2 threatens the sovereignty, integrity and unity of Indian State. The said statement of opposite party no. 2 would create instability and a sense of rebellion in the society. The aforesaid statement spreads public discontent. It is also alleged that opposite party no. 2 holds a constitutional position and statement is against the basic spirit of Constitution and is a cognizable offence. The petitioner also considered aforesaid statement as anti-national. Petitioner further prayed that a First Information Report be lodged and the matter be investigated.

4. The petitioner has also stated in supplementary affidavit filed before this Court that statement of opposite party no. 2 was televised in the evening of 15.1.2025 on television and petitioner had seen the same at her residence at Sambhal. In this respect an affidavit was also filed by petitioner before court of first instance.

5. The court of first instance thereafter by impugned order dated 10.2.2025 rejected the application of petitioner under Section 173(4) of Bharatiya Nagarik Suraksha Sanhita, 2023. The court of first instance

recorded a finding that petitioner has not shown as to how statement of opposite party no. 2 is threat to sovereignty, integrity and unity of Indian State. It is also recorded by court of first instance in impugned order dated 10.2.2025 that allegation of petitioner that statement of opposite party no. 2 would create instability and a sense of rebellion is only suspicion/imagination of petitioner and no material in this respect has been produced. Court of first instance also recorded a finding that petitioner is resident of Delhi and opposite party no. 2 is also resident of Delhi.

6. The petitioner being aggrieved by above-mentioned order dated 10.2.2025, preferred Criminal Revision No. 20 of 2025 before Additional District and Sessions Judge, Sambhal at Chandausi. The criminal revision was dismissed by order dated 7.11.2025. Revisional court has not found any error in order of court of first instance and as a result of same revisional court declined to interfere in order dated 10.2.2025 passed by court of first instance.

7. Learned counsel for petitioner submits that opposite party no. 2 is a Member of Parliament and his abovementioned statement is against Constitution of India and affects the integrity of country and on aforesaid basis complaint was filed on 23.1.2025 and same has been rejected by order dated 10.2.2025 and said order was subject matter of challenge in revisional proceedings and revision has been rejected on 7.11.2025. Learned counsel for petitioner further submits that statement made by opposite party no. 2-accused is in violation of Section 152 of Bharatiya Nyaya Sanhita, 2023.

8. Sri Manish Goyal, learned Additional Advocate General appearing on behalf of respondent-State submits that under Section 152 of Bharatiya Nyaya Sanhita, 2023 whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine. The trial court as well as the revisional court has not appreciated the law in proper perspective.

9. The sum and substance of argument of learned counsel for petitioner is that statement of opposite party no. 2 discloses an offence and as such court of first instance as well as revisional court erred in law in passing impugned orders. Learned counsel for petitioner in this respect has relied upon Section 152 of Bharatiya Nyaya Sanhita, 2023.

10. In any society governed by rule of law, citizens are mandated to respect and follow the law. This principle ensures law and order, protection of individual rights and framework for resolving the dispute. Any violation of law may entail legal penalties such as fines, imprisonment depending upon the nature of violation. In a democratic setup, legislature codifies behaviour and action which are considered harmful to society as well as to rule of law and as such are declared as an

offence entailing punishment. The aforesaid declaration of an offence by legislature are required to be as per constitutional mandate.

11. One of the fundamental rights enshrined under Constitution of India is freedom of speech and expression embedded in Article 19(1)(a) of Constitution of India. The aforesaid fundamental right is subject to reasonable restriction in the interest of sovereignty and integrity of India, security of State, public order, decency or morality, in relation to contempt of court, defamation or incitement of offence as envisaged under Article 19(2) of Constitution of India. The mandate under Article 19 of Constitution of India permits all citizen freedom of speech and expression with aforesaid reasonable restriction.

12. In **Devidas Ramachandra Tuljapurkar Vs. State of Maharashtra and others, (2015) 6 SCC 1**, the Hon'ble Supreme Court while examining the sanctity of freedom of speech and expression has held that said concept is also enshrined in the Preamble of Constitution. Paragraph No. 93 of **Devidas Ramachandra Tuljapurkar (supra)** is quoted hereinbelow :-

“93. Having stated about the test that is applicable to determine obscenity we are required to dwell upon the right to freedom of speech and expression. The words, “freedom of speech and expression” find place in the association words “liberty of thought, expression, belief, faith and worship”, which form a part of the Preamble of the Constitution. The Preamble has its own sanctity and the said concepts have been enshrined in the Preamble.”

13. Further, in **Kaushal Kishor Vs. State of Uttar Pradesh and others, (2023) 4 SCC 1**, the Hon'ble Supreme Court has considered scope of freedom of speech and expression in paragraph no. 194 and the same is quoted hereinbelow :-

“194. The freedom of speech and expression under Article 19(1) (a) is a right with diverse facets, both with regard to the content of speech and expression, and the medium through which communication takes place. It is also a dynamic concept that has evolved with time and advances in technology. In short, Article 19(1)(a) covers the right to express oneself by word of mouth, through writing, pictorial form, graphics, or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views and opinions. The communication of ideas may be through any medium such as a book, newspaper, magazine or movie, including electronic and audio-visual media.”

14. The Parliament has enacted Section 152 of Bharatiya Nyaya Sanhita, 2023 as an offence punishable with imprisonment. The aforesaid Section 152 of Bharatiya Nyaya Sanhita, 2023 is quoted hereinbelow:-

“152. Act endangering sovereignty, unity and integrity of India.--Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment

which may extend to seven years, and shall also be liable to fine.

Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.”

15. The ingredient of offence under Section 152 of Bharatiya Nyaya Sanhita, 2023 are as follows: -

- a) the act must be done purposely and knowingly.
- b) by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise.
- c) excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or
- d) indulges in or commits any such act.

16. The importance of freedom of speech and expression has been considered by Hon'ble Supreme Court in **Imran Pratapgadhi Vs. State of Gujarat and another, (2026) 1 SCC 721**. Paragraph No. 48 of the said judgement is quoted hereinbelow :-

“48. Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals

must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful.”

17. In a democracy, freedom of speech and expression, plays a vital role by individuals expressing their views. The advancement of democracy is based on exchange of views, free from retribution. Restricting freedom of speech reduces an individual to an approved narrative, undermining the moral polity of an individual.

18. In **Shreya Singhal Vs. Union of India, (2015) 5 SCC 1**, the Hon'ble Supreme Court has considered the concept of freedom of speech & expression and observed there are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a) of the Constitution of India. It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.

19. In respect of challenge to any speech and expression, courts play a very important role. The Courts are under the mandate to uphold the Constitution. The Fundamental Rights provided under Part III of Constitution are sacrosanct and courts are required to protect freedom of speech and expression unless reasonable restrictions are required in terms of Article 19(2) of Constitution of India. The Hon'ble Supreme

Court has considered role of courts in protecting fundamental right of freedom of expression and speech in **Imran Pratapgadhi (supra)**.

Paragraph No. 50 of the said judgement is quoted hereinbelow :-

“50. Courts, particularly the Constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.”

20. The Hon’ble Supreme Court in the aforesaid judgement has mandated that it is the bounden duty of courts to protect freedom of speech & expression and to thwart any attempt to undermine freedom of speech and expression. The aforesaid mandate therefore required each court to examine whether objection to any speech or expression would violate right of an individual to freedom of speech and expression. This mandate is required to be exercised by courts at all levels. Whenever an issue is raised objecting to a particular speech or expression, courts are required to be vigilant to ensure that fundamental right of an individual is not taken away lightly or restriction on the speech and expression are reasonable.

21. In **Imran Pratapgadhi (supra)**, the Hon'ble Supreme Court has held that it is important to ascertain whether prima facie case is made out against individual to proceed under criminal law. Paragraph No. 53.5 of said judgement is quoted hereinbelow :-

“53.5. Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.”

22. Where an application is preferred by an individual before any court of law for lodging of First Information Report under Section 152 B.N.S., 2023 in respect of any speech and expression, courts are required to examine and prima facie find whether any prima facie offence is made out, the said aspect gains more importance as the speech and expression are protected by Article 19(1)(a) of Constitution of India and only when it is shown that speech or expression comes within the term “reasonable restriction” provided under Article 19(2) of Constitution of India that the

court can consider the issue whether any offence is made out. If any speech is protected by fundamental right of freedom of speech and expression, then court cannot proceed to initiate criminal prosecution. In view of above, when a person approaches any court of law challenging the speech or expression of another individual, the incidence of fundamental right under Article 19(1)(a) of Constitution is that speech and expression are considered protected under Constitution umbrella unless person approaching the court or authorities show that particular speech and expression comes within ambit of reasonable restriction envisaged under Article 19(2) of Constitution of India and is an offence declared by law. The burden of proof in this respect rest upon person approaching courts to show that alleged speech or expression comes within the term reasonable restriction and is not protected by Article 19(1)(a) of Constitution.

23. While examining whether a particular speech and expression is in violation of law or comes within the exception provided under Article 19 (2) of Constitution, courts are required to apply prudent person test. In law, prudent person is a hypothetical person, who in the facts and circumstances would conduct in a reasonable, just and fair manner. In the context of present case, it is to be examined whether on the basis of allegations in the complaint/application of petitioner, it can be said that a prudent person would come to the conclusion that there is sufficient ground for proceeding against opposite party no. 2. In order to apply aforesaid test, it is necessary that material particulars, circumstances and context are brought before Court to demonstrate that speech or

expression violated Article 19(2) of Constitution of India and is an offence. Such material particulars and circumstance are also required to be placed before courts so that freedom of speech and expression of individual is not taken away lightly. Whenever fundamental right of an individual is being tested in terms of Article 19(2) of Constitution of India, strict interpretation is required to be made against taking away of such right and when a person approaches court of law to challenge speech or expression, burden should be placed on such person to demonstrate that such speech or expression is an offence or restricted by law. The insufficiency of ground for proceeding against an accused may also arise when material particulars and details in respect of alleged offence are absent in complaint/application.

24. It is to be noted that lodging of First Information Report is a serious act which may curtail liberty of an individual and therefore courts are required to be very cautious while considering application for lodging of First Information Report, more particularly, when alleged offence is in respect of speech or expression, which may be protected by grand-norm that is Constitution. It is settled law that all laws will abide by Constitution being the grand-norm. Any law which punishes speech or expression must abide by Constitution. In view of aforesaid, interpretation of law is also to be made in consonance with Article 19 of Constitution of India. The sufficiency of material particulars and circumstances against an individual therefore is a condition precedent.

25. Once any person raises a complaint with regard to another person speech and expression being violative of any law then at the first instance

it has to be shown that the offending speech or expression comes within the ingredients of offence as well as that aforesaid speech and expression is not protected by Article 19 of Constitution of India. Once a speech or expression is protected by Article 19 of Constitution of India, then such an individual cannot be proceeded under law for an offence.

26. It is an admitted case that opposite party no. 2 is an elected representative and Member of Parliament. In a democracy, elected representative serve as the bridge between citizens and government. The principle is rooted in the concept of representative democracy where citizens delegate their voice to elected representative. In this respect elected representatives may voice their concerns through various mediums. Even otherwise, such elected representative also has individual right of freedom of speech and expression.

27. While examining any alleged offending speech, it is necessary to examine as to the background of the person who is alleged to have made such a speech as well as the context in which such speech has been made. The expression 'fight' may have different meaning in various context. The meaning of 'fight' for armed forces personnel and sportsman would have different meaning, therefore, the context and back ground is required to be shown for purpose of examining the offending speech. In the context of elected representative, in natural course of events and conduct, the word 'fight' may signify intense advocacy, persistence or opposition (rather than physical combact), against policy, thought or ideology of opponent or particular person. There may be distinction between an elected representative declaring commitment to fight against

particular policy, ideology and a person inciting rebellion. It is an admitted fact that speech of opposite party no. 2 was made in an interview and therefore in normal course of event would come within discussion unless shown otherwise.

28. In parliamentary democracy, criticism of government action or policies is not only permitted but is essential. Therefore, criticism or ideological difference may not by itself be an offence. The said exception also arises from the explanation provided under Section 152 of Bharatiya Nyaya Sanhita, 2023.

29. In **Kaushal Kishor (supra)**, the Hon'ble Supreme Court has recognised the right of dissent as one of the facets of Article 19(1)(a) of Constitution of India and in this reference paragraph no. 198 of said judgement is quoted hereinbelow: -

“198. Article 19(1)(a) serves as a vehicle through which dissent can be expressed. The right to dissent, disagree and adopt varying and individualistic points of view inheres in every citizen of this Country. In fact, the right to dissent is the essence of a vibrant democracy, for it is only when there is dissent that different ideas would emerge which may be of help or assist the Government to improve or innovate upon its policies so that its governance would have a positive effect on the people of the country which would ultimately lead to stability, peace and development which are concomitants of good governance.”

30. The Court of first instance has recorded a specific finding that there are no material particulars and circumstances provided by applicant-petitioner which would indicate that offence under Section 152

of Bharatiya Nyaya Sanhita, 2023 is made out. The court of first instance has further held that applicant-petitioner has not shown how the alleged speech is a threat to sovereignty, integrity and unity of country. The court of first instance has further held that the claim of applicant-petitioner that offending speech would incite instability and rebellion is based on petitioner suspicion and imagination and no material has been shown in support thereof.

31. A perusal of application under Section 173(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 would go to show that reference has been made to speech of opposite party no. 2. As per the applicant, the offending speech was broadcasted on national television. The complete extracts of alleged speech made by opposite party no. 2 has not been brought before this Court nor same were before court of first instance or revisional court. A particular line of speech has been quoted in application preferred by applicant-petitioner before court of first instance which forms basis for prayer made for lodging of First Information Report against opposite party no. 2 under Section 152 of Bharatiya Nyaya Sanhita, 2023.

32. The objection of applicant is to the words “fight with Indian State”. The aforesaid expression is preceded by two words which indicate towards an independent organization and one political party. The applicant has not shown as to how alleged speech excites or attempts to excite, secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India. When learned counsel for applicant was

queried by this Court as to how aforesaid words would be an offence, learned counsel for the applicant has stated that speech would come within Section 152 of Bharatiya Nyaya Sanhita, 2023.

33. No circumstances and material particulars have been shown before this Court to indicate that aforesaid speech has resulted in exciting, secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India. Further, applicant has also not shown before this Court as to how aforesaid speech are an attempt to excite, secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India. The offending speech is alleged to have been made in January 2025 and even after one year it has not been shown before this Court that the aforesaid speech has resulted in any of the mischief covered by Section 152 of Bharatiya Nyaya Sanhita, 2023.

34. It is settled principle of law that a suspicion cannot be foundation for criminal prosecution. In present context, once Article 19(1) of Constitution of India gives its citizen fundamental right of freedom of speech and expression, then it was imperative on the part of the applicant-petitioner to have brought before court concerned, material particulars, circumstances and context which would have made the alleged offending speech of opposite party no. 2, an offence. The alleged speech does not explicitly calls for any of the mischief provided under Section 152 of Bharatiya Nyaya Sanhita, 2023, then applicant – petitioner ought to have demonstrated by material particulars and

circumstances before the court concerned that the alleged speech is not protected by Article 19(1)(a) of Constitution of India and is a cognizable offence.

35. The present petition is filed under Article 227 of Constitution of India. It is settled principle of law that power under Article 227 is to be exercised in order to keep courts within the bounds of their authority. Court of first instance as well as revisional court has recorded concurrent findings against applicant-petitioner. This Court in exercise of supervisory jurisdiction will not convert itself into a court of appeal. It has not been shown before this Court that the jurisdiction exercised by court of first instance or revisional court is in grave dereliction of duty and gross abuse of power by court concerned. The court concerned have exercised their jurisdiction in accordance with law.

36. In view of the above-mentioned facts, circumstances of the case and reasoning hereinabove, the present petition under Article 227 of Constitution of India lacks merit and is hereby **dismissed**.

(Vikram D. Chauhan,J.)

May 01, 2026

VMA