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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16th May, 2025

\+ W.P.(CRL) 259/2025

KHUSHI SHARMA .....Petitioner

Through: Mr. Jayant K. Sud, Sr. Advocate with Mr. Ashish Upadhyay, Mr. Kartik Jasra, Mr. Shivam Jasra, Mr. Prannit Stefano, Ms. Shayal Anand, Mr. Sai Manik Sud Mr. Sahib Kocchar and Ms. Vidhi Jasra, Advocates.

versus

UNION OF INDIA AND OTHERS .....Respondents

Through: Mr. Rohan Jaitley (CGSC), Mr. Dev Pratap Shahi, Mr. Varun Pratap Singh and Mr. Yogya Bhatia, Advocates for UOI.
Mr. Rahul Tyagi, ASC (Crl.) for State with Mr. Mathew M. Philip, Mr. Sangeet Sibou and Mr. Aniket Kumar Singh, Advocates.
Mr. N. Hariharan, Sr. Advocate with Mr. Siddharth Yadav and Mr. Sumit Chaudhary, Advocates for R-3.
Mr. Anil Mittal, Mr. Shaurya Mittal, Advocates with Mr. Vipin Kumar (SHO) with Mr. Sunny Tomer (SI, P.S.: Knowledge Park, Noida U.P. for R4 to R6.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

The present petition represents a sister's plea for proper investigation into the death of her 20-year-old brother - Harsh Kumar Sharma - who never returned after leaving home in Delhi on the morning of 03.12.2024, only to be found dead late that night in an obscure location in Greater Noida, Uttar Pradesh.

BRIEF FACTS

2. Briefly, the unfortunate episode leading-up to the filing of the present petition has unfolded as follows:

2.1. The petitioner's brother left home at about 09:30 hours on 03.12.2024 driving his own car to attend college in Noida, Uttar Pradesh; and when he did not return later that day, the petitioner and her mother tried reaching him on his mobile numbers but with no success despite having made countless calls to him. This led to the petitioner's mother calling the PCR on the numbers 100 and 112 at about 19:44 hours on 03.12.2024 to report that her son had gone missing. In response to the call, two police officers from P.S.: Moti Nagar, New Delhi reached the petitioner's residence and after making some preliminary inquiries, they asked the family members to come to the police station to lodge a formal complaint, which they did.

2.2. Eventually, the Delhi Police registered a missing person's complaint *vide* GD No. 0143A at about 21:15 hours at P.S.: Moti Nagar, New Delhi. The police subsequently tracked the cell phone location of the petitioner's brother, which led them to a service lane, near RCI Hostel, Greater Noida, Uttar Pradesh at about 23:30 hours, where they found the petitioner's brother in his car bearing registration number DL-8C-BF-2888, holding the steering wheel but showing no movement. The persons present at the spot broke the side-window of the car, opened it, and pulled-out the petitioner's brother.

2.3. The officer from the Delhi Police who was accompanying the petitioner and her family took photographs and video-graphed the car; and upon opening the car found a carbon monoxide cylinder in it. Most importantly, the brother's face was red and swollen and there were visible red spots on his body. The petitioner's brother was rushed to Kailash Hospital, Greater Noida.

2.4. In the meantime, the brother's bag and mobile phone(s) were removed from the car; and in the bag, they found a diary, on the first page of which there was a handwritten note which read : "*IF YOU WANT TO MEET THIS PERSON, HE IS DEAD*". The car is stated to have been left at the spot where it was found, as advised by the police.

2.5. The doctors at Kailash Hospital, Greater Noida declared the petitioner's brother 'brought dead' at about 01:00 a.m. on 04.12.2024. Thereafter, the officer from the Delhi Police who

was accompanying the petitioner and her family members escorted them to P.S.: Knowledge Park, Uttar Pradesh, where the U.P. Police registered the incident as an unnatural death *vide* GD No.002 at 01:56 hours on 04.12.2024. The petitioner states that at that point, the police officers at P.S.: Knowledge Park were shown the hand-written note found in the brother's diary and they assured the petitioner and her family members that senior officers would investigate the matter.

2.6. On the next day *i.e.*, on 04.12.2024 at about 08:00 hours, the petitioner alongwith her relatives reached Kailash Hospital, where the brother's body was kept in the mortuary. S.I. Rahul Kumar and one other police officer from P.S.: Knowledge Park also reached the hospital at about 09:15 hours; they video-graphed the dead body; and informed the petitioner that their forensic team had reached the spot for examining her brother's car.

2.7. The petitioner states that after they reached the spot, they were informed that in addition to the carbon monoxide cylinder, the forensic team had found 02 syringes in the car; both syringes were loaded with some chemical and blood was visible on the needles. As per S.I. Rahul, the forensic team had seized the cylinder as well as the syringes.

2.8. The brother's post mortem examination was conducted at the District Hospital, Bhangel, Noida, Uttar Pradesh. The body was subsequently handed-over to the family and they were also told to remove his car. According to them the petitioner and her

family were also told that there was possibility of some poisonous injection having been administered to the deceased from some syringe since there were needle pricks on the back-side under his shoulder.

2.9. The last rites of petitioner's brother were performed on 04.12.2024 at about 18:30 hours.

3. In this factual backdrop, the court has heard Mr. Jayant K. Sud, learned senior counsel appearing on behalf of the petitioner. Mr. Rohan Jaitley, learned CGSC has appeared on behalf of Union of India; Mr. Sanjay Lao, learned Standing Counsel (Criminal) and Mr. Rahul Tyagi, learned ASC (Criminal) have appeared on behalf of the Delhi Police; Mr. Anil Mittal, learned Standing Counsel has appeared on behalf of the U.P. Police; and Mr. N. Hariharan, learned senior counsel has appeared on behalf of respondent No.3 – S.H.O, P.S.: Moti Nagar, New Delhi, all of whom have been heard at considerable length.

4. For the record, the following filings have been made on behalf of the respondents :

4.1. Status report dated 06.02.2025 has been filed on behalf of the Delhi Police;

4.2. Status report dated 20.02.2025, additional status report dated 02.04.2025 and affidavit dated 09.05.2025 have been filed on behalf of the U.P. Police;

4.3. Affidavit dated 27.02.2025 has been filed on behalf of the Union of India; and

4.4. Written synopses have also been filed on behalf of the petitioner, the Delhi Police and the U.P. Police.

PETITIONER'S CASE

5. The principal grievance raised by the petitioner is that despite her brother having been found dead on the night of 03.12.2024; and despite her having filed police complaints dated 20.12.2024 and 23.12.2024 with the U.P. Police and the Delhi Police respectively requesting them to register an FIR for murder and to promptly investigate the matter, as of the date of filing of the present petition on 20.01.2025, *no FIR has been registered* by either of the police departments in the matter.

6. Learned senior counsel appearing for the petitioner submits that the petitioner has been given a run-around by the officials of P.S.: Moti Nagar, New Delhi and P.S.: Knowledge Park, U.P., with both police stations declining to register an FIR.

7. It is submitted that after repeated follow-ups with P.S.: Moti Nagar and P.S.: Knowledge Park, on 20.12.2024 the petitioner and her parents visited the offices of senior officials of the U.P. Police, whose names have been set-out in the petition and requested that an FIR be registered in the matter and prompt investigation be conducted, to give justice to the family of the deceased.

8. However, learned senior counsel appearing with the petitioner laments that all efforts on the petitioner's part have proved futile; no FIR has been registered into the death of the petitioner's brother either by the Delhi Police or by the U.P. Police *till date*.

9. It is further submitted that, being frustrated with her position, the petitioner filed a writ petition bearing W.P.(Crl.) No.23/2025 under Article 32 of the Constitution of India before the Supreme Court, which was however disposed-of as withdrawn, granting to the petitioner liberty to approach the jurisdictional High Court; and that is how the present writ petition has come to be filed.

RESPONDENTS' CASE

10. The Delhi Police have argued that all that they had received at P.S.: Moti Nagar, New Delhi was a 'missing person's report' which they duly registered *vide* GD No.0143A. They submit that a missing person's report *neither* discloses the commission of a cognizable offence *nor* does it disclose the commission of a non-cognizable offence. The Delhi Police have contended that such information, is not required to be reduced into writing as a FIR *or* as a Non-Cognizable Report ('NCR').

11. The Delhi Police have submitted, that in due discharge of their duty under the law, upon receiving the missing person's report, a police officer from PS : Moti Nagar reached the residence of the petitioner; and subsequently called them over to the police station where a missing person's report was duly registered. They have submitted that that the police officer traced the location of the missing person's mobile phone, which led them to recovering the car, the body, as well as a carbon monoxide cylinder in a certain location in Greater Noida, Uttar Pradesh.

12. The Delhi Police have contended, that since no complaint was made to them that the death of the petitioner's brother was the result of any foul play, muchless of any offence committed within the jurisdiction of the Delhi Police, there was no cause for the Delhi Police to register an FIR. It is submitted, that as was required of them, having found the dead body within the jurisdiction of P.S.: Knowledge Park, the Delhi Police informed the U.P. Police; and from that point onwards, it was for the U.P. Police to take the matter forward, in accordance with law.

13. Upon a pointed query, the Delhi Police have said that they did not consider it necessary to even register a 'Zero-FIR' since neither the complaint received by them *nor* the circumstances in which the body was found, indicated the commission of any cognizable offence; and that therefore, they were at a loss to know *which* cognizable offence was committed, absent which they could not have registered an FIR under any provision of the penal code.

14. On the other hand, the U.P. Police have argued that in cases of 'suspicious death', the law mandates that inquest proceedings be conducted under section 194 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'). They submit that the present case was clearly a case of 'suspicious death'; and therefore, a post-mortem examination was conducted at a government hospital and inquest proceedings were initiated before the concerned Executive Magistrate, before whom those proceedings are still pending.

15. The U.P. Police have further contended that the viscera samples and blood swabs of the deceased were sent for forensic examination to State Forensic Science Laboratory, Ghaziabad, U.P.; and the reports

received from the State FSL were forwarded to the Medical Officer In-Charge, District Mortuary, Noida, Gautam Budh Nagar, Uttar Pradesh; who has opined the following :

> "… … *possibility of Death as result of Asphyxia consequent upon carbon-monoxide poisoning can't be ruled out*."

16. Therefore, the U.P. Police have said that until inquest proceedings are concluded and a final inquest report is rendered, they cannot assume that the death of the petitioner's brother is a case of 'homicidal death'; and accordingly, there is no reason why the U.P. Police should register an FIR, muchless an FIR for the offence of murder.

DISCUSSION & CONCLUSIONS

17. In the above backdrop, the following questions arise for consideration of this court in the present case :

17.1. Have the Delhi Police and the U.P. Police complied with the mandate of the statutory provisions of the BNSS and of their respective Standing Orders in the present case;

17.2. Have the Delhi Police and the U.P. Police complied with the decision of the Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh & Ors***.,[1] and the more recent ruling on the point in ***Amit Kumar & Ors. vs. Union of India & Ors***.,[2] in the present case; and

17.3. Lastly, given the circumstances obtaining in the matter, was there any justification for the Delhi Police or the U.P. Police to

[1] (2014) 2 SCC 1
[2] 2025 SCCOnLine SC 631

say that no cognizable offence was disclosed in the present case.

18. We may first notice the statutory provision and the leading judicial precedents that are relevant for the present case.

19. Section 173 of the BNSS reads as follows :

> ***173. Information in cognizable cases****. — (1) Every information relating to the commission of a cognizable offence,* ***irrespective of the area where the offence is committed****, may be given orally or by electronic communication to an officer in charge of a police station, and if given —*
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> *(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;*
>
> *(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:*
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> *Provided that if the information is given by the woman against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:*
>
> *Provided further that—*
>
> *(a) in the event that the person against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a*

convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub-section (6) of Section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in Section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, —

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

(emphasis supplied)

20. A bare reading of the provision would show that while replacing the old Code of Criminal Procedure Code 1973 ('Cr.P.C.'), the Legislature has *inter-alia* added the words "… … *irrespective of the area where the offence is committed*… …" appearing in the opening

lines of section 173 of the BNSS, which are not found in the opening lines of the earlier equivalent provision in the Cr.P.C. *viz.*, section 154 of the Cr.P.C. The intent of the Legislature is therefore clear, namely that information relating to the commission of a cognizable offence if given orally must be reduced into writing by an officer in-charge of a police station *regardless of where the offence* may be stated to have been committed.

21. The obvious purpose of adding the aforesaid phrase to section 173 BNSS is that the Legislature wanted to address the mischief of police stations refusing to record information relating to commission of a cognizable offence, on the excuse that the offence complained-of has not been committed within their territorial jurisdiction. This excuse is therefore no longer available to any police station under the new provision of section 173 of the BNSS.

22. Next, this court would remind both the Delhi Police as well as the U.P. Police of the Constitution Bench decision of the Supreme Court in *Lalita Kumari* (supra), which in unambiguous terms has mandated the registration of an FIR, as follows :

> "*119. Therefore, in view of various counterclaims regarding registration or non-registration,* ***what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory****. However,* ***if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed****. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is*

falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

"*120. In view of the aforesaid discussion, we hold:*

120.1. ***The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation****.*

120.2. ***If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not****.*

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter

> *without satisfactorily explaining the reasons for delay.*
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> *The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.*
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> *120.7 [Ed.: This correction is based on para 120.7 as corrected vide order in Lalita Kumari vs. State of U.P., (2023) 9 SCC 695.]. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.*
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> *120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station,* ***we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above***."

(emphasis supplied)

23. It may also be noted that Advisory dated 05.02.2024 issued by the Ministry of Home Affairs of the Government of India to the concerned authorities has also instructed the police to register FIRs and to act on them, in exactly the words of the Supreme Court in *Lalita Kumari*.

24. The stand taken by the Delhi Police in the present case however, is that while they are fully cognizant of the mandate of the Supreme Court in *Lalita Kumari*, their contention is that *no cognizable offence was disclosed* in the oral information given to them by the petitioner, since the information related *only* to the petitioner's brother having gone missing; and therefore, there was no reason for them to reduce such information into writing and register an FIR. They have further

argued, that since according to them, no cognizable offence was disclosed, they could not have *filled-up just any offence* in the relevant column and registered an FIR.

25. The Delhi Police have contended that based on the information they received from the petitioner, they duly recorded a general diary entry; and thereafter proceeded to look into the matter by visiting the petitioner's residence and following the lead of the mobile phone location of the petitioner's brother, which took them to Greater Noida, Uttar Pradesh.

26. In the opinion of this court, the stand taken by the Delhi Police is flawed, for the reasons discussed hereinafter :

26.1. It is apparent that the Delhi Police have glossed over the fact that based on the information given to them by the petitioner, they visited the petitioner's resident; they collected CCTV footage of the area around the petitioner's house; they made inquiries about her brother's whereabouts; they traced his mobile phone location; and eventually found him dead in his car in circumstances which clearly belie that he had died a natural death. If any doubt was to remain in this behalf, in complaint dated 23.12.2024 addressed to the Commissioner of the Delhi Police, the petitioner in so many words called upon the Delhi Police to register an FIR for the murder of her brother, setting-out the circumstances which led her to believe so.

26.2. To answer the qualms expressed by the Delhi Police as to *which cognizable offence* was disclosed on the basis of the

information given to them by the petitioner; and which cognizable offence should they have entered in the FIR, this court is of the view that at the stage when information is received from a complainant it would be rare to be able to pin-point with certainty as to which *precise cognizable offence* is disclosed; and there would always be an element of subjectivity on the part of a police officer to decide as to which cognizable offence is disclosed in a given set of circumstances. This lack of clarity cannot however be justification for *not registering an FIR at all*.

26.3. It can never be countenanced, that based on what a complainant or an aggrieved person discloses to a police officer, the police officer may refuse to register an FIR saying that until he is sure which *exact cognizable offence is disclosed*, he would not register an FIR at all. *Such a position would lead to an anomalous situation, whereby investigation into a cognizable offence would not commence until an FIR is registered; and an FIR would not be registered until the police officer is clear as to which cognizable offence is disclosed.*

26.4. In the circumstances of the present case, this court is of the view that there was sufficient information and material before the Delhi Police to have registered an FIR for the offence under section 103 of the Bharatiya Nyaya Sanhita, 2023 ('BNS') *i.e.*, for murder *regardless* of the fact that the dead body was recovered outside their territorial jurisdiction. Furthermore, since the predominant body of evidence was discovered in

Greater Noida, Uttar Pradesh, *i.e.*, outside of their territorial jurisdiction, the Delhi Police would have been justified to designate the FIR as a 'Zero FIR' and to have transferred the investigation to the U.P. Police.

27. Furthermore, in their written synopsis dated 14.05.2025, the Delhi Police have placed reliance on a very recent decision of the Supreme Court in ***Imran Pratapgadhi vs. State of Gujarat***,[3] to argue that prior to the registration of an FIR, a preliminary enquiry can be conducted under section 173(3) of the BNSS. In this behalf, they have drawn attention to the following portion of the judgment :

> "*24. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.*"

28. In view of the above observations of the Supreme Court, even if the Delhi Police were of the view that no case was made-out for registering an FIR in the circumstances obtaining in the matter, they should at least have immediately informed the petitioner that no case was made-out in compliance with the observations of the Supreme Court, to enable her to avail their remedies in accordance with law. This also the Delhi Police did not do.

29. Another argument sought to be raised on behalf of the Delhi Police is that the petitioner ought not to have directly approached the High

[3] 2025 SCC OnLine SC 678

Court but should instead have filed an application under section 173(4) of the BNSS before the Magistrate for registration of an FIR. In this behalf, the Delhi Police have relied on the decision of the Supreme Court in ***Sakiri Vasu vs. State of Uttar Pradesh & Ors.***,[4] and have drawn attention to the follow extracts from the judgment :

> "*27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.*
>
> "*28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.*"

30. In regard to the above contention, suffice if to say, that though a party has a remedy under section 173(4) of the BNSS to approach a Magistrate seeking the registration of an FIR, and such remedy is *ordinarily* an efficacious remedy, in the egregious circumstances of the present case, this court would not fault the petitioner for filing the present writ petition directly.

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[4] (2008) 2 SCC 409

31. Needless to clarify, that the availability of an alternate remedy does not *bar* the jurisdiction of the High Court to entertain a petition under its extraordinary powers under Article 226 of the Constitution.

32. Lastly, as a matter of fact, *vide* order dated 17.01.2025 passed by the Supreme Court in writ petition bearing W.P.(Crl.) No.23/2025, it is specifically recorded that the petitioner had sought leave to withdraw her petition under Article 32 of the Constitution with liberty to approach the jurisdictional High Court, which is what the petitioner has done.

33. Now, looking at the same set of same circumstances from the perspective of the U.P. Police, there is no contestation that a young man was found dead inside a locked car, with a carbon monoxide cylinder and syringes, and an ominous note in his diary, all of which circumstances painted a ghastly picture of what was clearly not a natural death. The body was taken to a hospital in Greater Noida, where the person was pronounced dead; subsequently a post-mortem examination was conducted at a governmental facility; and inquest proceedings were initiated, with viscera samples having been sent for forensic examination.

34. It is surprising however, that despite a concatenation of all these circumstances, the U.P. Police also failed to discern any cognizable offence; and therefore, have chosen not to register an FIR *till date*.

35. The U.P. Police have submitted that upon perusal of the FSL report, the final opinion dated 01.04.2024 given by the Medial Officer In-charge as regards the cause of death (as extracted above) is that "*… … possibility of Death as result of Asphyxia consequent upon*

carbon-monoxide poisoning can't be ruled-out." The U.P. Police say therefore, that they must await the completion of the inquest proceedings before deciding whether any cognizable offence is disclosed in the case.

36. In the opinion of this court the manner in which the U.P. Police have proceeded in the case, yet again, does violence to the provisions of section 173 of the BNSS, inasmuch as the *only requirement* of section 173 is that the information received by the officer in-charge of a police station must be "… … *relating to* … …" the commission of a cognizable offence. No conclusive material or opinion is required at the stage of registration of an FIR.

37. As observed above, a police officer who receives information from a complainant *quite definitely needs to exercise some discernment*, and tempered with his experience, he is required to assess whether the information relates to the commission of a cognizable offence. However, this assessment is to be made at a rudimentary level and the threshold of examining the information, as to whether it discloses commission of a cognizable offence, is very minimal. If the answer to such assessment is in the affirmative, an FIR must be registered post-haste.

38. The other dilemma that has been canvassed by the U.P. Police is that registering an FIR under section 173 of the BNSS *before* inquest proceedings are concluded under section 194 of the BNSS, would amount to jumping the gun, as it were. It has been argued that until the cause of death is known and it is ascertained whether the death was 'homicidal', there would be no basis to registering an FIR for

murder. This dilemma has been recently answered by the Supreme Court in its decision in *Amit Kumar*, where the Supreme Court has delineated the difference between inquest proceedings conducted under section 174 Cr.P.C. (now section 194 BNSS) *and* registration of an FIR under section 154 Cr.P.C. (now section 173 BNSS), in the following manner :

> "*20. The pivotal question that falls for our consideration is whether the Police was justified in closing the matter upon conclusion of the inquiry under Section 174 of the Cr.P.C. ? In other words,* ***whether recourse to inquest proceedings under Section 174 of the CrPC obviates the requirement of registration of F.I.R.*** *? To put it in a still lucid manner, whether an inquest report discovering the cause of death would be good enough to close the matter without registration of an F.I.R.?*
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> * * * * *
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> "*23. The inquest proceedings are concerned with discovering whether in a given case the death was accidental, suicidal, homicidal, or caused by an animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted, therefore, the evidence taken is very short. (See : Chaman Lal v. Emperor, AIR 1940 Lah 210, at 214)*
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> "*24.* ***The investigations conducted under Sections 154 and 174 of the CrPC respectively are distinct in nature and purpose****. A study of Chapter XII of the CrPC reveals that these two provisions cater to different procedural objectives. The former begins with information about the commission of a cognizable offence referred to in Section 154(1), culminating in registration of F.I.R. and ending with filing of a chargesheet/challan before the competent court under Section 173 or a final report as the case may be. This procedure to be undertaken for initiating an investigation into a cognizable offence has been explained by this Court in Ashok Kumar Todi v. Kishwar Jahan, (2011) 3 SCC 758, in the following words:*

"48. Under the scheme of the Code, investigation commences with lodgement of information relating to the commission of an offence. If it is a cognizable offence, the officer in charge of the police station, to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the State in that behalf. The officer-in-charge has no escape from doing so if the offence mentioned therein is a cognizable offence and whether or not such offence was committed within the limits of that police station.[…]"

* * * * *

"***27. The investigation after registration of F.I.R. under Section 154 of the CrPC is an investigation into an offence. In contrast, the investigation under Section 174 of the CrPC is an investigation or an "inquiry" into the apparent cause of death.***

"*28. The marginal note attached to Section 174 of the CrPC reads "Police to inquire and report on suicide, etc." This is self-explanatory as to the scope of the provision. Sections 174 to 176 of the CrPC only contemplate inquiry into the cause of death. Although the phrase 'investigation' is used in Section 174 of the CrPC, yet it is only an investigation in the nature of an inquiry. Sometimes, during the inquest, the police record the presence of witnesses who are also witnesses in the case. These statements are not meant as substitutes for statements under Section 161 of the CrPC. The inquest requirement under Section 174 does use the word investigation but if one considers the entire phraseology of Section 174 of the CrPC, one comes to the conclusion that the word investigation in Section 174 is not an investigation to find out who are the offenders. It is only to enable the police to come up with the "apparent cause of death". This phrase in Section 174 should give us the clue as to the correct understanding of the role of the police in inquest panchnama.*"

(emphasis in bold supplied;

underscoring in original)

39. In light of the decision of the Supreme Court in *Amit Kumar*, it is clear that inquest proceedings under section 194 BNSS are in the nature of an *enquiry* into the cause of death, whereas *investigation* by the police is for the purpose of finding the offender and putting him to trial, which latter process begins with the registration of an FIR under section 173 BNSS. It is also clear that inquest under section 194 BNSS and investigation pursuant to an FIR under section 173 BNSS are two independent processes, and one need not await conclusion of the other.

40. Pertinently, in *Amit Kumar* the Supreme Court has also articulated the police's duty to register an FIR in no uncertain terms :

> "*34. The foregoing discussion leads us to the inevitable conclusion that when an informant approaches the police with information regarding the commission of a cognizable offence, the police owes a duty to promptly register an F.I.R. and initiate investigation in accordance with Section 154 of the CrPC. The police authorities are* ***not vested with any discretion*** *to conduct a preliminary inquiry to assess the credibility of the information before registering the F.I.R. Any such practice would be contrary to the established principles of criminal law.*
>
> "*35. Over a period of time, this Court through its legion of decisions, has emphasized the necessity of ensuring the prompt registration of F.I.R. to uphold the rule of law and* ***prevent any undue delay in the commencement of criminal investigation.*** *Timely registration of an F.I.R. not only ensures that crucial evidence is preserved but also serves to protect the rights of victims by setting the criminal justice process in motion without unnecessary procedural impediments.*"
>
> (emphasis supplied)

41. Another consideration that has been put-forth in the course of the hearing, is that registering an FIR for the offence of murder is not a trivial matter, since among other things, it would have serious

consequences for a suspect or an accused, who may face harsh treatment in relation to obtaining bail in such a case. This court is of the view that this consideration is wholly irrelevant and cannot be reason to dither registration of an FIR. This doubt in the mind of the police authorities would disappear if, after registering an FIR, they *continue to act in accordance with law*, by being cautious in making arrests to ensure that no one is needlessly deprived of their liberty in the process. It also arises from the police authorities failing to recognise that it is always available to them to complete the investigation promptly; to remove a person from the list of suspects, if they believe no material evidence is available against such person; and even to file a closure report, if so warranted.

42. Furthermore, in their affidavit dated 09.05.2025, the U.P. Police have placed on record copies of various guidelines and orders issued by the Director General of Police, Uttar Pradesh, and have drawn attention to circular dated 08.02.2021 covering the essential guidelines regarding timely investigative action in cases of missing persons/kidnapping/abduction, specifically to the following extract of the circular :

> "*On information of missing persons/kidnapping/abduction incidents, FIR will be immediately registered under Section 154 CrPC and legal proceedings will be initiated.*"

43. Thus, as per the directions issued by the Director General of Police, Uttar Pradesh, it would appear, that even information relating to a missing person is required to be "… … *immediately registered under Section 154 CrPC* … …" as an FIR, presumably for the offence of

abduction. In the present case however, as far as the U.P. Police are concerned, they were confronted with a dead person surrounded by circumstances which reeked of foul play. Registering an FIR was accordingly the only legal course open to the U.P. Police.

44. To summarise :

44.1. *First*, entertaining a doubt as to *which exact cognisable offence* is disclosed in a complaint *cannot* lead to negation of the statutory provisions of section 173 BNSS; and registration of an FIR is mandatory as articulated by the Supreme Court *inter-alia* in *Lalita Kumari* and *Amit Kumar*;

44.2. *Second*, whether or not the information furnished to a police officer discloses the commission of *any* cognizable offence would, by the very nature of things, be a matter of discernment on the part of the police officer. There cannot be any standard or test to determine if a cognizable offence is disclosed by way of information furnished to a police officer; and

44.3. *Third*, it is *not* the requirement of the law that the police officer must form a *conclusive opinion* as to *which* cognizable offence is disclosed, before he can put pen to paper and register an FIR. What the law requires is for a police officer to exercise his professional judgment, based on the information furnished to him, to decide as to whether a cognizable offence is disclosed and to thereafter put down the *probable offence(s)* which, in his honest though subjective view, are made-out based on the information disclosed to him.

45. At this stage, an important caveat must be reiterated, which is that an FIR is not an encyclopaedia of all information relating to a case;[5] and offences and provisions of the penal law can both be added and deleted during the course of investigation. Nothing defines the scope and purpose of an FIR better than the plain meaning of the phrase *i.e.*, : *first information* of the commission of a cognizable offence.

46. After several hearings in the matter, this court gets the clear sense that the present case exemplifies the archetypal 'passing-of-the-buck' syndrome as between the Delhi Police and the U.P. Police.

47. In the present case, this court is of the view that there was more than ample material available with the U.P. Police to proceed to register an FIR for the offence of murder, straightaway. Again, if any doubt was to remain as to what the complaint was about, in her representation dated 20.12.2024, the petitioner had, in so many words, alleged that her brother had been murdered.

48. Clearly therefore, there neither is nor was, any reason for the U.P. Police to await the conclusion of the inquest proceedings before registering an FIR.

49. In the present case, since no FIR was registered either by the Delhi Police or by the U.P. Police, even basic investigation such as seizure of incriminating articles (the car, the cylinder, the syringes) was not done; nor was the essential forensic investigation undertaken (such as lifting of finger prints, collecting DNA evidence and other

[5] ***Superintendent of Police, C.B.I. & Ors. vs. Tapan Kumar Singh***, (2003) 6 SCC 175, para 20

incriminating material); nor were any statements recorded under the provisions of the BNSS.

50. This court must express its serious consternation at the run of events in the present case, where two separate police forces, did not perceive that critical forensic and other evidence would irretrievably disappear if it was not gathered *immediately*. It is inconceivable that any police officer, with even the most minimal training, would not realise that the car in which the dead body was found was the repository of a huge amount of forensic evidence, such as DNA, fingerprints, footprints, and other such material, which would contain vital clues about the provenance of the offence. In this case, the U.P. Police considered it fit that the car should be returned to the family, thereby ensuring that all and any forensic evidence that may have been available in that car is lost forever. Now however, the position is that more than 05 months have passed and many crucial pieces of evidence may have been lost forever. This position is clearly unacceptable.

51. In view of the above discussion, the court finds *both* the Delhi Police and the U.P. Police remiss in complying with their duty of promptly registering an FIR. The present petition is accordingly allowed with the following directions :

    51.1. The Delhi Police are directed to *forthwith* register a ‘Zero FIR’ under section 103 BNS and other relevant sections; and to transfer all material and evidence collected by them in the course of inquiring into the death of the petitioner’s brother to the U.P. Police within 01 week; and

51.2. The U.P. Police are directed to register/re-register an FIR under section 103 BNS and other relevant sections in relation to the death of the petitioner's brother *forthwith*; and to proceed to investigate the matter, in accordance with law, without any further delay or dereliction.

52. Let a copy of this judgment be sent to the S.H.O, P.S.: Moti Nagar, New Delhi and S.H.O., P.S.: Knowledge Park, Uttar Pradesh, for information and compliance.

53. The petition is disposed-of, with the court recording its consternation and regret at the dereliction of duty shown by the concerned officers of the Delhi Police as well as the U.P. Police.

54. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

MAY 16, 2025
ak/ds