



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL REVISION No. - 835 of 2026

Chotkau Alias Allauddin

.....Revisionist(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Deptt. Lko
And 4 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Nadeem Murtaza, Prashast Puri,
Utkarsh Srivastava

Counsel for Opposite Party(s) : G.A.

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Nadeem Murtaza, Sri Utkarsh Srivastava, Sri Prashast Puri, Ms. Niharika Srivastava and Sri Parth Anand Advocates, the learned Counsel for the revisionist and Sri G.D. Bhatt, the learned A.G.A.-I for the State.

2. Sri Ashwini Kumar Dubey, PNO 880530329, the then Station House Officer, Police Station Ikauna, the complainant of the case, has also appeared in person on his own, without any order passed by the Court for his personal appearance and he has also been heard.

3. By means of the instant revision, the revisionist has challenged the validity of an order dated 02.07.2026 passed by Sri Amit Kumar Prajapati, the learned Additional Sessions Judge, Shravasti in Sessions Case No. 299 of 2025, titled '*State of U.P. versus Chhotkau alias Allauddin*', arising out of FIR No. 113 of 2025, lodged by the Station House Officer, Police Station Ikauna, District Shravasti on 12.05.2025 against the revisionist for the offences under Section 109 of BNS and Section 3/25 of the Arms Act, whereby the trial court has rejected the revisionist's application seeking his discharge.

4. Briefly stated, facts of the case are that previously the revisionist was made an accused in Case Crime No.76 of 2012 under Sections 302 and 376 IPC, Police Station Ikauna, District Shravasti. The trial court convicted and sentenced him for the aforesaid offences. This High Court

affirmed the order of sentence and conviction. The revisionist challenged the conviction and sentence orders by filing Criminal Appeal No. 361-362 of 2018, which were allowed by means of a judgment and order dated 28.9.2022 passed by the Hon'ble Supreme Court. The judgment of the Hon'ble Supreme Court is reported in (2023) 6 SCC 742, wherein, while setting aside the order of conviction and sentence and acquitting the appellant of the charges, the Hon'ble Supreme Court made the following observations: -

“85. Before wrapping up, it is necessary to say something about the approach adopted by the Sessions Court and the High Court. In cases of this nature the court is obliged to assess the evidence on the test of probability. Though wide discretion is given to the Court to consider the “matters before it”, such an evidence has to be sifted carefully before recording satisfaction. It is not the quantum, but what matters is the quality.

*86. Both the Courts below found the evidence of P.Ws. 1 to 3 acceptable. The seriously inherent contradictions in the statements made by them have not been duly taken note of by both the courts. **When the offence is heinous, the Court is required to put the material evidence under a higher scrutiny.** On a careful consideration of the reasoning of the Trial Court, as confirmed by the High Court, we find that sufficient care has not been taken in the assessment of the statements made by P.Ws. 1 to 3. No one spoke as to who sent the FIR to the court and when it was sent. Strangely even the copy of the post-mortem report was admittedly received by SHO on the 13.03.2012 though the postmortem was conducted on the 09.03.2012. It was the same date on which the FIR reached the Court. **These factors certainly create a strong suspicion on the story as projected by the prosecution, but both the Courts have overlooked the same completely. This erroneous approach on the part of the Sessions Court and the High Court has led to the appellant being ordained to be dispatched to the gallows.***

*87. We cannot shy away from the fact that it is a ghastly case of rape and murder of a 6 year old child. **By not conducting the investigation properly, the prosecution has done injustice to the family of the victim. By fixing culpability upon the appellant without any shred of evidence which will stand the scrutiny, the prosecution has done injustice to the appellant. Court cannot make someone, a victim of injustice, to compensate for the injustice to the victim of a crime.***

*88. In fact this is a case where **the appellant is so poor that he could not afford to engage a lawyer even in the Sessions Court. After his repeated requests to the Court of District and Sessions Judge, the***

service of an advocate was provided as amicus. In cases of such nature, the responsibility of the Court becomes more onerous. When we analyse the evidence with such a sense of responsibility, we are not convinced that the guilt of the appellant stood established beyond reasonable doubt. Therefore, the appeals are allowed and the conviction and penalty are set aside. The appellant shall be released forthwith if not wanted in connection with any other case.”

(emphasis added)

5. Thereafter, an FIR No. 110 of 2025 was lodged in Police Station Ikauna, District Shravasti on 09.05.2025 at 22:16, on the basis of a written complaint stating that one Shafeeq and two of his unnamed accomplices had forcibly taken away the complainant's daughter aged 7 years, at about 9:15 p.m. on 09.05.2025 on an e-rickshaw. Upon making a frantic search, the accused persons and the victim were found a little ahead of Mohinipur crossing. The other two unnamed accused persons escaped, but Shafeeq was caught on the spot and the complainant handed over Shafeeq and the victim to the police, even prior to lodging of the FIR, as the FIR makes a mention of this fact.

6. On 12.05.2025, the Station House Officer Ashwini Kumar Dubey lodged FIR No. 113 of 2025 in Police Station Ikauna, District Shravasti against the revisionist Chhotkau @ Allauddin for offences under Section 109 of BNS and Section 3/25 of the Arms Act, alleging that (1) the complainant S.H.O. along with (2) Sub-Inspector Vivek Pandey, (3) Constable Sandeep Kumar Yadav, (4) Constable Shesh Ram Verma, (5) Sub-Inspector Afzal Saleem Khan, (6) Sub-Inspector Prem Chand, (7) Head Constable Ram Singh, (8) Constable Chandresh Kumar, (9) Constable Prince Chaudhary, (10) Sub-Inspector Vishal Yadav, (11) Sub-Inspector Avnish Yadav, (12) Constable Atul Singh and (13) Constable Ajay Kumar Chaudhary, were engaged in patrolling and for arresting the revisionist Chhotkau @ Allauddin, whose name had come to light during investigation of Case Crime No. 110 of 2025, in a government vehicle numbered UP 46 G 0161. At about 22:55 hours, an informer told that the revisionist could escape to Nepal during night using his vehicle. The informer said that he was trying to find out the accused who could escape through any route and the police should be alert on all the routes.

7. Upon getting the information, the Station House Officer contacted

Nitin Yadav, the Officer-in-charge of SWAT (Specialized Weapons and Tactics) team and asked for reinforcement. The complainant split the police personnel accompanying him into three teams. The informant S.H.O. who was carrying a pistol and 10 cartridges, Sub-Inspector Vivek Pandey, who was carrying one pistol and 10 cartridges, Constable Sandeep Yadav and Constable Sheshram Verma formed the first team. The second team consisted of Sub-Inspector Afzal Saleem Khan carrying a pistol and 10 cartridges, Sub-Inspector Prem Chand carrying a pistol and 10 cartridges, Head Constable Ram Singh, Constable Chandresh Kumar and Constable Prince Chaudhary. The third team consisted of Sub-Inspector Vishal Yadav who had a pistol and 10 cartridges and Sub-Inspector Avnish Yadav who too had a pistol and 10 cartridges, Constable Atul Singh and Constable Ajay Kumar Chaudhary.

8. The FIR alleges that all the three teams were told about the object, all of them carried out personal search of each other and assured that no article related to any crime or any offence was being carried by any of them. All the three teams were dispatched on three different passages.

9. The narration made in the FIR is that 13 persons including the Station House Officer, five Sub-Inspectors, one Head Constable and six Constables were sitting in one vehicle number UP 46 G 0161. Unless the vehicle was a mini bus, it was neither physically possible nor legally permissible for 13 persons to sit in a Government vehicle used by the police for patrolling and going to arrest an accused person, as normally jeeps, SUVs or MUVs are used by the police for such purposes and those vehicles normally do not have sitting capacity of 13 persons.

10. It also appears to be strange that when all the 13 police officials claim to be moving in one government vehicle, in patrolling and carrying out the search of the accused person, how they got split into three teams and all three teams moved on three different passages.

11. The complainant S.H.O. further alleged in the FIR that (1) Nitin Yadav, the Officer-in-charge of the SWAT team also came along with (2) Head Constable Ranvijay Singh, (3) Head Constable Taufeeq Khan, (4) Head Constable Avnish Vikram Singh, (5) Constable Rishabh Gaud, (6) Constable Abhishek Singh, (7) Constable Praveen Yadav, (9) Constable Abhishek Singh (Surveillance) and (10) Constable Amit Kumar

(Surveillance).

12. All the teams were engaged in searching the accused and they got information from the informer that the revisionist Chhotkau was about to pass via Andharpurwa river bridge on his e-rickshaw on his way to Nepal via Bhinga. Upon this information, SWAT team in-charge Nitin Yadav and the other officials accompanying him were asked to make an ambush near Andharpurwa bridge and the S.H.O. and his teams also reached there. All the teams consisting of a total of 23 persons took positions near the bridge after hiding their vehicles on the sides of the road.

13. Interestingly, the FIR does not make a mention of any other vehicle used in the alleged encounter besides vehicle number UP 46 G 0161.

14. The FIR narrates that after some time, a light was seen coming from the side of Ikauna, which appeared to be of an e-rickshaw. The members of the SWAT team (10 in number) came out from their respective places of hiding suddenly and signaled the e-rickshaw to stop. Seeing the police personnel, the driver of e-rickshaw turned left. As soon as he turned left, the complainant S.H.O. asked him to stop. The person driving the e-rickshaw got frightened, he collided with a tree and thereafter he got down of his e-rickshaw and tried to run away. The S.H.O. asked him to surrender. Finding himself surrounded by the police, the accused started firing gunshots towards the complainant S.H.O. and the team of 23 police personnel, including 10 members of SWAT team. The S.H.O. claims that as he was hiding, he escaped unhurt. The S.H.O. again asked the accused to surrender, whereupon the accused threatened that the police should not come behind him otherwise he would kill all of them and thereafter, he again started loading his weapon. Upon hearing the noise of loading of the weapon, the S.H.O. fired two gunshots with his service pistol in self-defense of himself and his accompanying police officials and he asked his team to surround the accused. The S.H.O. telephonically informed the police station regarding the encounter and he also asked to inform DCR (District Control Room) for sending further reinforcement. Meanwhile, they heard the sound of a person crying in pain. The S.H.O. and his followers went ahead crawling and saw that the revisionist had fallen down on the ground and was in pain. Blood was oozing out from both his legs. A country made pistol and some cartridges were lying near him.

15. The F.I.R. alleges that the police asked the revisionist about Case Crime No. 110 of 2025 and the revisionist while lying down on the ground, injured with two gunshot injuries in his leg and surrounded by 23 police personnel, confessed that he had taken away the victim of Case Crime No. 110 of 2025 on his e-rickshaw at about 9:00 p.m. on 09.05.2025. He took her to Mohinipur and from there to Kailashpur Ghat and raped her on his e-rickshaw as well as on the ground. The girl suffered bleeding and was crying in pain. He left the girl on the spot and ran away. He was trying to escape to Nepal but the police shot him in both his legs and he was caught.

16. The FIR goes on to state that the revisionist was taken into police custody at 04:45 a.m. on 12.05.2025 and thereafter, he was sent for treatment in vehicle number UP 46 G 0161, which was the solitary vehicle mentioned in the FIR in which the S.H.O., 5 Sub-Inspectors, 1 Head Constable and 6 Constables had come to the spot of the incident. The FIR further states that a country made pistol, a live cartridge, an empty cartridge, and a blood-soiled bullet were recovered from the spot. The complainant has stated that several persons were passing by the spot of the incident and they were asked to become a witness but nobody agreed to it.

17. A charge-sheet has been submitted against the revisionist on 07.07.2025 for the offences under Section 109 of BNS and Section 3/25 of the Arms Act, wherein it is mentioned that after lodging of the FIR by the S.H.O., initially the investigation was entrusted to Sub-Inspector Dharamraj Yadav. Thereafter, as per the orders of the Circle Officer, the investigation was transferred to Inspector Yogesh Kumar Singh, Police Station Naveen Modern Police Thana, Shravasti. Yogesh Kumar Singh got transferred as Reader of the Superintendent of Police and thereafter the investigation was conducted by the Inspector-in-Charge of Naveen Modern Police Thana, Shravasti. However, the charge-sheet has been submitted by the S.H.O., Ikauna, which position was held by the complainant himself, as per the details mentioned at the foot of the charge-sheet.

18. The trial court took cognizance of the offence and summoned the revisionist to face the trial.

19. The revisionist filed an application seeking his discharge, which was rejected by means of an order dated 28.07.2025 passed by the Sessions Judge, Shravasti, wherein the trial court, while rejecting the application seeking discharge also stated that there was sufficient ground for framing charges under Section 109 of BNS and Section 3/25 of the Arms Act against the revisionist.

20. The revisionist challenged the aforesaid order by filing an application under Section 528 of BNSS No. 2005 of 2025. The application was allowed by means of a judgment and order dated 26.03.2026 passed by a Coordinate Bench of this Court, wherein the Coordinate Bench found that: -

*“5. Considering the submissions of learned counsel for the applicant, learned A.A.G., and going through the contents of the application as well as other relevant documents including the judgments relied by the learned counsel for the parties, it is evident that earlier applicant was convicted in a case of rape and murder of a minor girl, in which, capital punishment was awarded to him by the trial court, which was upheld by the Hon'ble High Court. Thereafter, appeal was filed by the applicant before the Hon'ble Supreme Court, which was entertained by the Hon'ble Supreme Court as Criminal Appeal No.361-362 of 2018 (Chhotkau @ Allahuddin Vs. State of U.P. & Ors.), in which, vide order dated 28.9.2022 the order of conviction passed by the trial court was **set aside with the observation that applicant was so poor that he could not afford to engage an advocate in the Sessions court and after repeated request to the Court of District and Sessions Judge, service of Amicus Curiae was provided to him. The action of the prosecution was also deprecated in para no.87 of the aforesaid judgment.***

5.1. The record also reveals that F.I.R. No.110 of 2025 under Sections 137(2) of B.N.S. was lodged at Police Station - Ikauna, Shrawasti on 9.5.2022 at 22:16 Hrs. by one Ajay Jaiswal, in which, he himself has admitted that one accused was caught by him and handed over to the police alongwith her minor daughter, but the name of the co-accused persons was not asked from Shafeeq as in the F.I.R., description of only two unknown persons were given.

The F.I.R. No.110 of 2025 lodged by the complainant, Ajay Jaiswal is reproduced as under :-

'सेवा में श्रीमान थाना अध्यक्ष महोदय इकौना श्रावस्ती महोदय निवेदन है कि प्रार्थी अजय जायसवाल पुत्र रामविलास जायसवाल ग्राम चिचडी थाना इकौना जनपद श्रावस्ती का निवासी हूँ। आज दिनांक 09.05.2025 को समय लगभग 09.15 PM मेरी पुत्री तनु उम्र

वर्ष को शफीक पुत्र अज्ञात निवासी इटाँझा थाना इकौना जनपद श्रावस्ती अपने दो अज्ञात साथियों के साथ मेरी पुत्री को जबरदस्ती फुसलाकर बैटरी रिकशा से लेकर भाग गया बाद में काफी ढूँढने के बाद मोहनीपुर चौराहे से आगे लड़की और मुलजिम रोड पर मिले जब मुलजिम को पकड़ने के लिए गये तो वह तेजी से भगा शफीक को पकड़ लिया गया बाकी उसके दो साथी फरार हो गया शफीक और पुत्री तनु को मेरे द्वारा पुलिस को सुपुर्द किया गया। अतः श्रीमान जी से निवेदन है कि आवश्यक कार्यवाही करने की कृपा करे। प्रार्थी अजय जायसवाल मो०नं० 73795XXXXX 96281XXXXX दिनांक 09.05.2025 नोट तहरीर की नकल अक्षरशः कम्प्यूटरीकृत किया गया। साफ्टवेयर की वजह से लिपिकीय त्रुटि होना सम्भावित है। अपराध की कायमी व विवरण हे० मो० मनोज कुमार तिवारी द्वारा बोल बोल कर अक्षरशः कम्प्यूटरीकृत करवा कर चिक किता करवाया गया ।"

5.2. As per the prosecution case of F.I.R. No.113 of 2025, S.H.O., Police Station - Ikauna received information that one of the accused of F.I.R. No. 110 of 2025 is leaving the country and going to Nepal, on which, police officials divided in three teams and the said operation was lead by Mr. Ashwani Kumar Dubey, Station House Officer, Police Station Ikauna, Shrawasti. In the memo of the recovery, it is admitted that a team member saw a light of E-Rickshaw, but the person who was sitting in the E-Rickshaw, after seeing police, tried to escape, and in course of escaping, E-Rickshaw was hit with a tree and when he was trying to run away, he was instructed to surrender, but he challenged the police team by saying 'not to chase him, otherwise they will be killed'. It is also admitted that Mr. Ashwani Kumar Dubey, S.H.O. heard a sound of loading the weapon, on which, he fired twice, and thereafter, they heard the sound of groaning and by crawling they reached there and saw that one person is lying and blood is oozing from his both legs. A country made pistol and cartridges were also found lying near the said person.

5.3. Apparently, in the memo, it is admitted by the team leader that he only heard a sound of loading the weapon, and indisputably, no fire was opened by the applicant. However, surprisingly, then how the charge sheet was submitted by the Investigating Officer under Section 109 B.N.S.

5.4. The record further reveals that after the said encounter, no information was given to the family members of the applicant. Further, though it is alleged that copy of the arrest memo was given to the applicant, but same was torn by him in the hospital, however, there is no description of the recovery of the said torn arrest memo, which was given to the applicant.

*5.5. In view of the above facts and discussions, this Court is of the view that the Hon'ble Supreme Court vide order dated 28.9.2022 passed in the case of the applicant herein, i.e., Criminal Appeal No.361-362 of 2018 (supra) observed that **applicant was so poor and he could not afford to engage a lawyer to defend himself. In the***

present case also, at the time of remand as informed by learned counsel for the applicant, no legal aid was provided to the applicant. Admittedly, all these facts were not considered by the trial court at the time of rejecting the discharge application.

6. Accordingly, the application stands allowed, the order dated 28.7.2025 passed by the Sessions Judge on the discharge application of the applicant is hereby set aside.

7. The trial court is directed to pass a fresh order on the discharge application after providing adequate legal aid to the applicant.”

21. It is in purported compliance of the direction issued by this Court in the aforesaid order dated 26.03.2026 that the trial court has passed the impugned order dated 02.07.2026.

22. The trial court held that the Investigating Officer had submitted a charge-sheet after conducting investigation and the Magistrate has taken cognizance of the offences and committed the trial to the Sessions Court. The accused had filed an application seeking his discharge which was rejected by means of an order dated 28.07.2025 and charges were framed against him by the same order. The High Court set aside the order dated 28.07.2025 and remanded the matter for being decided afresh. The parties were heard on the application for discharge in compliance of the order passed by this Court. The trial Court held that the grounds raised by the accused can only be entertained after evidence is adduced and the same cannot be accepted merely on the basis of probabilities. The trial Court further observed that it cannot hold that the statements mentioned in the case diary are not trustworthy and the applicant is innocent. The trial Court also mentioned in the impugned order that the charges have already been framed keeping in view the material available in the case diary. The accused-revisionist has failed to adduce any evidence to establish his innocence. Therefore, he cannot be discharged on the basis of probabilities. Accordingly, the Additional Sessions Judge rejected the application seeking discharge and proceeded to record that as the charges have already been framed by means of an order dated 28.07.2025, there is no need to frame charges again.

23. Assailing validity of the impugned order dated 02.07.2026, the learned counsel for the revisionist has submitted that the trial court has failed to give due regard to the judgment and order dated 26.03.2026 passed by a coordinate Bench of this Court in Application under Section

528 BNSS No. 2005 of 2025, by which the order dated 28.07.2025 was set aside in its entirety. Therefore, that part of the order dated 28.07.2025 by which charges had been framed was also set aside by this Court. The trial court's statement recorded in the impugned order that, "*as charges have already been framed by the order dated 28.07.2025, there is no need to frame charges again*", prima facie shows lack of proper understanding of the order passed by this Court.

24. Although it is true that at the stage of deciding an application for discharge, the trial court is not required to conduct a mini-trial and the defense of an accused can also not be gone into at this stage but making a person face trial, is a serious matter and the trial court must satisfy itself that the prosecution material makes out a case for trial of the accused.

25. In **Union of India v. Prafulla Kumar Samal**: (1979) 3 SCC 4, the Hon'ble Supreme Court referred to numerous principles to be applied while considering an application for discharge or framing charges: -

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities

appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(emphasis added)

26. Thereafter, in **Sajjan Kumar v. CBI**, (2010) 9 SCC 368, the Hon’ble Supreme Court again considered the issue and held that: -

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

*(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as **it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad***

probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

27. When we examine the prosecution case in light of the principles laid down by the Hon’ble Supreme Court in the above mentioned cases, numerous glaring facts emerge which raise a serious suspicion against the correctness of the prosecution version, as would be highlighted in the following paragraphs.

28. The foundation of the case is an FIR lodged by the Station House Officer alleging that when a team of police personnel consisting of the S.H.O., five Sub-Inspectors, a Head Constable and six Constables, 13 persons in all, were engaged in patrolling and for arresting the revisionist Chhotkau @ Allauddin, whose name had come to light during investigation of Case Crime No. 110 of 2025, in government vehicle number UP 46 G 0161 at about 22:55 hours, an informer told that the revisionist could escape to Nepal during the night by his vehicle.

29. The SHO alleges that 13 persons including the Station House Officer, five Sub-Inspectors, one Head Constable and six Constables were sitting in one vehicle number UP 46 G 0161. Unless the vehicle was a mini bus, it was not physically possible for 13 persons to sit in a government vehicle used by the police for patrolling and going to arrest an accused person, as normally jeeps, SUVs or MUVs are used by the police for such purposes and those vehicles normally do not have sitting capacity of 13 persons. Legally also, it was not permissible to carry 13 persons in a jeep, SUV or MUV. This narration of 13 persons sitting in one vehicle prima facie appears to be false and it could only be true if half of them were sitting on the roof top of the vehicle.

30. FIR No. 110 of 2025 was lodged in Police Station Ikauna, District Shravasti on 09.05.2025 at 22:16, on the basis of a written complaint stating that one Shafeeq and two of his unnamed accomplices had forcibly taken away the complainant’s daughter aged 7 years, at about 9:15 p.m. (i.e. 21:15) on 09.05.2025 on an e-rickshaw. The accused persons and the victim were found a little ahead of Mohinipur crossing. The other two unnamed accused persons escaped, but Shafeeq was caught on the spot

and the complainant handed over Shafeeq and the victim to the police, even prior to lodging of the FIR, as the FIR makes a mention of this fact. The victim was allegedly taken away at 21:15, she was caught with the named accused Shafeeq, thereafter a complaint was written, Shafeeq and the victim were handed over to the police and thereafter the FIR was registered at 22:16, i.e. within 61 minutes. Yet, the police claim that Shafeeq, who had been caught by the police and was handed over by the complainant to the police along with the complaint, was not involved in commission of the offence, but it was the revisionist who committed the alleged offence.

31. I am refraining from making any further comment on this aspect of the matter, as after implicating the revisionist in FIR No. 110 of 2025 lodged against Shafeeq, the prosecution acted with exceptional haste, filed a charge-sheet against the revisionist Chotkau. The revisionist has been convicted in a great haste by means of a judgment and order dated 03.10.2025 passed by Sri Brijesh Kumar, Additional Sessions Judge/Special Judge (POCSO), Shravasti, in Session Trial No. 221 of 2025. The learned counsel for the revisionist has submitted that the revisionist could not contest the matter properly and he could not even file an appeal against the conviction order within time. Now, the revisionist has filed a belated appeal which is pending consideration of this Court.

32. The FIR alleges that after getting information from a *Mukhbir* (informer) about movement of the revisionist, the team of 13 police personnel who were moving in one government vehicle, got split into three teams and all three teams moved on three different passages. It is impossible as to how a police team moving in one vehicle can split into three teams and move towards separate directions, unless they split the vehicle also in three vehicles. It also appears impossible that three police teams will go for an ambush during the night, on foot.

33. The complainant SHO claims to have contacted the Officer-in-charge of SWAT (Specialized Weapons and Tactics) team and asked for reinforcement, whereupon the Officer-in-charge of the SWAT team also came along with 3 Head Constables and 5 Constables. The SWAT team was asked to make an ambush near Andharpurwa bridge and the complainant S.H.O. and all his three teams also reached there. All the

teams consisting of a total of 23 persons took positions near the bridge after hiding their vehicles on the sides of the road. Interestingly, the FIR does not make a mention of any other vehicle used in the alleged encounter, besides vehicle number UP 46 G 0161, which also raises a serious doubt against the FIR version.

34. The FIR narrates that after some time, the revisionist came there on an e-rickshaw. The members of SWAT team (10 in number) came out from their respective places of hiding suddenly and signaled the e-rickshaw to stop, but the revisionist turned his e-rickshaw towards the left, he collided with a tree, got down of his e-rickshaw tried and ran away, but the 10 member Special Weapon and Tactics Team and the 13 members of the three police teams could not stop a person moving on an e-rickshaw, which is also unbelievable, unless all of them are thoroughly incompetent.

35. The S.H.O. claims that he asked the revisionist to surrender whereupon the revisionist started firing gunshots towards the S.H.O. and the entire team of 23 police personnel, including 10 members of SWAT team. The S.H.O. claims that as he was hiding, he escaped unhurt. He again asked the accused to surrender, whereupon the accused threatened that the police should not come behind him, otherwise he would kill all 23 of them and thereafter, he again started loading his weapon.

36. The SHO claims that upon hearing the noise of loading of the weapon, he fired two gunshots with his service pistol in his self-defense and in self defense of the police officials accompanying him and both the shots fired during the night, by merely hearing the sound of loading the weapon, hit the revisionist in both his legs.

37. The S.H.O. asked the District Control Room for sending further reinforcement, as he found the 13 member police team and 10 members SWAT team insufficient to control the revisionist, who was armed with a country made pistol and two cartridges.

38. The police claimed that after receiving two gun-shot injuries in both his legs, the revisionist confessed that he had kidnapped and had taken away the victim of Case Crime No. 110 of 2025 on his e-rickshaw at about 9:00 p.m. on 09.05.2025. He took her to Mohinipur and from there to Kailashpur Ghat and raped her on his e-rickshaw as well as on the ground. The girl suffered bleeding and was crying in pain. There is no

allegation in FIR No. 110 of 2025 that the victim had been raped, she had suffered bleeding and she was crying in pain, although the FIR has been registered within 61 minutes of the victim having been taken away. Therefore, *prima facie* it appears that the police has recorded a false confession of the revisionist.

39. The FIR goes on to state that the revisionist was taken into police custody at 04:45 a.m. on 12.05.2025 and thereafter, he was sent for treatment in vehicle number UP 46 G 0161, which was the solitary vehicle mentioned in the FIR in which the S.H.O., 5 Sub-Inspectors, 1 Head Constable and 6 Constables had come to the spot of the incident.

40. The FIR further states that a country made pistol, a live cartridge, an empty cartridge, and a blood-soiled bullet were recovered from the spot. It is strange that a police team of 13 persons and a SWAT team of 10 persons got frightened, went into hiding and called for further reinforcement for tackling a person carrying a country made pistol and merely two cartridges.

41. It is also strange that 22 police persons armed with weapons were attacked by the revisionist carrying a katta (country-made pistol) and he had merely two cartridges with him, one of which was used by him and the other was recovered by the police.

42. The narration made in the FIR speaks volumes about the manner in which the police has conducted an encounter of the revisionist.

43. In furtherance of the observations made above, the Court had asked the SHO, who has appeared in person, as to from how much distance he had fired the shot, whereupon he said that he had fired the shot from a distance of about 15 meters. The Court asked whether he is capable of aiming and shooting from such a distance in the night, whereupon he said that it was a moonlit night. However, the Court has serious apprehensions regarding the correctness of the narration made in the FIR and the manner of investigation conducted by the police. *Prima facie*, it appears that the narration is false.

44. It has been brought to the notice of the court that all 23 police officials involved in the encounter of the revisionist have been rewarded for their alleged good work and the alleged good work includes extraction of a

confession of an offence, for which the revisionist has already been acquitted by the Hon'ble Supreme Court. The apparent cause of annoyance of the police against the revisionist may be the observations made by the Hon'ble Supreme Court against the prosecution in the judgment reported in (2023) 6 SCC 742 acquitting the revisionist in the earlier matter.

45. The Court is observing day in and day out that whenever the police apprehend a person, it often gives rise to another FIR alleging that when the accused was apprehended, he indulged into indiscriminate firing against the police team. Normally, not even a pellet touches even the uniform of any police person and all of them escape unhurt. The police fires one shot and it hits the accused on his knee or below it.

46. The Court asked the complainant-S.H.O. about the justification of firing a second gunshot in the alleged self defense of the entire team of 23 persons whereupon he stated that as he was using a semi-automatic pistol which fires shots quickly, so he fired two gunshots, both of which hit both legs of the revisionist. The court asked about the caliber of the weapon used, whereupon the S.H.O. said that it was a 9 mm pistol.

47. The court confronted the SHO with the medico-legal examination report of the revisionist, which mentions two lacerated wounds of size 1x1 c.m. each and two lacerated wounds of size 0.5x0.5 c.m. each. There is no mention of the margins being inverted or everted and there is no mention of the wounds being entry wounds and exit wounds. In these circumstances, the Court asked the S.H.O as to how was it possible to cause a lacerated wound of size 0.5x0.5 c.m. from a bullet measuring 0.9 cm (9 mm), whereupon the S.H.O. said that the tip of the bullet is narrower and therefore a 9 mm bullet may cause a wound of 5x5 mm. His explanation does not appeal to reason.

48. Prima facie it appears that the complainant S.H.O. has not given a true narration in the FIR and he has not given a true narration to this court also and has apparently tried to mislead the court.

49. The aforesaid facts give rise to a reasonable apprehension in the mind of the Court that the S.H.O. has lodged a report containing a false narration. The investigation was initially conducted by a Sub-Inspector subordinate to the S.H.O. posted in the same police station. Thereafter,

although the Superintendent of Police, Shravasti transferred the investigation to Naveen Modern Police Station, Shravasti, yet the charge sheet indicates that it has been submitted by S.H.O. Thana Ikauna, Shravasti itself.

50. In **People's Union for Civil Liberties v. State of Maharashtra:** (2014)10 SCC 635, the Hon'ble Supreme Court was pleased to issue several directions, amongst which, the following are relevant for the present case: -

“31.1. Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

31.2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

31.3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

31.6. *The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.*

31.7. *It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the court concerned.*

31.8. *After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be concluded expeditiously.*

31.9. *In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.*

31.13. *The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.*

31.14. *An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.*

31.15. *No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.*

31.16. *If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as abovementioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such*

complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein.

32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.

33. Accordingly, we direct that the above requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India.”

51. In **Raju v. State of U.P.**, 2026 SCC OnLine All 144, a coordinate Bench of this Court emphasized upon the necessity of complying with the directions issued by the Hon’ble Apex Court in the case of **People’s Union for Civil Liberties** (supra). The Court observed that the Fundamental Right of protection of human life, liberty and dignity, which is not only enshrined in the Indian Constitution but also universally recognized in the international community, cannot be allowed to be taken away at the whims and fancies of a few officers of the law enforcement agencies.

In **Raju v. State of U.P.** (supra), this Court recognized the fact that there is a rising trend among some police officials to indiscriminately resort to firing even in petty matters and thereafter, project the incident as a police encounter, without following the procedure laid down in **People’s Union for Civil Liberties** (supra). This Court specifically took notice of the disturbing practice of routine police encounters where the police fire on the legs of the accused persons ostensibly to please superior officers or to get an out of turn promotion or appreciation from the higher authority or to get fame in social media or to teach the accused a so-called lesson by way of punishment. Deprecating such conduct and calling it wholly impermissible, the Court further observed that the power to punish lies exclusively within the domain of the Courts and not with the police.

In **Raju v. State of U.P.** (supra), this Court went on to further hold that it is not the case that the State Government had issued any oral or written direction to police officers to teach a lesson to accused persons by firing at their legs and therefore such acts are wholly unjustified. The Court flagged such conduct as pure misuse of authority by police officials in order to attract the attention of higher officers or to create an impression of public sympathy. It was held that absence of injuries

suffered on the part of police officials further raises a question regarding the necessity and proportionality of the use of fire arms in the alleged encounters.

Reiterating the guidelines that had been formulated by the Hon'ble Apex Court in **People's Union for Civil Liberties** (supra), the Coordinate Bench further held that Article 141 mandates that law declared by the Hon'ble Supreme Court is binding on all the Courts and has to be followed by the State and its agency too and therefore, the guidelines issued in **People's Union for Civil Liberties** (supra) are mandatory in nature and no exception can be carved out for not following the same in case of police encounters where death or grievous injuries have been caused to the accused person.

52. Prima facie, it appears that the procedure prescribed in **People's Union for Civil Liberties** (supra) not been complied with in the present case.

53. The aforesaid facts give rise to a necessity of a thorough investigation to be conducted by an independent agency, namely the Central Bureau of Investigation (CBI), into the correctness of the allegations leveled in the FIR No. 113 of 2025 lodged in Police Station Ikauna, District Shravasti for the offences under Sections 109 of BNS and 3/25 of the Arms Act.

54. During inquiry, the shooting capacity of the complainant SHO Ashwini Kumar Dubey (PNO 880530329) will also be assessed to examine whether he is capable of aiming and shooting from a distance of 15 meters with his 9 mm service pistol, in the night, while aiming merely by hearing the sound of loading of a weapon.

55. The inquiry shall preferably be conducted expeditiously and a report shall be submitted to this court within a period of three months.

56. The Registry is directed to communicate this order to the Director, Central Bureau of Investigation to enable him to nominate an officer for conducting inquiry in furtherance of this order.

57. The matter requires detailed consideration.

58. The learned AGA is granted three months' time to file a counter affidavit.

59. One week time thereafter shall be available to the revisionist for filing a rejoinder affidavit, if any.

60. List this case on **23.11.2026**.

61. Till the next date of listing, the operation and implementation of the impugned order dated 02.07.2026 passed by the learned Additional Sessions Judge, Shravasti in Session Case No. 299 of 2025 shall remain stayed.

(Subhash Vidyarthi,J.)

August 13, 2026

Arti/-