

Court of Chief Judicial Magistrate, Kasganj

Misc Case 190/2026

Present: Khan Zishan Masood, UP2480

State of U.P vs Sanjay Yadav

Crime no: 141/2026

Police Station: Sahawar

Sections: 85, 115(2), 352, 351(3) BNS

03.06.26

Case file presented for order. Perused the Reports of the Respected Superintendent of the Police, Kasganj.

Facts of the case

An application was filed before this court by the counsel Sri Rajat Yadav with the allegation that accused one Sanjay Yadav was detained in the police station since 28.04.26. It was also averred that a FIR has been lodged on 29.04.26 under Sections 85, 115(2), 352 and 351(3) BNS. That the police authorities have illegally detained the accused one Sanjay Yadav and is not allowing legal consult under section 38 of the BNSS. The counsel requested that he be allowed to meet the accused and prayed for orders to prevent the grave injustice.

The court directed the Station House Officer (SHO) of Sahawar that counsel be allowed to meet the accused as per Section 38 of the BNSS. **The court noted that Sections 85, 115(2), 352 and 351(3) are such police could not have arrested the accused without serving notice under section 35(3) BNSS.** The old Corresponding sections are 498A, 323, 504 and 506 IPC (for ready reference). The court called for the CCTV footage of the Police Station to verify the allegation.

The court perused the CCTV footage. The Counsel verified one person seen in the footage is the accused Sanjay Yadav. The accused Sanjay Yadav is seen sitting outside the LOCK-UP in the police station right from 28.04.26 12:15 PM all the way to 29.04.26 23:00 pm i.e. for almost two days

When the SHO was questioned on this and explanation was sought, he orally admitted that the accused was in the police station from 28.04.26

upto 30.04.26. Further in the written explanation filed by the SHO there was no justification as to why accused was detained for two days.

Detailed orders were passed on 06.05.26 and a report was called from The Respected Superintendent of the Police, Kasganj. **The Respected Superintendent of the Police, Kasganj, in his report, also verified and confirmed from the CCTV footage that the accused was illegally detained for more than two days.** The Respected Superintendent of the Police, Kasganj also informed that a departmental enquiry has also been initiated.

The court in its order dated 06.05.26 had noted that a doubtful GD entry has been lodged on 30.04.26. The GD entry no 42 was drawn on 30.04.26 at 15:31 pm in which it was alleged that the accused Sanjay was engaged in creating a Ruckus outside the Police station on 30.04.26. The court had expressed doubt that when the accused was in illegal custody for two days and was seen in the CCTV footage to be inside the Police station, how could he have been creating a ruckus outside the Police station. A separate report was called for to verify this. The Respected Superintendent of the Police, Kasganj in his report dated 21.05.26 confirmed that indeed GD entry no 42 is false and concocted and that no such event took place.

This court then treated the application of the accused as that under Section 173(4).

This court is of the firm opinion that the SHO, Sahawar is prima facie guilty of the offence of illegal detention as well forgery. Before lodging a FIR, it is prudent that the Public officer has an opportunity to explain. The explanation of Sri Govind Ballabh is in record. His explanation is grossly insufficient. Secondly, his controlling Authority's (superior officer) report is also on file and has actually confirmed that Sri Govind Ballabh has illegally detained the accused for two days and has also affected forgery.

Further none of the acts of the SHO fall within the purview of "act done in discharge of duty". Illegal detention without any authority of law and effecting false and fictitious GD entries cannot be said to be "act done under discharge of duty."

In **XXX v. State of Kerala & Ors.** (Neutral Citation: 2026 INSC 88), CRIMINAL APPEAL NO. 4629 OF 2025 the Hon'ble Supreme Court has held that

Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175.

The case is fit for lodging FIR against Sri Govind Ballabh, SHO, Sahawar, Kasganj for illegal detention i.e. 127(2) BNS and Forgery i.e. 336, 337 and 344 BNS.

Order

Let FIR be lodged u/s 127(2), 336, 337 and 344 BNS against Sri Govind Ballabh, SHO, Sahawar in Sahawar Police Station. Office to send a copy to The Respected Superintendent of the Police, Kasganj for compliance.

Chief Judicial Magistrate
Kasganj