



2026:DHC:8081



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

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*Judgment reserved on: 18.09.2026**Judgment pronounced on: 21.09.2026*# **CNR No. DLHC010438192026**+ **W.P.(CRL) 2850/2026, CRL.M.A. 28622/2026 & CRL.M.A. 28623/2026****KUNAL YADAV & ORS.**

.....Petitioners

Through: Mr. Prashant Bhushan, Mr. Anurag Tiwary and Ms. Anushka Singh, Advocates

versus

MANAN KUMAR MISHRA & ORS.

.....Respondents

Through: Mr. Amol Sinha, ASC for the State with SI Vikram and SI Harsh Kumar Ms. Simran Kumari, Mr. Virat Raj Mishra and Ms. Pooja, Advocates for R-2

Mr. Shoumendu Mukherji, Senior Panel Counsel with Mr. Abhishek Batra, Mr. Puneet Dhawan, Ms. Megha Sharma, Mr. Aniruddha Ghosh, Ms. Kaberi Sharma, Advocates for R-3 & R-4

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. This petition was earlier listed before coordinate bench of this court and on recusal by the Hon'ble Judge, it was assigned to this bench for

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preliminary hearing on 18.09.2026. I heard learned counsel for petitioners on the issue of maintainability of this petition and reserved the matter for orders.

2. For ready reference, prayer clauses of this writ petition are extracted below:

“A. Issue a writ of mandamus or any other appropriate writ, order or direction directing the CBI, or such other independent agency as this Hon'ble Court deems fit, to register an FIR and conduct an independent investigation into the assault on the Petitioners and other advocates inside and outside the premises of the Bar Council of India on the intervening night of 20/21.08.2026, including the role of Shri Manan Kumar Mishra, of the officials and staff of the BCI, of the unidentified assailants, and of the police personnel present at the spot; and to monitor the said investigation;

B. Issue a writ of mandamus or any other appropriate writ, order or direction directing the Bar Council of India to forthwith preserve and hand over to the investigating agency, in original, all CCTV recordings of the premises of the Bar Council of India for the period from 20.08.2026 to 21.08.2026;

C. Issue a writ of mandamus or any other appropriate writ, order or direction directing the BCI to consider the Petitioners' Representation dated 20.08.2026 and to decide it by a reasoned and speaking order;

D. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. For present purposes, the relevant circumstances culled out of the petition are as follows.

3.1 The petitioners are practicing advocates and respondent no.1 is a Senior Advocate, working as Chairman of the Bar Council of India (*respondent no.2*) and is also serving as Member of Parliament. According

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3.5 On the next day, 21.08.2026, the respondent no.1 addressed a statement to the media, which statement has been quoted in the petition. On 22.08.2026 some of the petitioners submitted a detailed written complaint to

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SHO of PS IP Estate and also sent a representation through email to the Bar Council of India seeking action against the persons involved. On 24.08.2026 also, 26 advocates including the petitioners submitted a representation to the President of the Delhi High Court Bar Association. But no action has been taken. According to petitioners, the videos of the alleged incident are available in public domain. Hence, the present petition.

4. As mentioned above, on 18.09.2026, arguments on maintainability of this petition were heard. For ready reference, those arguments as recorded in the order dated 18.09.2026 are quoted below:

“1. The petitioners seek mandamus, directing the CBI or any other independent agency to register FIR and conduct independent investigation into the assault on the petitioners and other advocates inside and outside the premises of the Bar Council of India on the night intervening 20.08.2026 and 21.08.2026. Petitioners also seek mandamus, directing the Bar Council of India to preserve and hand over to the investigating agency, all CCTV recordings of the premises of the Bar Council of India pertaining to the said period. Petitioners also seek mandamus, directing the Bar Council of India to consider their representation dated 20.08.2026 and decide it by reasoned and speaking order.

2. At the outset, learned counsel for petitioners is called upon to address on maintainability of this writ petition in the light of availability of alternate efficacious remedy. It is also pointed out that so far as prayer clause 'C' is concerned, prima facie, it appears that this relief does not fall within the domain of the criminal court.

3. Learned counsel for petitioners has addressed on the above aspects of maintainability. It is submitted by learned counsel that the mandamus sought is only against the CBI or any other independent agency, because Delhi Police falls under the Government and Mr. Manan Mishra is a Member of Parliament of the ruling party, so unfairness of investigation is suspected. It is also submitted that the Delhi Police has not taken any action on the complaint of the petitioners. Further, it is submitted by

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learned counsel for petitioners that the court of learned Magistrate shall not be able to direct seizure of the CCTV footage or other investigative steps. It is further submitted that the magistrate is not empowered by law to direct investigation by the CBI. As regards prayer clause 'C', it is contended by learned counsel for petitioners that since the representation dated 20.08.2026 is intertwined with the remaining prayers, the same can be entertained by this Court through the present criminal writ petition.

- 4. On maintainability, no other argument has been advanced.*
- 5. Matter is reserved for orders on maintainability."*

5. Thence, the question to be deliberated upon is as to whether writ jurisdiction of the High Court can be invoked for grant of *mandamus* to register the complaint and investigate. On this legal issue, it would be apposite to briefly traverse through the legal position, which is as follows.

5.1 The writs under Article 226 of the Constitution of India can be issued by the High Courts for enforcement of not just fundamental rights but for other matters as well. In view of vast expanse of this prerogative of the High Courts, evolution of law has settled boundaries within which this jurisdiction can be legitimately exercised. The jurisdiction to issue writs being extraordinary and discretionary, as a matter of judicially sanctified self-imposed restrictions, the power and scope of legitimate issuance of writ of any kind is well settled through a plethora of judicial pronouncements. One of the restrictions placed on the power of the High Courts to entertain a writ petition or refuse to do so is the availability of an alternate efficacious remedy. Where an alternate efficacious remedy is available to the person aggrieved, he has to adopt the same, instead of seeking grant of writ. However, this restriction is subject to four exceptions, namely enforcement

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of fundamental rights, or curbing violation of principles of natural justice, or the impugned directive being wholly without jurisdiction, or the subject legislation is claimed to be *ultravires*. Where a right is created by a statute and the remedial procedure also is prescribed by the said statute itself, the aggrieved person must avail of that procedure prescribed by that law, instead of knocking at the doors of the High Court for issuance of writ. This judicially sanctified rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. The logic behind such self-imposed restrictions on writ jurisdiction is to ensure that the procedure established by law is not bypassed and the remedial machinery created by the statute is not made redundant.

5.2 Way back in the year 1964, the Constitution Bench of the Supreme Court in the case of ***Thansingh Nathmal vs Superintendent of Taxes***, 1964 SCC OnLine SC 13, held that writ jurisdiction is not to be exercised merely because it is lawful to so; that the very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed restrictions; and that ordinarily the High Court will not entertain a writ petition under Article 226 of the Constitution of India where the petitioner has an alternate remedy. This legal principle holds field till date and reference can be drawn also from the latest judgment of the Supreme Court in the case of ***Sujal Vishwas Attavar & Anr. vs The State of Maharashtra & Ors.***, 2026 INSC 442.

6. In the present context, next comes the query as to whether there exists

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on the statute book an alternate efficacious remedy for a person seeking issuance of *mandamus* writ for registration of a case and investigation. If so, the present writ petition has to be rejected.

6.1 In the case of *Ashwini Kumar Upadhyay vs Union of India & Others*, 2026 SCC Online SC 741, one of the questions framed by the Supreme Court was as to whether the existing framework of criminal procedural law provides adequate and efficacious remedies to address the grievances raised by the petitioners, particularly in cases of non-registration of a First Information Report. After elaborate discussion of legal position, the Supreme Court held thus:

“98.3. On the third issue, we hold that the procedural framework under the CrPC (now Bharatiya Nagarik Suraksha Sanhita, 2023) provides a comprehensive and multi-tiered mechanism to address grievances arising from non-registration of FIRs. The remedies available under Sections 154(3), 156(3) and 200 of the CrPC, coupled with the supervisory jurisdiction of the Magistrate, constitute an efficacious statutory scheme.

....

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164. For the foregoing reasons and discussion, our conclusions are summarised as follows:-

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...

V. The statutory framework under the CrPC (now the Bharatiya Nagarik Suraksha Sanhita, 2023), provides a comprehensive and layered mechanism to set the criminal law in motion. The duty of the police to register an FIR upon disclosure of a cognizable offence is mandatory, as settled in Lalita Kumari (supra).

VI. In cases of non-registration of FIR, the CrPC/BNSS provide efficacious remedies. An aggrieved person may approach the Superintendent of Police under Section 154(3) of CrPC or corresponding

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VIII. The supervisory jurisdiction of the Magistrate under Section 156(3) of CrPC or corresponding Section 175 of BNSS is of wide amplitude and includes supervisory oversight over the investigation at appropriate stages. This power is intended to ensure that the investigation is conducted in a fair, impartial, and lawful manner, and may be exercised simultaneously during the stage of investigation, where the material on record discloses any deficiency, inaction, or taint in the investigative process.” (emphasis supplied)





extraordinary jurisdiction of the High Court for the reason that efficacious and efficient alternative remedies exists. Hence, at this stage, we find the instant writ petition to be premature, and, therefore, not fit to be entertained.” (emphasis supplied)

7. Falling back to the present case, according to the petitioners, the authorities with which they lodged complaint about the alleged incident are the Bar Council of India, the SHO of PS IP Estate, and the President of the Delhi High Court Bar Association. As regards the alleged incident, the complaint to the SHO, PS IP Estate was lodged on 22.08.2026. No case has been set up by the petitioners to satisfy this court if the SHO concerned is guilty of negligence or inaction. Admittedly, till date no complaint has been lodged by the petitioners before the concerned DCP (*equivalent in Delhi to the Superintendent of Police*), what to say of approaching the concerned magistrate under Section 223 BNSS. Not even whisper has been made in the petition as to why these are not considered efficacious remedies.

8. Then, one also has to ascertain if any cognizable offence is made out from the complaints filed by the petitioners before different authorities. Whether it is Delhi Police or CBI or any other agency, in order to investigate the case, first the complaint has to be registered as FIR (First Information Report) in the case of Delhi Police or RC (Regular Case) in the case of CBI. For that, the precondition is that the complaint must spell out a cognizable offence. From the said complaints lodged by the petitioners, it appears that no cognizable offence at all is made out. For, the only allegation is that the alleged aggressors (*none of whom was allegedly armed with any weapon*)



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beat, slapped, thrashed and dragged the petitioners. That, at the most constitutes offence of causing hurt, defined under Section 114 BNS, which is a non-cognizable offence. Consequently, in view of Section 174 BNSS it is only the concerned magistrate, who can act; and rather, in view of sub-section (2) of Section 174 BNSS, no police officer shall investigate such offence. The contention of learned counsel for petitioners that the magisterial court will not be able to direct seizure of the CCTV footages is fallacious, to say the least, in view of the scope of provisions under Chapter XVI of BNSS. Even otherwise, petitioners themselves have pleaded that those videos are in public domain.

9. To conclude, the petitioners have an alternate efficacious remedy available to them in the form of filing a complaint case in the court of the concerned magistrate under Section 223 BNSS, so I do not find it a fit case to issue *mandamus* to any authority to register the case and investigate.

9.1 Coming to the prayer clause C of the petition, the petitioners seek *mandamus* to the Bar Council of India to consider and decide their representation dated 20.08.2026. It is contended on behalf of petitioners that the said representation is intertwined with the remaining prayers, so it can be granted. Since no case *qua* the other prayers is made out, there is no occasion to grant prayer C as well. Even otherwise, in my view the demands raised in the said representation viz. resignation of respondent no.1, accountability of the BCI members, welfare of advocates, legal education reforms, and consideration of no-confidence motion have no bearing at all

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with the prayer for investigation into the alleged incident.

9.2 But before parting with this case, I must place on record a respectful disapproval of the submission made by the learned counsel for petitioners that since respondent no.1 is a Member of Parliament from the ruling dispensation, the Delhi Police will not act fairly, but the CBI will do so. No basis has been submitted to buttress this apprehension. In the absence of any specific basis, it is not fair to tarnish the entire Delhi Police force in this manner, especially when petitioners' own case fails to make out a cognizable offence. Besides, the apprehension argument must also fail because even CBI against whom *mandamus* to register case and investigate has been sought is a government body. One should resist the temptation to discredit any government organisation by such general, sweeping and baseless allegations. For, it generates counterproductive cynicism and distrust in the mind of common man against the entire ecosystem.

10. In view of the aforesaid, the petition is dismissed as not maintainable.

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