

Court No. - 90

Case :- APPLICATION U/S 482 No. - 4290 of 2023

Applicant :- Nawal Kishor

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Satish Chandra Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned AGA and peruse the record.

2. The applicant has invoked the inherent jurisdiction assailing the orders dated 20.1.2023 and 18.1.2023 passed in Case No. 2127/2019 (State Vs. Nawal Kishor and others) including further proceedings thereof pending in the court of Chief Judicial Magistrate, Jaunpur arising out of FIR No. 107 of 2012, under Sections 323 and 504 IPC, P.S. Jafrabad, District Jaunpur.

3. It has been submitted by the learned counsel for the applicant that Vinit Kumar Mishra has lodged an NCR against Naval Kishore (present applicant) and his three sons. In the aforesaid matter, the present applicant and his two sons namely Krishna Kumar Mishra and Byasu Mishra are appearing before the court to face trial. However, Raj Kumar Mishra (third son of the applicant) is not appearing who had already left his paternal home since before 2014 and present applicant has no concern with Raj Kumar Mishra. Learned trial court has passed the order dated 18.1.2023 issuing non-bailable warrant and proclamation under Section 82 CrPC against Raj Kumar. It is further submitted that in pursuance of the order dated 18.1.2023, police is unnecessarily harassing to the present applicant, who along with his remaining two sons is throughout appearing before the Court. In this respect, present applicant has filed a detailed application dated 20.1.2023, which has illegally been rejected by the court below, vide order dated 20.1.2023, on the same day i.e. 20.1.2023 with a stroke of a pen in one line, which is quoted hereinbelow:

"आज अवेदक नवल किशोर की तरफ से प्रस्तुत प्रार्थना पत्र निरस्त्र किया जाता है"

4. In the given circumstances of the present case, applicant is

aggrieved with the proclamation under Section 82 CrPC issued against co-accused Raj Kumar, who is his son, which beget putting him to so much trouble. As per case of applicant, police has already submitted it's report showing his non-presence in the village. Fair trial of the case is a right of the accused, however, in the instant matter, present applicant is unnecessarily being harassed for want of presence of co-accused Rajkumar, who is living separately for long period of time. Perusal of order dated 20.1.2023, quoted above, cannot be said to be a judicial order in the eye of law. The plights of the present applicant, as mentioned in the application dated 20.1.2023, has not been considered by the court below while passing the order impugned dated 20.1.2022, which has been passed in a very perfunctory manner sans attention to the plea raised on behalf of the present applicant.

5. In this conspectus, as above, I am of the considered view that the present application deserves to be allowed and the order dated 24.1.2023 is liable to be quashed in exercise of inherent power of this Court under Section 482 CrPC to secure the ends of justice. As such, the instant application is allowed and the order dated 20.1.2023 passed by learned ACJM, Jaunpur is hereby quashed and the application dated 20.1.2023 filed on behalf of the present applicant is hereby restored to its original number. Accordingly, the learned trial court is hereby directed to reconsider the aforesaid application and pass appropriate order in accordance with law after giving opportunity of hearing to the parties concerned expeditiously, preferably, within a period of three months from the date of production of a certified copy of this order.

6. For a period of three months or till the decision on the application dated 20.1.2023 filed on behalf of the present applicant as mentioned above, whichever is earlier, no coercive action shall be taken against the remaining accused in pursuance of the order dated 18.1.2023 issuing the proclamation under Section 82 CrPC.

Order Date :- 9.11.2023

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