

Court No. - 90

Case :- APPLICATION U/S 482 No. - 10468 of 2021

Applicant :- Surendra Singh

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

Counsel for Applicant :- Pawankumar Dubey

Counsel for Opposite Party :- G.A.,Ajit Kumar Singh
Chauhan,Suresh Dhar Dwivedi

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned counsel for respondent no.2, learned A.G.A. and perused the record on Board.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. assailing the order dated 17.03.2021 passed by the Additional Sessions Judge, Court No.3, Shahjhanpur, in Sessions Trial No.15 of 2019 arising out of Case Crime No.648 of 2018 under Section 302, 120B/34 I.P.C., Police Station Kanth, District Shahjhanpur, rejecting the application dated 03.02.2021 (Paper No.114-Ba).

3. Facts culled out from the record are that with respect to the incident dated 27.09.2018, wherein one of the victims succumbed to fire injuries, an F.I.R, being Case Crime No.648 of 2018, has been lodged by respondent no.2. The present applicant (accused) came with the defence that on the date of occurrence of offence he was under incarceration in another complaint case. During trial, the present applicant has moved an application dated 03.02.2021 under Section 333 (3) Cr.P.C. to summon the jail record dated 26.09.2018 so that he can prove his incarceration. Learned Magistrate has rejected the application, vide order dated 17.03.2021, which is under challenge before this Court.

4. Learned counsel for respondent no.2 has no objection in allowing the instant application and urged that the same may be allowed and direction may be issued for expeditious disposal of trial.

5. Having considered the record on Board, it is evident that the present applicant (accused) has moved an application to prove his innocence in the occurrence of offence for which he has been indicted. According to his case, on the date of occurrence of

offence, he was under incarceration, therefore, to prove his innocence, he wants to summon the jail register. It is no more *res integra* that fair trial and opportunity of hearing is right of the accused which is guaranteed under Article 21 of the Constitution of India, therefore, it would not be appropriate to reject the application moved by the present applicant to summon the jail record which goes to root of the case.

6. In this conspectus as above, no useful purpose would be served to keep this application pending, therefore, this Court deems it appropriate to decide the instant application finally, in view of the consent given by learned counsel for respondent no.2. Thus, to secure the ends of justice, the instant application is **allowed**. Order dated 17.03.2021 passed by the Additional Sessions Judge, Court No.3, Shahjhanpur is quashed. Learned trial court is hereby directed to summon the jail record, which has sought to be summoned by the present applicant by filing application dated 03.02.2021 (Paper no.114-Ba), within a period of one week from the date of production of certified copy of this order. He shall make all endeavour to expedite the trial, as early as possible.

Order Date :- 12.12.2023

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