

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6445 of 2023

Petitioner :- Sajid Ali

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Shivajee Singh Sisodiya

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Shivajee Singh Sisodiya, learned counsel for the petitioner and Sri R.K. Gupta, learned AGA for the State.

2. This petition has been filed challenging the order dated 28.03.2023, by which a notice was issued against the petitioner in case no. 508 of 2022 (State vs. Sajid Ali and others) arising out of case crime no. 671 of 2021, under sections 147, 452, 307, 323, 325, 504 IPC, Police Station-Baradari, District Bareilly.

3. From submission of both the sides, following facts emerge. An FIR naming 11 persons under sections 147, 452, 323, 325, 504 IPC was lodged. After investigation, a chargesheet was submitted against 9 persons under sections 147, 452, 323, 325, 504 IPC while the petitioner herein Sajid Ali has been chargesheeted under sections 147, 452, 307, 323, 325, 504 IPC. The learned trial court, on the basis of the chargesheet took cognizance against 8 persons only. The cognizance order dated 04.04.2022 does not reveal that any cognizance has been taken against the petitioner as well in this case. Thereafter several dates were fixed for appearance of accused persons. In the ordersheet drawn on 28.03.2023, the learned trial court noted down that accused Sajid Ali (and one more) were released on anticipatory bail and that they are yet to appear in this case, therefore, ordered to issue notice for 12.04.2023. The aforesaid order dated 28.03.2023 is impugned in this petition.

4. From submission of both the sides, this is undisputed that no cognizance has been taken against the petitioner herein. The contention of the petitioner is that no notice can be issued against him in this case, as no cognizance has been taken. The contention of the learned AGA, on the other hand, is that probably by oversight or mistake, the order of cognizance dated 04.04.2022 does not mention name of Sajid Ali.

5. Be that as it may, this fact is indisputable that cognizance order is silent as regard the petitioner. In view of the above peculiar facts and circumstances of the case, this petition is **disposed of** as below:-

*(i) The petitioner shall move an application venting out all the grievances against issuance of notice before the court concerned, **within a period of 15 days** along with copy of the instant order.*

*(ii) The court concerned shall decide the application, preferably **within 30 days** from the date of moving the application, after giving proper opportunity of hearing to both the sides.*

*(iii) Till the decision on the application or for **45 days**, whichever is earlier, the effect and operation of order dated 28.03.2023 shall remain stayed.*

Order Date :- 7.12.2023

#Vikram/-