

Court No. - 86

Case :- APPLICATION U/S 482 No. - 27177 of 2022

Applicant :- Nitin Alias Bupendra Baghel And Another

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Syed Imran Ibrahim

Counsel for Opposite Party :- G.A.,Rajesh Kumar Singh

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed with the prayer to quash charge-sheet dated 20.04.2022 and cognizance/summoning order dated 01.07.2022 as well as entire proceedings of Criminal Case No. 7931 of 2022 (State Vs. Nitin @ Bhupendra Baghel and another), arising out of Case Crime No. 820 of 2021, under Sections 498-A, 323, 504, 506 and 406 IPC and Section 3/4 D.P. Act, Police Station Jagdishpura, District Agra, pending in the court of Judicial Magistrate/ Additional Civil Judge (Jr. Div.), Agra.

3. After some arguments, learned counsel for the applicants has made a statement at the Bar, on instructions, that he does not want to press other prayers made in the instant application and states that applicant no.1 is ready to appear before the court below and seek his bail and that his release be considered in view of law laid down by Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another reported in (2022) 10 SCC 51.***

4. Per contra, learned AGA states that he has no objection to the aforesaid prayer made by learned counsel for the applicants for not pressing the other prayers made in the instant application on behalf of applicant no.1.

5. In view of the above, in case applicant no.1 appears before the court below within three weeks from today and seeks bail, his release be considered in view of law laid down by Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another***

reported in (2022) 10 SCC 51.

6. Learned counsel for the applicants has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against applicant no.2 and the present case has been instituted with a malafide intention for the purpose of harassment. He has pointed out certain documents and statements in support of his contention, as such, impugned charge sheet, cognizance/summoning order as well as entire proceedings be quashed on behalf of applicant no.2.

7. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against applicant no.2 and as such, impugned charge sheet, cognizance/summoning order as well as entire proceedings cannot be quashed on his behalf.

8. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant no.2. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

9. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in the cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192*** and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283***. The disputed defence of the accused cannot be considered at this stage.

10. Moreover, applicant no.2 had already been directed to be released on bail and he has got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

11. At this stage, this Court is not in a position to weigh the

factual matrix of the case properly and accused has a right to file a discharge application before the trial court and the trial court may decide his discharge application, if there is no evidence against him.

12. The prayer for quashing the impugned charge sheet, cognizance/summoning order as well as entire proceedings is therefore refused as against applicant no.2.

13. However, it is directed that in case applicant no.2 files an application for discharge before the court below, the same be considered and decided expeditiously considering each and every aspect of the matter in accordance with law after hearing the public prosecutor.

14. With the aforesaid directions, this application under Section 482 Cr.P.C. is finally disposed of.

Order Date :- 28.11.2023

RPD