Court No. - 86

Case :- APPLICATION U/S 482 No. - 35147 of 2023

Applicant :- Triveni Prasad Shukla
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Irfanul Huda
Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

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

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 18.10.2022 and cognizance order dated 14.11.2023 as well as further proceedings of Special Case No. 1962 of 2022 (State Vs. Triveni Prasad Shukla) arising out of Case Crime No. 350 of 2015, under Section 8/22(C), 8/25 NDPS Act, P.S. Civil Line, District- Etawah, pending in the court of Addl. Sessions Judge/Tying Rape Cases POCSO Act/NDPS Act, Etawah.

3. Learned counsel for the applicant 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 the applicant 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, entire proceedings be quashed.

4. 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 the applicant and as such, entire proceedings cannot be quashed.

5. 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. 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.

6. 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.

7. Moreover, the applicant 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.

8. 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.

9. The prayer for quashing the charge sheet, cognizance order and entire proceedings is therefore refused.

10. However, it is directed that in case the applicant files an application for discharge before the court below, the same be considered and decided expeditiously in accordance with law after hearing the public prosecutor and considering each and every aspects of the matter.

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

Order Date :- 18.10.2023
KU

Digitally signed by :-
KALIM UDDIN SIDDIQUI
High Court of Judicature at Allahabad