

Court No. - 86

Case :- APPLICATION U/S 482 No. - 38146 of 2023

Applicant :- Dinesh Kumar And 3 Others

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

Counsel for Applicant :- Atmaram Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Supplementary affidavit filed by learned counsel for applicants is taken on record.

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

3. This application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the charge sheet dt. 4.1.2022 as well as cognizance order dated 13.3.2023 passed by A.C.J. M. (Junior Division), Court No.14, Allahabad in case No. 190 of 2023, State Vs. Keshav Nath and others, under section 452, 323, 504, 506 and 427 I.P.C. P.S. Meja, District Prayagraj, arising out of case crime no. 628 of 2021, pending in the court of A.C.J.M. (Jr. Division), Court No. 14, Allahabad.

4. 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 application qua applicant nos. 2 and 3 who are ready to surrender before the court below and seek their bail and that their 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.

5. Per contra, learned A.G.A. has submitted that he has no objection to the prayer made by learned counsel for applicants for not pressing the other prayers made in the application.

6. In view of the above, in case the applicants no. 2 and 3 appear before the court below within three weeks from today and seek bail, their 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.

7. Learned counsel for the applicants has next 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 applicants no. 1 and 4 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, the charge sheet be quashed.

8. 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 applicants no. 1 and 4 and as such, the charge sheet cannot be quashed.

9. 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 applicants. 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.

10. 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.

11. Moreover, the applicants no. 1 and 4 had already been directed to be released on bail and they have 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 they are free to take all the submissions in the said discharge application before the trial court.

12. 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 them.

13. The prayer for quashing the charge sheet is therefore refused.

14. However, it is directed that in case the applicants no. 1 and 4 file an application for discharge before the court below, the same be considered and decided expeditiously in accordance with law after hearing the public prosecutor.

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

Order Date :- 8.11.2023

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