

**Court No. - 81**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 8609 of 2023

**Petitioner :-** Santosh Tripathi And Another

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Utsav

**Counsel for Respondent :-** G.A.,Ajay Kumar Jagdish,Rajeshver Mishra

**Hon'ble Mrs. Jyotsna Sharma,J.**

1. Case called out in the revised list. None responds for the petitioners. Heard Sri Ajay Kumar Jagdish, learned counsel for respondent no. 2 and Mohd. Sohaib Khan, learned AGA for the State.

2. This petition has been filed by the petitioners namely, Santosh Tripathi and Ashutosh Tripathi challenging the order dated 20.09.2022 and 19.04.2023 passed by the Additional Chief Judicial Magistrate, Court No. 9, Allahabad in case crime no. 172 of 2022 under sections 419, 420, 467, 468, 471 IPC, whereby the court concerned ordered for issuance of non-bailable warrants and process under section 82 Cr.P.C. against the accused persons (the petitioners herein).

3. As none is responding for the petitioners, I went through all the materials on record including the contentions as contained in the petition itself for the purpose of deciding this matter on merits.

4. From the perusal of the petition, it appears that the petitioners are challenging the order issuing non-bailable warrants and process under section 82 Cr.P.C., on the ground that he never evaded arrest and the orders have been obtained by the investigating officer concealing the material fact that no bail application moved by the petitioner, was pending before any court. The other contentions mainly relate to the merits of the case crime no. 172 of 2022, which is apparently under investigation. It is said by the petitioners that the FIR is delayed by two years and that in fact Santosh Tripathi (petitioner no. 1) sustained serious injuries on his head and legs and he was brought by his father Ashutosh Tripathi (the petitioner no. 2 herein) in injured and unconscious condition to the Community Health Centre and was medically examined and that no false medical reports was submitted to the investigating officer.

5. The private respondent no. 2 submits that in this case, the accused persons were found involved in fabrication of medical papers. The concerned medical officers/doctor of M.L.N. Medical College stated before the investigating officer that hand written portion on C.T. scan report was not part of original medical report and was in fact interpolation. During the investigation, the allegations were found true and that the investigating officer found enough of evidence for preparing a chargesheet under sections 419, 420, 467, 468, 471 IPC, however the accused persons did not cooperate and did not appear, therefore, the investigating officer applied for issuance of non-bailable warrants against the accused persons by moving an application before the

court concerned. The court concerned allowed the same and passed the orders for issuance of non-bailable warrants. This order was passed on 20.09.2022. Subsequently, the investigating officer applied for issuance of process under section 82 Cr.P.C. and the court allowed the same. This order was passed on 19.04.2023. The submission of the opposite side is that the accused persons are evading arrest since then. The anticipatory bail application of the petitioners has been rejected two times earlier by a coordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. Nos. 10034 of 2022 and 5920 of 2023 vide order dated 21.10.2022 and 21.07.2023 respectively (copy whereof are taken on record). It is further brought to the notice of this court that the petitioners have also filed a Criminal Misc. Writ Petition No. 7414 of 2022, challenging the FIR, which has been dismissed vide order dated 23.08.2022. Copy of this order is also taken on record.

6. I went through all the material on record. The petitioners could not pinpoint a single ground which may justify this court to interfere in the order in exercise of limited powers under Article 227 of the Constitution. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law.

7. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.

8. In my view, the petition lacks merit and is therefore **dismissed**.

**Order Date :- 13.12.2023**

#Vikram/-