

Court No. - 89

Case :- APPLICATION U/S 482 No. - 32080 of 2023

Applicant :- Balveer Singh 2 Others

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

Counsel for Applicant :- Nipun Singh, Shivam Yadav

Counsel for Opposite Party :- G.A., Bibhuti Narayan Singh

Hon'ble Deepak Verma, J.

1. Heard Sri Shivam Yadav and Sri Nipun Singh, learned counsels for the applicants, Sri Bibhuti Narayan Singh, learned counsel for the opposite party no. 2, learned Additional Government Advocate for the State of U.P./opposite party no.1 and perused the record.

2. This application under Section 482 Cr.P.C. has been filed by the applicants to quash the order dated 11.08.2023 and bailable warrant dated 18.08.2023 in Session Case No. 2501 of 2021, arising out of Case Crime No. 310 of 218, under Section 307/34, 504 and 506 IPC, Police Station- Shikandrabad, District- Bulandshahar, pending before the Additional Sessions Judge, Court No. 6, Bulandshahar.

3. Learned counsel for the applicants submits that both the parties have lodged first information reports against each other. He next submits that opposite party no. 2 lodged first information report against the applicants under Sections 147, 148, 504, 307 IPC as Case Crime No. 310 of 2018 and Investigating Officer after recording statements of witnesses and collecting evidences, submitted charge sheet under Section 504, 506 IPC and thereafter, cognizance has been taken by the concerned Magistrate. He next submits that on the first information report lodged by the applicants, proceedings were going on against opposite party no. 2 under Section 307/34, 504 & 506 IPC as Case Crime No. 311 of 2018. He next submits being a cross case, the present case was sent to session to club with Case Crime No. 311 of 2018 and so that both the cases be tried together by the session court. He next submits that the trial court framed charge under Section 307/34, 504 & 506 IPC against the applicants despite the fact that charge sheet and cognizance have been taken under Sections 504, 506 IPC. He next submits that framing of charges under Section 307/34, 504 & 506 IPC is illegal and without application of judicial and liable to be set aside. He next submits that Investigating Officer after collecting evidences and recording statements of

witnesses, submitted charge sheet under Sections 504, 506 IPC and thereafter, learned Magistrate took cognizance under Sections 504, 506 IPC. The trial court framed the charge under Sections 307/34, 504, 506 IPC after considering the extraneous materials, which are not part of the case diary and liable to be set-aside.

4. Per contra, learned AGA as well as counsel for the opposite party no.2 have vehemently opposed the submissions made by counsel for the applicants and submitted that as far as contents of first information report are concerned, there is allegation against the applicants that with intention to murder they opened fire upon the opposite party no. 2 and as far as statements of witnesses are concerned, prima facie, there is evidence under Section 307 IPC against the applicants to frame charges, therefore, framing of charge under Section 307 IPC is just and proper.

5. Considered the submissions made by counsel for the parties and perused the entire record.

6. From perusal of first information report as well as statements of witnesses, there is evidence that applicants have intention to cause death, which is a material ingredient to frame charge under Section 307 IPC against the applicants. While framing the charge learned Magistrate has only to go with the evidences collected during investigation by the Investigating Officer and the court has not required to go into the merits of the case. The court has not considered the other materials while framing the charge under Section 307 IPC and order passed by the learned Additional Session Judge is just and proper and no interference is warranted by this Court.

7. With the aforesaid directions, this application under Section 482 Cr.P.C. stands **dismissed**.

8. However, if the applicants surrender before the concerned court within four weeks from today and apply for bail, their bail applications shall be decided expeditiously by the court concerned, in accordance with law.

9. For the period of four weeks from today or till the time of surrender of the applicants before the Court below, whichever is earlier, no coercive action shall be taken against them.

Order Date :- 2.11.2023

Aditya