Court No. - 87

Case :- APPLICATION U/S 482 No. - 35441 of 2023

Applicant :- Amit Kumar
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Anand Pati Tiwari
Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

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

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 10.04.2023 passed in Criminal Revision No. 67 of 2022 (Amit Kumar vs. State of U.P. and another) passed by learned Sessions Judge, Auraiya and also quash the impugned order dated 22.03.2021 passed in Complaint Case No. 371 of 2021, under Sections- 138 of N.I. Act passed by learned Chief Judicial Magistrate, Auraiya.

3. The contention of learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purpose of causing harassment. He pointed out certain documents and statements in support of his contention.

4. 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 at this stage. 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. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in 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.

5. At this stage, learned counsel for the applicant submitted that applicant is ready to surrender before the trial Court for obtaining

bail and for that some protection may be granted to him.

6. However considering the aforesaid alternative prayer made by learned counsel for the applicant, it is directed that the applicant shall surrender before the concerned court below within four weeks from today and in case he applies for bail, the bail application of the applicant shall be disposed of expeditiously by the courts below in accordance with law and keeping in view the guidelines as laid down by the Apex Court in the case of ***Satender Kumar Antil vs Central Bureau of Investigation and another***, reported in 2021 SCC Online SC 922.

7. For the period of four weeks from today or till the time of surrender of the applicant before the concerned court below, whichever is earlier, he shall not be arrested in the above case.

8. With the above observations and directions, this application under Section 482 Cr.P.C. is **disposed of.**

Order Date :- 12.10.2023
Sartaj

Digitally signed by :-
SARTAJ AHMAD
High Court of Judicature at Allahabad