

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15356 of 2023

Petitioner :- Zainab Fatima

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajeshwar Prasad Sinha

Counsel for Respondent :- G.A.,Praveen Kumar Pandey,Sandeep Kumar Mishra

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Supplementary affidavit filed in Court today is taken on record.
2. Heard Shri B.P. Srivastava, learned Senior Advocate assisted by Shri Rajeshwar Prasad Sinha, learned counsel for the petitioner, Shri P.C. Srivastava, learned Additional Advocate General assisted by Shri J.K. Upadhyay, learned AGA-I, Shri A.K. Sand, learned Government Advocate and Shri Praveen Kumar Pandey, learned counsel for the informant.
3. Present petition has been filed to quash the impugned First Information Report dated 25.2.2023 lodged by respondent No.4 in Case Crime No.114 of 2023 under Sections 147, 148, 149, 302, 307, 506, 34, 120B IPC and Section 3 of Explosive Act and 7 Criminal Law Amendment Act, Police Station-Dhoomanganj, District-Prayagraj.
4. Submission of learned counsel for the petitioner is that the petitioner is not named in the impugned First Information Report, and she has been implicated simply because she is the wife of one of the accused, Ashraf (now dead). It is next submitted that her name does not figure in the statement of informant Jaya Pal and Rohit @ Shani and other witnesses, namely, Shanti Devi, Rishabh Pandit, recorded under Section 161 Cr.P.C. That the investigation qua petitioner has proceeded only on the basis of the confessional statement recorded under Section 161 Cr.P.C. of the named accused and some other accused, which are not admissible in law. It is next submitted that her false implication is also due to political rivalry between the parties. It is also next submitted that even till date, no evidence of conspiracy in respect of the commission of the alleged offence has surfaced against the

petitioner.

5. Attention was also drawn to the statements recorded under Section 161 Cr.P.C. by the police to submit that no incriminating material has come against the petitioner to prove the allegation of involvement of petitioner in hatching conspiracy for the murder of witness Umesh Pal and his PSO's.

6. Per contra, Shri P.C. Srivastava, learned Additional Advocate General, submits that in the statement of the main accused persons, including other persons, the name of the petitioner has been revealed, showing her active involvement in the conspiracy of the murder of Umesh Pal (a star prosecution's eye-witness in one of the trials pending against Ateeque Ahmad and other). Her name has also come in reference to the illegal financial transactions with other accused persons involved in hatching the conspiracy for murder. It is pointed out that not only Ateeque Ahmad (now dead, but even Ashraf (now dead), husband of the petitioner, along with other co-accused, have specifically named the petitioner herein along with accused Shaeesta, wife of Ateeque Ahmad (now dead), who is also a proclaimed offender and is also carrying cash-reward on her head. It is also submitted that, in fact, the petitioner is also absconding and is not cooperating in the investigation and proceeding under Section 82 Cr.P.C. are initiated against her on 26.7.2023 and subsequently, First Information Report under Section 174-A IPC has also been registered against the petitioner on 25.8.2023.

7. In essence, the submission, therefore, is that it is a triple broad day-light murder case which was recorded in a CCTV camera installed near the place of the incident; the petitioner is arrayed as an accused in hatching a conspiracy of the murder of Umesh Pal, who was star prosecution witness in a case of murder of his brother Raju Pal-the then sitting MLA, along with two of his security personnel deployed by police. The driver of the vehicle was also seriously injured in the shoot-out. The petitioner's name surfaced during the investigation, which is still pending. Additionally, the petitioner is on the run and not cooperating in the investigation. On a bare reading of the statement recorded under Section 161 Cr.P.C., prima facie, sufficient incriminating material has come against the petitioner. Notably, deceased Umesh Pal had deposed against accused Ateeque Ahmad(now deceased) and his associates during the trial and had serious life-threatening apprehensions by the accused Ateeque Ahmad(deceased) and his associates, who were facing the murder trial of MLA Raju Pal. It was next submitted that in any case, whatever grounds that the

learned counsel is taking for the petitioner are nothing but, at best, can be said to be her defence only. At the stage of quashing the impugned FIR, the defence taken by the accused cannot be looked into by the Court.

8. We find substance in the argument of the learned Additional Advocate General. It is a case of broad day - light murder of an eye-witness of a murder case along with two gunners. The incident was also allegedly recorded in the CCTV camera installed near the place of the incident. The name of the petitioner is figured during the investigation in the statement of two named accused, Ateeque Ahmad (brother-in-law of the petitioner), now both dead, as well as statements of other co-accused persons. Admittedly, the petitioner is absconding and not cooperating in the investigation and, hence, obstructing the cause of justice. Therefore, no case of quashing of the impugned FIR is made out against the petitioner.

9. Thus, in view of the law laid down by Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh)** decided on 07.10.2021, no case has been made out for interference with the impugned First Information Report.

10. The writ petition is devoid of merit and accordingly **dismissed**.

Order Date :- 27.10.2023

LN Tripathi