

Court No. - 89

Case :- APPLICATION U/S 482 No. - 33958 of 2023

Applicant :- Nizamuddin

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Gyan Prakash Mishra

Counsel for Opposite Party :- G.A.,Anshul Pathak,Rahul Singh
Dahiya

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the order dated 02.09.2023 passed by learned Additional Sessions Judge/ Fast Track Court, Court No. 2, Bulandshahr in Session Trial No. 36 of 2019 (State Versus Shahrukh and others), arising out of Case Crime No. 262 of 2018, under Sections 498A, 328 I.P.C. and under Section 3/4 D.P. Act, Police Station Shikarpur, District Bulandshahar.
3. Learned counsel for the applicant has challenged the impugned order dated 02.09.2023 by which learned learned Additional Session Judge/Fast Track Court, Court No.2, Bulandshahr has rejected the application of the applicant under Section 311 Cr. P.C. It is further submitted that applicant is informant and PW-2 has made deposition before the trial court that her sister-in-laws, who were present when the victim was given poison by her in-laws and for just decision of the case. It is necessary that her sister-in-law who were present at the time of the incident be examined as prosecution witness. It is next submitted that trial court has not considered the relevancy of examination of the witness asked by the applicant, rejected the application of the sister-in-law of the victim. It is further submitted that the order passed by the concerned court is bad and cannot be tenable in the eye of law. When new counsel was engaged by the counsel then applicant got the knowledge that witness Afreen and Fareen sister-in-laws of the victim were present at the time of the incident. A chance for examination of the witness Afreen and Fareen must be given to the applicant, otherwise the right of the applicant would be defeated and would amount to refusal of right of complainant for fair trial.

4. *Per contra*, learned A.G.A. opposed the prayer and submitted that prosecution witness examination was started in the year 2019, many opportunities were given to the applicant to produce the witnesses and examine them, but after about 44 months this application has been moved. The case is being listed for argument. The applicant has moved present application under Section 311 Cr. P.C. after exhausting defence examination only to linger on the case. It is next submitted that the order passed by the learned trial court is just and proper and no interference is warranted.

5. Considered the entire facts and circumstances of the case and testimony of the PW-2, it appears from the statement that sister-in-law reached the place of incident after about 3-4 minutes of the consumption of the poison which is clear from the statement of PW-2 and at this stage no interference can be drawn that they were eye witnesses. From the perusal of the testimony of PW-2, the witness to whom the applicant wants to examine, was not an eye witness and moreover 44 months were given to the applicant to produce the witness but applicant did not make any effort to make an application to produce and summon the witnesses but after closing of the prosecution witness and after closing of defence witness, the applicant moved the present application under Section 311 Cr. P.C. only to delay the proceedings.

6. The order passed by the learned trial court is just and proper based on merit of the case, passed after hearing both the parties. No interference is warranted. The present 482 application is **dismissed** with the aforesaid observation.

Order Date :- 16.11.2023

T.S.