

Court No. - 89

Case :- APPLICATION U/S 482 No. - 34602 of 2023

Applicant :- Shamshad

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Najakat Ali

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Supplementary affidavit filed today on behalf of applicant is taken on record.
2. Heard learned counsel for the applicant and learned A.G.A. for the State.
3. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the impugned charge against order dated 01.08.2023 passed by Sessions Judge, Rampur in Session Trial No.04 of 2023, (State versus Danish Khan and 3 others), arising out of Case Crime No.261 of 2022, under Sections 307, 323, 324, 341, 504 & 506 IPC, Police Station Swar, District Rampur and further direct the learned Sessions Judge Rampur to decide the application dated 05.05.2023 filed by the applicant.
3. Learned counsel for the applicant has challenged the order dated 01.08.2023 by which learned trial Court has framed the charge against the accused person under Sections 307/34, 323/34, 324/34, 341, 504 IPC.
4. Learned counsel for the applicant submits that charges have been framed against the accused persons, namely Danish Khan, Iqbal Khan, Rashid Khan and Azam Khan. Learned Magistrate after perusal of contents of FIR as well as statement recorded during investigation and medical examination report found, the offence under Section 307 IPC against accused Danish Khan. Prima-facie after perusal of materiel evidence on record the charge under Section 307 IPC should be framed against all the accused persons, namely, Iqbal Khan, Rashid Khan and Azam Khan but trial Court on irrelevant consideration framed the charge under Sections 323, 324, 341, 504 and 506 IPC. The medical report and statement of the witnesses disclosed the offence under Section 307 IPC against all the accused persons.

5. Per contra, learned AGA opposed the submissions raised by learned counsel for the applicant.

6. Considering the arguments raised by learned counsel for the applicant, perused entire record and statement of informant; it is apparent that Danish Khan was specifically assigned the role of assaulting with fire arm and with intention to cause death thereafter learned Magistrate has rightly framed the charge under Section 307 IPC against Danish Khan but on perusal of statement of instant medical report and other evidences available on the record it is apparent that no witness has given statement against accused Iqbal Khan, Rashid Khan and Azam Khan for assaulting injured with intention to kill him. For framing charge under Section 307 IPC the material substance to consider is that any criminal act has been done with intention to cause death. Statement of the witness against Iqbal Khan, Rashid Khan and Azam Khan do not contain material ingredient of Section 307 IPC. The learned trial Court has rightly not framed the charge under Section 307 IPC.

7. In view of the above observations, no interference is warranted. Accordingly, the present application is **dismissed**.

Order Date :- 22.11.2023

I.A.Siddiqui