

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15046 of 2023

Petitioner :- Bahadur Ali Khan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Mohammad Khalid, Imran Ullah

Counsel for Respondent :- G.A., Pranab Kumar Ganguli

Connect with

Case :- CRIMINAL MISC. WRIT PETITION No. - 15523 of 2023

Petitioner :- Gufran Ansari @ Gufran Ahmad Ansari

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

Counsel for Petitioner :- Manoj Kumar, Dadhi Bal Yadav

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Imran Ullah, learned counsel for the petitioners in Writ Petition No.15046 of 2023 and Shri D.B. Yadav, learned counsel for the petitioner in Writ Petition No.15523 of 2023 as well as Shri Ashutosh Ganguli holding brief of Shri Pranab Kumar Ganguli, learned counsel for the informant in Writ Petition No.15046 of 2023 as also learned A.G.A. for the State respondents in both the writ petitions.

2. In both the writ petitions, the petitioners are seeking quashing of the impugned First Information Report dated 04.09.2023 registered as Case Crime No. 324 of 2023, under Sections 153A, 153B, 295, 295A, 504 and 506 IPC and 3/5 Damage to Public Property (Prevention) Act, Police Station Kerakat, District Jaunpur and further prayer has been made not to arrest the petitioners in pursuance of impugned First Information Report.

3. On 12.10.2023, following order was passed -

1. Heard Shri Imran Ullah, learned counsel for the petitioner, Shri Pranab Kumar Ganguli, learned counsel for the informant, Shri Ratan Singh, learned A.G.A. for the State and perused the record.

2. During the course of the arguments, learned counsel for the petitioner submits that the construction over Area 1105 sq. ft. has already been

removed/demolished.

3. Learned A.G.A. is directed to seek accurate instructions in this regard, after measurement of the area over which the demolition has been carried out.

4. We find that all the offences are punishable under seven years, and as such section 41-A of Cr.P.C. is applicable in the present case.

5. Put up this case as fresh on 27.10.2023."

4. Learned AGA on the basis of the instructions received has informed the Court that the construction over area 1105 sq. ft. has already been removed/demolished.

5. The submission is that all alleged offences are punishable with imprisonment upto seven years, therefore the police authorities are bound to follow the procedure laid down under Section 41-A Cr.P.C. The petitioners have been wrongly implicated and could not be arrested. Reliance has been placed on the judgement of Apex Court in **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 and Social Action Forum for Manav Adhikar Vs. Union of India, Ministry of Law and Justice and others in Writ Petition (Civil) No. 73 of 2015 with Criminal Appeal No. 1265 of 2017 Writ Petition (Criminal) No. 156 of 2017 and in Satendra Kumar Antil vs. Central Bureau of Investigation and Another (2022) 10 SCC 51** and co-ordinate Division Bench of this Court in **Vimal Kumar & 3 others Vs. State of U.P. & 3 others in 2021 (2) ACR 1147.**

6. We have gone through the impugned First Information Report and we are of the opinion that the guidelines framed by the Apex Court in the above noted judgement are equally applicable to the facts of the instant case.

7. Accordingly, the petitions stands **disposed of** in terms of the judgements as noted above.

Order Date :- 2.11.2023

RKM