

**Court No. - 91**

**Case :-** APPLICATION U/S 482 No. - 36813 of 2023

**Applicant :-** Anoirban Saha And Another

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Sunil Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Gajendra Kumar,J.**

1. Heard learned counsel for the applicants and learned AGA for the State.

2. This application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the charge sheet dated 03.12.2020 as well as the entire proceeding of Case no.1865 of 2020, arising out of Case Crime No.1145 of 2019, under Sections 420, 406 IPC, Police Station Bisrakh, District Gautam Buddh Nagar, pending in the court of C.J.M., Gautam Buddh Nagar.

3. Learned counsel for the applicants submits that the court concerned vide order dated 24.12.2020, took cognizance on the charge sheet submitted by the Investigating Officer after completing the investigation under Sections 420, 406 IPC. Further submission is that in pursuance of the aforesaid order, custody warrant/warrant B was issued as the applicant no.2 was languishing in Tihar jail and in compliance of the such warrant, the applicant no.2 was produced before the concerned Magistrate, warrant was prepared on 05.09.2022 under Section 309 Cr.P.C.. Further submission is that against the cognizance order, a criminal revision no.347 of 2023 was filed and the revisional court vide order dated 06.07.2023, set aside the impugned order dated 24.12.2020 and directed the court concerned to pass afresh order.

Further submission is that the applicants moved an application before the court concerned on 24.07.2023, which was heard and decided vide order dated 11.08.2023. Further submission is that the application with the prayer to issue a release order as there was no cognizance/summoning in force or operative order but the concerned Magistrate has rejected the application and passed afresh order for taking cognizance and summoning the accused. Further submission is that no afresh warrant (custody warrant) has been issued in pursuance of the order dated 11.08.2023 or no warrant has been issued afresh. The main contention of the learned counsel for the applicants is that without issuing a fresh custody order/warrant in view of the circumstances of this case, the entire proceeding is nothing but an abuse of process of Court as the accused is in custody without any valid custody order/warrant as the summoning order dated 24.12.2020 has already been set aside.

4. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid fact.

5. Having regard to the facts and circumstances of the case, the application is disposed off with a direction to the court concerned to look into the matter and pass appropriate order afresh keeping in view the summoning order, which has already been set aside.

6. With the aforesaid observations, the present application u/s 482 Cr.P.C. is **disposed off**.

**Order Date :- 29.11.2023**  
Sanjeet