Court No. - 87

Case :- APPLICATION U/S 482 No. - 38065 of 2023

Applicant :- Shivam Mishra And Another
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Amiteshwar Shukla,Kriti Sngh
Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 01.06.2023, summoning order dated 02.09.2023 as well as entire proceedings of Criminal Case No. 8249 of 2023 (State Vs. Barmeshwar Mishra and others), arising out of Case Crime No. 96/2023, under Sections- 147, 148, 307 I.P.C., Police Station- Bairiya, District- Ballia pending in the court of C.J.M., Ballia.

3. The contention of learned counsel for the applicants is that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purpose of causing harassment. He pointed out certain documents and statements in support of his contention.

4. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants at this stage. All the submissions made at the bar, relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283***. The disputed defence of the accused cannot be considered at this stage.

5. At this stage, learned counsel for the applicants submitted that applicants are ready to surrender before the trial Court for

obtaining bail and for that some protection may be granted to them.

6. However considering the aforesaid alternative prayer made by learned counsel for the applicants, it is directed that the applicants shall surrender before the concerned court below within four weeks from today and in case they apply for bail, the bail application of the applicants shall be disposed of expeditiously by the courts below in accordance with law and keeping in view the guidelines as laid down by the Apex Court in the case of ***Satender Kumar Antil vs Central Bureau of Investigation and another***, reported in 2021 SCC Online SC 922.

7. For the period of four weeks from today or till the time of surrender of the applicants before the concerned court below, whichever is earlier, they shall not be arrested in the above case.

8. With the above observations and directions, this application under Section 482 Cr.P.C. is **disposed of.**

Order Date :- 8.11.2023
Arvind

Digitally signed by :-
ARVIND KUMAR GUPTA
High Court of Judicature at Allahabad