

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 16595 of 2023

Petitioner :- Sarvar

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

Counsel for Petitioner :- Om Prakash Vishwakarma, Ram Babu Yadav

Counsel for Respondent :- G.A., Amit Kumar Pandey

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Heard learned counsel for the parties.

The petitioner was implicated initially in case crime no.173 of 2021, under sections 504, 506 IPC by the informant at P.S. Buxa, District Jaunpur. The allegations in the FIR was that in open Panchayat, the petitioner had refused to marry the daughter of informant and had also abused them. In this FIR subsequently a charge-sheet was submitted under section 376 IPC. A writ petition was filed before this Court which was apparently dismissed. The matter was then carried in appeal to Supreme Court wherein an interim protection was granted in Special Leave to Appeal (Crl) No.3872 of 2022. Ultimately SLP (Crl) No.3872 of 2022 has been disposed off by following orders passed on 07.02.2023:

"Leave granted.

Heard learned counsel for parties.

It is stated that charge sheet has been filed.

In view thereof, order dated 27.04.2022 is made the final order in the appeal.

At this stage, learned counsel for the appellant points out that on 19.12.2022, non-bailable warrants have been issued against the appellant. The order has been passed on 19.12.2022 by the learned Sessions Judge, Jaunpur on an application of the complainant that the appellant may abscond and directed non-bailable warrants to be issued.

Such an order passed by the learned Additional Sessions Judge appears to be

in the teeth of the order passed by this Court.

Not only that, it is a mechanical exercise ignoring the judgments passed by this Court seeking to set in place that bail jurisprudence.

We have no hesitation in quashing the order dated 19.12.2022 in the present proceedings itself.

We request that this order and the order passed by the learned Sessions Judge, Jaunpur be placed before Hon'ble the Chief Justice of the High Court for looking into the matter on the Administrative Side.

The charge sheet having been filed, naturally the appellant will cooperate with the trial.

The appeal accordingly stands disposed of."

It is, thereafter that the informant has instituted a fresh FIR in crime no.125 of 2023 stating that on 20.02.2023 the petitioner has kidnapped informant's minor daughter and she is not traceable. It is this subsequent FIR which is challenged by the petitioner on the ground that he has no role to play in the disappearance of the victim.

Learned AGA states that the victim is not yet been traced out and investigation is in progress.

We have perused the first information report in the present matter which contains prima-facie allegations with regard to commissioning of cognizable offence. It is specifically alleged that the victim has been kidnapped by the accused. Whether these allegations are correct or not is an aspect to be examined at the stage of investigation. At this juncture we cannot conclude that the allegations made in the FIR are incorrect.

In that view of the matter, we decline the prayer made in the writ petition to quash the FIR and the writ petition is dismissed.

Order Date :- 7.11.2023 /C. MANI