Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 16599 of 2023

Petitioner :- Akash Alias Ashu
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Gyanendra Prakash Srivastava
Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Learned counsel for the petitioner is directed to correct the case number in the prayer clause during the course of the day.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to decide the stay application filed in Appeal No.C202315000001363 (Akash alias Ashu vs. District Magistrate, Mau) u/s 6(1) of U.P. Control of Gunda Act, pending in the court of learned Commissioner, Azamgarh Division Azamgarh expeditiously within stipulated period prescribed by this Hon'ble Court.

II- To issue a writ, order or direction which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

It is submitted by learned counsel for the petitioner that an order for externment under Section 3(1) U.P. Control of Goondas Act, 1970 was passed by the District Magistrate, Mau in Case No.191 of 2023 vide order dated 25.09.2023 on the basis of report dated 24.01.2023 against which an appeal was filed before the Commissioner, Azamgarh Division Azamgarh which was admitted and is still pending but no stay order of externment was passed. In this way, during the pendency of appeal, if the affect of order in question is not stayed the purpose of appeal would be defeated, therefore, requested to direct the court concerned not to take any coercive action against the petitioner in pursuance of externment order dated 25.09.2023 during the pendency of appeal and to

decide the appeal as expeditiously as possible.

Learned A.G.A. urged that in this case order was passed by the District Magistrate on the basis of material on record and against which appeal was filed but he has nothing to object about the stay of operation of order for externment during the pendency of appeal.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties, perusal of record and the order passed by the Commissioner at the time of admission of appeal, it appears that though the appeal has been filed and is still pending before the court of Commissioner for final hearing but no order for staying the implementation of externment was passed which cannot be said to be lawful.

As a result, it is directed that the order dated 25.09.2023 passed by the District Magistrate, Mau for externment and under challenge in appeal shall remain in abeyance during the pendency of appeal.

It is also directed that Commissioner, Azamgarh Division, Azamgarh shall make his endeavour to decide the appeal of the petitioner as expeditiously as possible preferably within a period of ***90 days*** from the date of production of certified copy of this order.

Accordingly, this writ petition is ***disposed of*** finally.

Order Date :- 19.10.2023
Ashok Gupta

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