Court No. - 91

Case :- APPLICATION U/S 482 No. - 39260 of 2023

Applicant :- Afzal @ Mohammad Afzal
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Akhilesh Kumar Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

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

2. This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the entire proceedings of Session Trial No. 1551 of 2022 (State Versus Afzal) arising out of Case Crime No. 421 of 2022 under Sections 342, 376, 506 I.P.C. , Police Sttion Haldaur, District Bijnor, as well as quash the charge sheet No. 336 of 2022, dated 13.11.2022 and the cognizance order dated 05.12.2022 passed in the aforesaid criminal case, pending in the court of learned Additional District and Sessions Judge, Court No.4, Bijnor, District Bijnor.

3. At the very outset, learned counsel for applicants submits that as per material on record, no offence under the charging sections is made out against applicants. As such impugned charge-sheet as well as entire proceedings of aforesaid case are liable to be quashed by this Court.

4. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicants and as such, entire proceedings cannot be quashed.

5. From the perusal of 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. All the submissions made at the bar relates to the disputed question 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. Moreover, the applicants have got a right of discharge under Section 239, 245(2) or 227/228 Cr.P.C. as the case may be, before the court below and they are free to take all the submissions in the said discharge application before the trial court.

6. The prayer for quashing the proceedings of case as well as charge sheet is refused.

7. At this stage, learned counsel for the applicants submit that applicants may be permitted to move discharge application before the court concerned.

8. Keeping in view the facts and circumstances of the case, it is directed that the applicants will move a proper application for discharge through counsel within thirty days from today and they are free to take all the submissions in the said discharge application before the Trial Court, which shall be considered and disposed of by the Trial Court in accordance with law within a period of two months.

9. Accordingly, the present application is **disposed of.**

Order Date :- 30.11.2023
T.S.

Digitally signed by :-
TRIBHUWAN SINGH
High Court of Judicature at Allahabad