

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39297 of 2023

Applicant :- Subash Chandra And 5 Others

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

Counsel for Applicant :- Vidya Dhar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

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

2. This application under Section 482 Cr.P.C. has been filed with the prayer to quash the charge-sheet no.A-59 of 2022 dated 27.03.2022, cognizance order dated 22.09.2022 as well as entire proceedings of Criminal Case No.393 of 2022 (State Vs. Subhash Chandra) arising out of Case Crime No.60 of 2022, under Section 147, 323, 504, 506 IPC, Police Station Khutahan, District Jaunpur, pending in the court of Additional Civil Judge (J.D.)-VII/Judicial Magistrate, Jaunpur.

3. At the very outset, learned counsel for the applicants has made a statement at the Bar, on instructions, that he does not want to press other prayers made in the instant application on behalf of applicant nos.3, 4 and 6 and states that the applicant nos.3, 4 and 6 are ready to appear before the court below and seek their bail and that their release be considered in view of law laid down by Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another reported in (2022) 10 SCC 51.**

4. Per contra, learned AGA states that he has no objection to the aforesaid prayer made by learned counsel for the applicants for not pressing the other prayers made in the instant application.

5. In view of the above, in case the applicant nos.3, 4 and 6 appear before the court below within three weeks from today and seeks bail, their release be considered in view of law laid down by Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another reported in (2022) 10 SCC 51.**

6. With the aforesaid observations, this application under Section 482 Cr.P.C. is finally **disposed of** on behalf of applicant nos.3, 4 and 6.

7. So far as the applicant nos.1, 2 and 5 are concerned, learned counsel for the applicants has submitted that applicant nos.1, 2 and 5 have already been directed to be released on bail by the court below.

8. Learned counsel for the applicants has submitted that from perusal of the allegations made in the criminal case and the material collected during the course of inquiry, no offence is disclosed against the applicant nos.1, 2 and 5. He has pointed out certain documents and statements in support of their contention and has further submitted that present criminal case has been instituted with a malafide intention for the purpose of harassment and as such, impugned charge-sheet, cognizance order as well as entire proceedings be quashed.

9. Per contra, learned AGA has submitted that from perusal of the allegations made in the criminal case and the material collected during the course of inquiry, prima facie offence is clearly made out against the applicant nos.1, 2 and 5 and as such, impugned charge-sheet, cognizance order as well as entire proceedings cannot be quashed.

10. From 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 applicant nos.1, 2 and 5. 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.

11. At this stage, only prima facie case is to be seen in the light of the law laid down by Hon'ble Supreme Court in the 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.

12. Moreover, the applicant nos.1, 2 and 5 had already been directed to be released on bail and they have got right of discharge under Sections 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial court.

13. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused has right to file discharge application before the trial court and the trial court may decide their discharge application, if there is no evidence

against them.

14. The prayer for quashing the impugned charge-sheet, cognizance order as well as entire proceedings is therefore refused.

15. However, it is directed that in case the applicant nos.1, 2 and 5 files an application for discharge before the court below, then the court below shall consider each and every aspect of the matter and shall pass a detailed order on the said application expeditiously in accordance with law after hearing both the parties.

16. With the aforesaid directions, this application under Section 482 Cr.P.C. is finally disposed of on behalf of nos.1, 2 and 5.

Order Date :- 2.11.2023

Zafar