

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 17965 of 2023

Petitioner :- Shailesh Chaudhary And Another

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

Counsel for Petitioner :- Pramod Kumar Pandey

Counsel for Respondent :- G.A.,Kumar Gaurav

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Pramod Kumar Pandey, learned counsel for the petitioners, Shri Prathmesh holding brief of Shri Kumar Gaurav, learned counsel for the informant and Shri Virendra Kumar Pal, learned A.G.A for the State respondents.

2. The relief sought in this petition is for quashing of the F.I.R. dated 27.07.2017, registered as Case Crime No. 692 of 2017, under Sections 376(2)(d), 506 IPC, Police Station Kotwali, District Maharajganj. Further prayer has been made not to arrest the petitioners in the aforesaid case.

3. Submission of the learned counsel for the petitioners is that twice FIR has been lodged in the present case and the petitioners are being unnecessarily harassed by the police in a matter of 2017, which is nothing but an abuse of process of law, as such the impugned FIR is liable to be quashed.

4. *Per contra*, learned counsel for the informant opposed the petition and submits that initially Final Report dated 06.09.2017 was filed and the same was rejected vide order dated 03.09.2019 and further investigation was directed. Thereafter again Final Report dated 27.06.2021 was filed which was again rejected by the Chief Judicial Magistrate, Maharajganj vide order dated 02.08.2023 noticing all these facts and further investigation was directed. It was also highlighted in the order of the Chief Judicial Magistrate that the statement of the victim recorded under section 164 Cr.P.C. clearly supports the prosecution version, therefore, no interference is warranted.

5. We also noted that stamp reporter has reported delay of 2200 days in filing the present writ petition and as per statement of the

victim recorded under section 164 Cr.P.C. heinous offence under section 376(2)(d) IPC is also involved in the present case, therefore, *prima facie*, a cognizable offence is made out. Therefore, in view of the law laid down by Hon'ble Supreme Court in the case of ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335*** and ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918*** and in ***Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh)*** decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

6. The writ petition is devoid of merit and is accordingly dismissed.

Order Date :- 28.11.2023

Nitendra