

Court No. - 93

Case :- APPLICATION U/S 482 No. - 42439 of 2023

Applicant :- Satyaveer

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

Counsel for Applicant :- Inder Pal Singh Tomar, Inder Pal Singh Tomar

Counsel for Opposite Party :- G.A., Shivanand Mishra

Hon'ble Manoj Bajaj, J.

Applicant has filed this application under Section 482 Code of Criminal Procedure to challenge the order dated 17th November, 2022 passed by Additional Chief Judicial Magistrate, court no.3 Etawah, in Case No.10 of 2022 arising from Case Crime No.91 of 2021, titled State of U.P. Vs. Satyaveer and others, under Sections 323, 504, 506, 452, 308 IPC registered at Police Station- Vaidpura, District- Etawah, whereby to secure his presence, non- bailable warrants have been issued against him.

Learned counsel submits that the approach adopted by the trial court in issuing the non-bailable warrants against the applicant is erroneous in law as the case against him was instituted upon a false information and apart from it, the applicant being a driver employed with Uttar Pradesh State Road Transportation is

not keeping good health, who is suffering from viral fever etc. and is undergoing treatment, therefore, ignoring all these aspects, the court has issued the non- bailable warrants against him. Learned counsel submits that the applicant is willing to join the trial proceedings, and in case, the non- bailable warrants are set aside, the applicant would submit himself before the trial court.

The prayer is opposed by learned counsel for the complainant Sri Sanjay Mishra holding brief of Sri Shivanand Mishra, who submits that the applicant has already been given indulgence by this Court on number of occasions, but he has failed to put in appearance before the trial court, therefore, the court has rightly issued non-bailable warrants to secure the presence of the applicant. Learned counsel has produced the orders passed by this Court in Criminal Miscellaneous Anticipatory Bail bearing number 6882 of 2022, whereby vide order dated 6th August, 2022, this court while observing that there is no apprehension of arrest to the applicant, declined his prayer. This Court further observed that in view of the decision of the Hon'ble Supreme Court in **Satendra Kumar Antil vs. Central Bureau of Investigation**

and another Special Leave to Appeal (Cri) No.5191 of 2021, it is expected that the trial court shall follow the same.

Apart from it, learned counsel has drawn the attention of the Court to another order dated 1st November, 2022 and submitted that the attempt of the applicant to challenge the criminal proceedings on merits was also not pressed by accused, and this Court had granted him three week's time to submit and apply for the bail. He submits that these orders have not been complied with by the applicant, and again this petition has been filed unnecessarily.

At this stage, learned counsel for the applicant has produced the order dated 4th October, 2023 and submitted that the application filed by the applicant under Section 438 Code of Criminal Procedure for pre- arrest bail was dismissed by the Additional Sessions Judge, court no.1, Etawah.

Upon hearing the learned counsel for the parties and considering the above background, this Court finds that on previous two occasions, this Court has not shown any indulgence to the applicant and therefore, it was incumbent for him to submit himself before the court and join the trial proceedings. Further, once his claim for

pre- arrest bail was declined by this Court on 6th August, 2022, there was no occasion for him to file the second petition for the same relief before the court of Sessions without there being much change of circumstances and the said case has also been rightly dismissed.

The argument which have been advanced by the learned counsel are relating to the merits of the prosecution case and in this regard, the claim already stands withdrawn by the applicant on previous occasion i.e. on 1st November, 2022, therefore, it becomes absolutely clear that the applicant is repeatedly bringing the same issue before this Court on the basis of old and stale cause of action. This is nothing, but misusing the process of law, therefore, the applicant deserves to be saddled with costs.

Resultantly, this application is dismissed with costs of Rs.20,000/- to be deposited with the High Court Legal Services Committee, High Court, Allahabad.

Order Date :- 4.12.2023

Raj