

Court No. - 92

Case :- APPLICATION U/S 482 No. - 42849 of 2023

Applicant :- Nabi Bakhsh

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

Counsel for Applicant :- Hanuman Prasad Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Hanuman Prasad Kushwaha, learned counsel for the applicant and Sri Kamlesh Kumar Tripathi, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of proceeding of Case No.3002 of 2001 (State Vs. Nabi Bakhsh) arising out of Case Crime No.819 of 2000, under Section 409 I.P.C., Police Station Kotwali Lalitpur, District Lalitpur including order dated 11.12.2001 and order dated 01.10.2003 passed by Additional District and Sessions Judge/Special Judge (D.A.A.), Lalitpur in Criminal Revision No.136 of 2002 and non-bailable warrant dated 12.07.2023 issued by Chief Judicial Magistrate, Lalitpur.

3. Learned counsel for the applicant submits that the allegation against the applicant is that when he was posted at Police Station Kotwali, District Lalitpur, at the relevant time, investigation and an inquiry was handed over to him. Subsequently, the applicant was transferred to Jhansi. When the applicant was asked to hand over the case diary of the case, he continuously avoided to hand over the said case diary to the new investigating officer appointed in the case and when the F.I.R. under Section 409 I.P.C. was lodged against the applicant on 11.09.2000, he handed over the said case diary on 14.09.2000. Upon such hand over of the case diary, the final report was submitted by the investigating officer of the said case before the Chief Judicial Magistrate. Learned Chief Judicial Magistrate having found the *prima facie* case made out against the applicant herein under Section 409 I.P.C., on 11.12.2001 rejected the said final report and summoned the applicant herein. When the applicant did not appear before the Magistrate, on 22.05.2002 the non-bailable warrant issued against the applicant herein. Against the order dated 11.12.2001, whereby the applicant has been summoned, the applicant herein has filed the Criminal Revision No.136 of 2002 which was also dismissed vide judgment and order dated

01.04.2003. Subsequent thereto, the matter is pending since then and non-bailable warrants were issued even prior to filing of criminal revision by the applicant herein and more than 20 years have passed the applicant has not appeared before the Chief Judicial Magistrate despite non-bailable warrant and arrest warrant issued against the applicant herein for a long period of time of 20 years. Learned counsel for the applicant further submits that in the case for which the further investigation was handed over to the Special Crime Investigation Team, Lalitpur the newly appointed investigating officer after investigating that matter has also filed the final report in that case.

4. Having heard the rival submissions made by learned counsel for the applicant, this Court has carefully gone through the record of the case. However, looking at the conduct of applicant herein who has been a police servant, as a responsible officer, despite the knowledge of non-bailable warrant issued against him he has deliberately avoided his appearance before the learned Chief Judicial Magistrate, therefore, at this stage, this Court do not wish to consider any sympathy in favour of the applicant and do not find any good ground to interfere in the instant case, therefore, the instant case is devoid of merit and is hereby **dismissed**.

Order Date :- 1.12.2023

Atul