

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 18523 of 2023

Petitioner :- Swatantra Kumar

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

Counsel for Petitioner :- Rajesh Kumar

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Arun Kumar Singh Deshwal,J.

Heard learned counsel for the petitioner and learned A.G.A. for the State.

The instant writ petition seeks quashing of the FIR dated 31.10.2023 giving rise to Case Crime No. 666 of 2023, under Sections 452, 328, 376, 380, 506, 509 I.P.C., P.S. Dibiyaipur, District Auraiya.

Contention of learned counsel for the petitioner is two fold. The first contention is that the F.I.R. is highly belated. The second contention raised is that the petitioner-accused is a constable and that on the date of alleged incident he was on duty.

We have considered the submissions made by learned counsel for the parties and perused the impugned F.I.R. There are direct allegations against the petitioner and it is serious allegation of rape after having administered something in cold drink which resulted in the informant having been lost consciousness. This allegation is supplemented by allegations of removal of informant's ornaments as well as cash from her purse. In so far as these allegations are concerned, they constitute the ingredients of a cognizable offence. The delay, if any, in lodging of the F.I.R. has been explained in the F.I.R. In any case, the delay is irrelevant in cases of rape. The second submission of the petitioner having been on duty is plea of alibi which is not liable to be considered in a writ petition which seeks quashing of the F.I.R.

In view of the above, the submissions made by learned counsel for the petitioner, do not find favour of this Court because the allegations in the F.I.R. contain ingredients of cognizable offence. Therefore, prayer of the petitioner to quash the First Information Report is rejected.

The writ petition is therefore **dismissed**, without prejudice to the right of the petitioner to apply for bail/anticipatory bail.

Order Date :- 29.11.2023

Vandana