

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 4422 of 2023

Petitioner :- Ashok Kumar Bajpai

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Others

Counsel for Petitioner :- Sanjeev Shukla

Counsel for Respondent :- G.A.

Hon'ble Rajnish Kumar,J.

Hon'ble Umesh Chandra Sharma,J.

Heard learned counsel for the petitioner and learned AGA.

This writ petition has been filed with the prayer to quash the First Information Report registered as Case Crime No.0412/2023, under sections 420, 406 I.P.C. Police Station-Kotwali, District Unnao and with a prayer not to arrest the petitioner in pursuance of the impugned FIR.

Submission of learned counsel for the petitioner is that the petitioner has been falsely implicated, the F.I.R. contains false averments and the road has been constructed by the petitioner as per the standard, but without making any enquiry, the First Information Report has been lodged against the petitioner.

He further submitted that the offences alleged in the FIR carry punishment below seven years, therefore the petitioner is entitled for benefit of Section 41-A of Cr.P.C. as per law laid down by the Supreme Court in the case of **Satender Kumar Antil vs Central Bureau of Investigation and Another;** (2022) 10 SCC 51, however, the Police is trying to arrest the petitioner.

The petition is being opposed by learned A.G.A.

The correctness or otherwise of the allegation made in F.I.R. need not be examined by us in view of the law settled inasmuch as such issues are required to be examined at the stage of investigation. The petitioner shall be at liberty to place all materials in support of his defence before the Investigating Officer.

Since the First Information Report *prima facie* discloses commissioning of cognizable offence, therefore, it cannot be quashed in view of the law laid down by the Supreme Court in the case of **State of Telangana Vs. Habib Abdullah Jellani**, (2017) 2 SCC 779 and **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others**; (2021) SCC Online SC 315. Prayer for quashing the F.I.R. is declined.

As the offences alleged in the F.I.R. provide for maximum sentence upto seven years, the provisions of Section 41-A of the Code of Criminal Procedure have to be complied with in view of **Satender Kumar Antil versus Central Bureau of Investigation and Another**; (2022) 10 SCC 51 and the same shall be complied.

The writ petition is, accordingly, **disposed of**.

Order Date :- 7.6.2023

Arnima