

Court No. - 12

Case :- APPLICATION U/S 482 No. - 6423 of 2022

Applicant :- Gurvinder Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Another

Counsel for Applicant :- P.K. Singh Bisen, Dr. Pooja Singh

Counsel for Opposite Party :- G.A., Anand Shanker Asthana, Rajendra Kumar Dwivedi

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the order dated 25.04.2022 passed in Session Trial No.600 of 2021 by Additional District and Sessions Judge, F.T.C., Pratapgarh arisen from the Case Crime No.06 of 2021 under Sections 376, 354-A, 354-B, 354-C, 354-D, 452, 323, 504, 506, 509 I.P.C. and Section 67 of I.T. Act, Police Station Lalganj, District Pratapgarh.

3. On 27.9.2023, following order was passed:-

1. Counter affidavit filed by learned counsel for the private respondent is taken on record.

2. On 14.9.2023, following order was passed:-

1. As it is informed that lawyers are abstaining from judicial work today, applicant is present in person.

2. Applicant requests that he may be allowed to argue his case. Accordingly, his prayer is allowed.

3. Applicant informs that certain articles, those are not case property, have also been taken into custody by police and the application for release of those articles has been rejected by trial court, hence, indulgence of this Court is required.

4. On 19.09.2022 following order was passed:-

"Heard Shri P.K. Singh Bisen, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

Learned counsel for the applicant while drawing attention of this Court towards the order dated 07.04.2022 passed by this Court in Application U/S 482 No.1569 of 2022 as well as the impugned order dated 25.04.2022, vehemently submits that one Apple I-pad, two phones of Motorola and Moto company, one Coolpad, two sims, five photos and one Lenovo hard-disk as well as two phones of Samsung Galaxy should have been released in favour of the applicant and thus the trial court has committed grave material illegality in not releasing the aforementioned articles in favour of the applicant, which could never be deemed to be case property.

In the considered opinion of this Court, matter requires consideration. Issue notice to the opposite party no.2 returnable within three weeks. Steps in this regard be taken by learned counsel for the applicant within three working days from today.

List this case on 13.10.2022.

Till the next date of listing, the State may also file counter affidavit and would procure complete/up to date case diary of the case."

5. It is evident from the record that there is no specific pleading in the counter affidavit that which mobile phone is a case property, in which, certain photographs were found. It is also not clear from the record that whether the said mobile was sent to F.S.L. for examination or not.

6. List this Case on 27.09.2023.

7. On the next date, Circle Officer, Police Station- Lalganj, District-Pratapgarh shall appear in person before this Court along with complete case diary. He will inform that how many articles have been taken into custody as a case property and place the inventory of the said articles before this Court.

3. In pursuance of aforesaid order, Mr. Ramsurat Sonkar, Deputy Superintendent of Police, Lalganj, Pratapgarh is present and requested one weeks time to seek instructions.

4. List this case on 11.10.2023.

On the next date, Officer present today, shall again appear along with the written instructions in pursuance of earlier order.

4. In pursuance of earlier order, Mr. Ramsurat Sonkar, Deputy Superintendent of Police, Lalganj, Pratapgarh is present and file counter affidavit and submits that at the time of arrest, following articles were recovered from the possession of the applicant:-

(i) Sim of Airtel, 8991000900 - 1197469670

(ii) Sim of Voda, 8991150002 - 1773347482

(iii) Five passport size photos.

(iv) Apple I Phone (A2111), IMEI - 35396910267065, black in colour.

(v) Motorola Mobile, black in colour, I.M.E.I. - 351866092367670 and I.M.E.I. - 351866092367688.

(vi) One Mobile of Moto, golden in colour (damaged).

(vii) One Mobile - Coolpad, while in colour (damaged).

(viii) One Mobile - Samsung Galaxy - A8

(ix) One Mobile - Samsung Galaxy - S10.

(x) One Lenovo Hard Disk.

- (xi) one purse alongwith Rs.4570/- in cash
- (xii) one speed post receipt of Indian Postal Department
- (xiii) three A.T.M. cards
- (xiv) one Pan Card
- (xv) one Adhaar Card
- (xvi) One Indonesian Note of Rs.10,000/-
- (xvii) three carry bags
- (xviii) thirteen jackets
- (xix) three P. Cap
- (xx) twelve T-Shirts
- (xxi) one gloves
- (xxii) five shorts
- (xxiii) one ladies purse
- (xxiv) one lower
- (xxv) one Conair
- (xxvi) two pillow cover
- (xxvii) one Samsung Galaxy
- (xxviii) Passport of the applicant
- (xxix) A.T.M. card in cover
- (xxx) A.T.M. card of Punjab Bank.

5. Learned counsel for the applicant submits that except Article No.(i) to (x), all have been released in favour of the applicant. She also submitted that during the course of investigation, Investigating Officer has not gathered anything from Article No. (i) to (x), which was recovered from the possession of the applicant by the Investigating Officer at the time of arrest, as merely on the basis of description of the case diary that aforesaid Article

No.(i) to (x) are relevant for the disposal of the case, same cannot be handed over to the applicant is illegal and arbitrary, therefore, application was moved before the court below for the release of aforesaid Article No.(i) to (x), but the application was rejected in the most mechanical manner.

6. Learned A.G.A. as well as learned counsel for the complainant vehemently oppose the prayer of the applicant and submit that as Article No.(iv) to (x) are having relevancy with the trial and there is a possibility that indecent pictures and other relevant conversation are stored in the said device, therefore, same cannot be released in favour of the applicant but they do not dispute this fact that alleged articles were recovered from the possession of the applicant on 16.1.2021 at the time of arrest and also not disputed that no description in case diary is found that any data which relates to crime was transferred from these devices.

7. As it is evident from the case diary produced by the officer who is present before this Court that nothing was taken out by the Investigating Officer from the Article No.(iv) to (x), only description has been mentioned that there is a possibility that in the aforesaid device conversation as well as indecent photos of the victim are stored and also admitted that these article were not sent to F.S.L. as nothing was to get match.

8. Considering the submissions of learned counsel for the parties, going through the record of the application, counter affidavit, rejoinder affidavit and the case diary, as it is evident from the case diary that not even a single data was taken by the Investigating Officer, during the course of investigation from the alleged device and only recovery has been shown and kept in Maalkhana, merely on the basis of saying that all these articles are relevant to the case in question, in such circumstances, all these Article No.(i) to (x) cannot be kept in Malkhana.

9. In view of the above facts and circumstances, the present application under Section 482 Cr.P.C. is

allowed and authority concerned is directed to release Article No.(i) to (x) as mentioned in para-4 of this order in favour of the applicant.

10. As the counsel for private respondent requested that leave to appeal may be granted but he fail to show any legal point, therefore, same is hereby refused.

Order Date :- 11.10.2023

Gaurav/-