

Court No. - 13

Case :- MATTERS UNDER ARTICLE 227 No. - 5636 of 2023

Petitioner :- Rais Iqbal

Respondent :- State Of U.P Thru. Prin. Secy. Home Lko. And 2 Others

Counsel for Petitioner :- Ram Ji Trivedi, Shraddha Tripathi

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard learned counsel for the petitioners and learned AGA for respondent no. 1 to 3.

By this petition, the petitioner has prayed for the following relief:-

"(1) to direct the Opposite Party-3 to entertain the Application for Objection filed by the Petitioner against the Sanctioning Order dated 29.06.2022 and to pass appropriate order in-light of the order dated 17.08.2023 (Annexure No-1 to this Petition) passed in the Writ Petition No- 6387 of 2023."

Learned counsel for the petitioner submits that Division Bench of this Court while dismissing Writ Petition No. 6387/2023, "Rais Iqbal Vs. State of U.P. and others", has provided that in case, the petitioner is aggrieved by the sanction order, he can challenge such sanction order before the trial court. He further submits that he has tried to file an objection before the trial court, however, the same has not been entertained by the trial court.

Learned AGA has opposed the petition submitting that the petition is misconceived. The petitioner is an accused and non-bailable warrants have been issued on 16.02.2023 by the learned trial court and he is absconding since then. He further submits that unless he surrenders before the trial court and applies for bail, the compliance of Section 205 and 207 Cr.P.C. can be done. He is not entitled to be heard by the learned trial court at this stage.

Perused of the record.

Division Bench in para 13 while dismissing the petition has expressed the following opinion:-

"13. This Court is of the opinion that in case the petitioner is aggrieved by the non application of mind in the grant of sanction by the competent authority then the appropriate remedy for the petitioner would be to challenge such sanction for prosecution only before the trial court where the evidence can be led by the petitioner and the prosecuting agency, which can be weighed by the trial court to see whether there is actually

any non application of mind in the grant of sanction."

It is not disputed between the parties that the petitioner is absconding in the trial and it is also not disputed that non-bailable warrants have been issued against him. Needless to say that unless the petitioner surrenders before the trial court, he has no right to be heard.

The petition is misconceived and is accordingly dismissed.

Order Date :- 3.11.2023

R.C.