

Court No. - 23

Case :- APPLICATION U/S 482 No. - 11969 of 2023

Applicant :- Prakash Narayan Tiwari

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Civil Sectt. Lko. And Another

Counsel for Applicant :- Vimal Shukla, Kaushal Kishore, Rajeev Prakash Anand

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard Shri Vimal Shukla, learned counsel for the applicant, learned A.G.A. for the State and perused the entire record.

In view of the order which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

The instant application under Section 482 Cr.P.C. has been filed by the applicant for setting aside the order dated 25.02.2020, 20.10.2023 passed in S. S. T. No.98 of 2018 arising out of Case Crime No.1259 of 2017, under Sections 323, 504, 506, 406 I.P.C. and 3 (1) Dha, SC/ST Police Station Kotwali Nagar, District Balrampur "State vs. Prakash Narayan Tiwari and others".

It is also submitted by learned counsel for the applicant that applicant is suffering from tuberculosis disease and has been undergoing treatment for several months. His submission is that non-bailable warrant came to be issued against the applicant abruptly which is not

sustainable in the light of law laid down by the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin vs. State of Maharashtra** reported in **(2012) 9 SCC 791** and in **Inder Mohan Goswami and another vs. State of Uttaranchal and others** reported in **(2007) 12 SCC 1** for issuing processes to ensure appearance.

Per contra, learned A.G.A. has opposed the prayer by submitting that the present applicant is not appearing in the Court concerned for the reason best known to the applicant himself. He submits that in view of his long absence, the instant application is not maintainable.

Having heard the learned counsel for the applicant, learned A.G.A. for the State and upon perusal of record, this application under Section 482 Cr.P.C. is **disposed of** with a direction that in case, the present applicant appears before the learned trial Court on or before the next date fixed and moves an application for cancellation of process issued against him/seeking bail, the same shall be disposed of by the learned trial Court having regard to the entire facts of this case including medical infirmities, if any, of the applicant and also in strict accordance with the law laid down by the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin' case (supra)** and in **Inder Mohan Goswami's case (supra)**.

Till the next date i.e. 16.12.2023, the impugned

orders dated 25.02.2020 and 20.10.2023 shall not be given effect to qua the applicant.

It is made clear that in case, the applicant fails to appear before the Court concerned on or before 16.12.2023, learned trial Court shall be at liberty to proceed against him in accordance with law and the interim protection granted herein above shall not be available to him without any further reference to this Court.

Order Date :- 8.12.2023
Mahesh