

Court No. - 11

Case :- APPLICATION U/S 482 No. - 12717 of 2023

Applicant :- Anil Tiwari @ Anil Kumar Tiwari

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
U.P. Lko. And 3 Others

Counsel for Applicant :- Ambika Prasad Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard.

Present petition has been filed with the following prayer:-

"To allow this petition and quash the impugned chargesheet dated 16-03-2023 filed in case crime No. 30 of 2023, U/s- 354K I.P.C. and 9/10 Pocso Act, and 3(1)(w) S.C/ST Act, at Police Station- Jais, District-Amethi, so for it relates to the petitioner contained as Annexure No.1 to this petition and summoning order/ cognizance order dated 07-07- 2023 passed by Additional Session Judge/Special Judge Pocso Act, (Exclusive) First Raebareli in Criminal case No. 545 of 2023 State Vs Anil Tiwari under section-376 A.B. 1.P.C. and Section-5/6 of Protection of Children from Sexual offences Act, 2012 and Section-3 (2) (V) Scheduled Caste and Scheduled Tribes Police Station- Jais District - Amethi which is contained as Annexure No.2 to this petition may also be quashed as well as entire proceeding above said criminal case in the interest of Justice."

Learned counsel for the applicant has placed reliance upon the facts indicated in paragraph 15 to 19 of the affidavit filed in support of the application. The same are being extracted hereunder:-

"15. That the real facts of the case is that the applicant is only the Driver of school Vehicle bus number U.P. 36 T 4510 of moon land international School Jais District-Amethi and his work is only to carry the student to the school from concern Mohalla to the aforesaid school thus the only responsibility of the applicant was to the said purpose.

16. That the daughter of informant namely Kumari Ashwi was also used to come and go from the said bus to the school and on 21-01-2023, the applicant has take opp the daughter of informant near the nursing home but due to reaching Late at the House, the informant became agree and Next day on 23-01-2023 in the morning at 07:30 am when the applicant reached at School after taking the school bus the informant used to say that on 21-01-2023 his daughter did not reach within time Hence he will make complaint in the school.

17. That after hearing the aforesaid talk the applicant was disturbed mentally and said that he was take all his daughter within the time and if your daughter did not reach at house by going some other place in respect of playing with other children then he is not responsible.

18. That after hearing the said talk the informant was angree and started to abuse badly by saying that he makes payment to come and go about his daughter to the school. Hence it is your responsibility to carry at the house to his daughter inspite of it after requesting by the applicant to say near about fifty students come and go to the school by bus as well as bus helper Hence all the responsibility does not lie upon him and at this juncture the informant started to beat from Laat Mooka to the applicant as several people has seen this incident.

19. That on same very date on 23-01-2023 the applicant gave a written application at Local Police Station-Jais District-Amethi about the said incident but the police concern has brought the informant after catching and subsequently the police has left him after making some conspiracy and the applicant was not medically examined by the police nor report was registered. The photo/typed copy of the application dated 23-01- 2023 given by the applicant is being annexed as Annexure No.12 to this affidavit."

Based upon above, learned counsel for the applicant submitted that the impugned chargesheet is liable to be quashed.

On the other hand, Ms. Swati Upadhayay, learned AGA submitted that the present applicant is not entitled to the relief sought in the present case, in view of the law laid down by the Hon'ble Apex Court in the case of **State of Haryana Vs Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426** and **R.P. Kapur Vs State of Punjab 1960 SCC OnLine SC 21**, as *prima facie* the FIR constitutes a cognizable offence.

She further submitted that FIR was lodged against the applicant on 25.01.2023 under Sections 354 IPC, 7/8 POCSO Act and 3(2)(va) SC/ST Act and during the investigation the Investigating Officer, after considering the evidence on record, the statements of the witnesses (father and mother of the victim) and the statement of victim, who on the basis of records was found to be nine years old at the time of incident (which is annexed on page 91 of the paperbook), submitted the impugned chargesheet as such, indulgence of this Court is not necessary in this case.

Further submission is that the applicant is still in judicial custody as the Court twice rejected the bail applications preferred by the applicant i.e., Bail Application No(s). 2679 of 2023 and 11964 of 2023 vide order(s) dated 24.08.2023 and

06.10.2023, respectively.

She submitted that no doubt that the observations made in the order(s) rejecting the bail application(s) of the applicant are not required to be considered in the instant matter filed under Section 482 CrPC as also the observations made by this Court while rejecting the bail application(s) cannot be considered during the trial of the case but the fact remains that twice the bail application(s) of the applicant were rejected.

She further stated that in view of the allegations leveled by the victim herself, who at the time of incident was about nine years old, it is apparent that *prima facie* case is made out against the applicant.

Considering the submissions of the learned counsel for the parties and facts of the case particularly the perusal of the statement of the victim recorded under Section 164 CrPC and paragraph 15 to 19 of the affidavit filed by the applicant in support of the application, this Court finds no reason for interference in the issue in question.

Accordingly, the present petition is hereby dismissed.

Order Date :- 22.12.2023/Vipul