

Court No. - 29

Case :- APPLICATION U/S 482 No. - 2779 of 2024

Applicant :- Bhagat Kumar Yadav And 4 Others

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

Counsel for Applicant :- Rajeev Mishra, Mool Shankar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot, J.

Heard Sri Rajeev Mishra, learned counsel for the applicants, Sri Umesh Kumar Pandey, learned counsel for opposite party no. 2 and learned AGA for the State.

Prosecution case set out in the FIR records that the applicants and other co-accused persons inflicted grievous injuries on the vital part of the first informant and his party with lathi and danda. Some of the members were vomiting blood. The applicants came to this Court on an earlier occasion and had filed Application U/S 482 CrPC. The said application was disposed of with the following directions:

"7. Accordingly, this petition is disposed of with a direction to the petitioners to move appropriate bail application within two weeks from today. If the same is moved, the learned trial court shall consider the same in the light of the guidelines issued in the case of Satender Kumar Antil (Supra) and pass appropriate order, thereon, as expeditiously as possible."

Pursuant to the said directions of this Court the trial court has passed the following orders:

"The present bail application has been moved on behalf of accused Bhagat Kumar Yadav, Rakesh Yadav, Sudheer Yadav, Stat.

Shivkali@ Keshav Devi, Smt. Archana Yadav through counsel in the case crime no.117/2018, sections- 147, 323, 504, 506, 308 IPC, P.S. Kotwali Bikapur, Ayodhya/ Faizabad.

The accused are not present before the court neither any surrender application is moved.

Heard the learned counsel for the accused and the Ld. APO. Perused the record.

The learned counsel for the accused submitted that the physical presence of the accused is not necessary for considering bail in view of latest decision of Hon'ble supreme Court in special leave to appeal to criminal (**crl. No. 5191/2021 Satendra Kumar Antil vs CBI**). Learned Counsel produced the copy of the aforesaid Judgment. He further submitted that the accused will not appear before the court. Pending bail application may be disposed. Perused the aforementioned Judgment respectfully.

The learned A.P.O. while opposing the bail has submitted that the offence committed by the accused is triable by the Sessions Court. The guidelines laid down by Hon'ble Supreme Court in Satendra Antil case are not applicable to the facts of the present case. Without the presence of the accused bail application can not be considered as per law.

In view of the guidelines laid down by the Hon'ble Supreme Court in the aforementioned judgment the appearance of the accused is necessary. In accordance with section 437 Crpc which deals with When bail may be taken in case of non-bailable offence it is explicitly mentioned therein- accused appears or is brought before a court other than the High Court or Session, he may be release on bail.

Since the offence committed by the accused is of grave and serious nature and triable Court of Session. Hence, without the accused being physically present before the Court the bail application can not be considered. Accordingly bail application is rejected without expressing any opinion on the facts of the case."

No exception can be taken to the order passed by the trial court. The applicant has failed to appear before the trial

court. The offence is grave in nature. Mere reference of a section in the chargesheet or in the FIR is not conclusive. Ingredients of serious offences are made out from the materials in the record. The trial court shall consider the same while considering the bail application.

In this wake no interference is called for.

The Application U/S 482 is dismissed.

The learned trial court shall take appropriate action against the applicants.

Order Date :- 21.3.2024

Pravin