

Court No. - 13

Case :- APPLICATION U/S 482 No. - 5616 of 2024

Applicant :- Indramani Yadav And Others

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

Counsel for Applicant :- Pawan Kumar Pandey, Ajay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the parties.
2. By means of this application under Section 482 Cr.P.C., the applicants have prayed for the following main reliefs:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside/quash the impugned N.B.W. order dated 10.6.2024 passed by Additional Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Ambedkar Nagar, under Sections 147, 452, 323, 326(Ka), 504 IPC, P.S. Alapur, District Ambedkar Nagar.

It is further respectfully prayed that during the pendency of present petition, the further proceeding of impugned N.B.W. order dated 10.6.2024 passed by Additional Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Ambedkar Nagar, as well as the further proceeding of Complaint Case No.118 of 2019 (Jagannath Versus Sitaram), may kindly be stayed."

3. Learned counsel for the applicants stated that in view of settled proposition of law that the trial court for the purposes of appearance of an accused should first issue summons and thereafter bailable warrant and non-bailable warrant should be issued. In this regard, reliance has been placed on Section 80 Cr.P.C. Further, reliance has also been placed on the judgment passed by the Hon'ble Apex Court in the case of ***Inder Mohan Goswami and another vs. State of Uttranchal and others*** reported in ***(2007) 12 SCC 1***.
4. It is further stated that an FIR was lodged by preferring an application under Section 156(3) Cr.P.C. dated 23.11.2016 before the Civil Judge, (J.D.)/J.M., Tanda, District- Ambedkar Nagar, which was registered as Case No. 336 of 2016 and thereupon an order was passed on 16.12.2016 and in compliance thereof, the investigation was carried out. After completion of investigation, the Investigating Officer filed the final report against which a

protest application/petition was filed. Thereafter, the statements of witnesses as required under Sections 200 and 202 Cr.P.C. were recorded and after considering the material available on record including the statements of complainant/Ram Murat/PW-1, Pawan Kumar/PW-2, and Dr. Rinki Rashmi/PW-3, the trial court entertained the protest petition and summoned the applicants vide order dated 04.02.2023 under Sections- 147, 323, 326A, 504 IPC and Section 3(1)X of SC/ST Act. The order dated 04.02.2023 was challenged before this Court in Criminal Appeal No. 842 of 2023 (Indramani Yadav and others vs. State of U.P. and another), which was partly allowed vide final judgment and order dated 27.04.2023 and the summoning order dated 04.02.2023 passed by the trial court was set-aside to the extent of summoning the applicants under Section 3(1)X of SC/ST Act. The judgment of this Court dated 27.04.2023 passed in Criminal Appeal No. 842 of 2023 was placed before the trial court namely Special Judge, SC/ST Act, Ambedkar Nagar and after taking note of the same, the trial court sent the paper book of the case to C.J.M, Ambedkar Nagar, as appears from the letter dated 11.08.2023 (Annexure No. 25 to the present application).

5. It is further submitted that after the aforesaid, the matter was taken up before the court concerned on 10.06.2024 and trial court namely C.J.M, Ambedkar Nagar without adopting the process as required under the law passed the order under challenge dated 10.06.2024, whereby, issued Non-bailable warrant against the applicants, which is impermissible under the law.

6. Submission is that the order impugned dated 10.06.2024, in the facts of the case, is liable to be interfered with in the light of judgment and provisions, cited/indicated above.

7. Considered the aforesaid facts and Chapter VI of the Code of Criminal Procedure, 1973, which provides 'Processes to Compel Appearance' and the observations made by the Hon'ble Apex Court in paragraphs 50 to 57 of the judgment passed in the case of ***Inder Mohan Goswami*** (supra), which are extracted hereunder:-

"Personal liberty and the interest of the State

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the

International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summons; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in the court, the summons or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or

destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

8. From the aforesaid facts and the documents on record including the impugned order dated 10.06.2024, it is evident that the C.J.M., Ambedkar Nagar, has not proceeded in the matter as per law and further, in the impugned order, no reason has been assigned for issuance of non-bailable warrant.

9. In view of aforesaid, the impugned order dated 10.06.2024 is hereby ***quashed***. The instant application under Section 482 is accordingly ***allowed***. The C.J.M., Ambedkar Nagar is directed to proceed in the matter strictly in terms of law.

Order Date :- 5.7.2024

Arun/-