

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Crl. Misc. Application (C-482) No. 68 of 2012

Bhagwati Prasad Gairola

.....

Petitioner

versus

State of Uttarakhand & another

.....

Respondents

Mr. Lokendra Dobhal, Advocate for the petitioner.

Mr. M.A. Khan, Brief Holder for the respondent State.

Hon'ble U.C. Dhyani, J.

Heard.

2) By means of this petition, moved under Section 482 of Cr.P.C., the petitioner has sought quashing of the proceedings of Criminal Case No. 10 of 2012; State vs. Darshan Lal and others, relating to offences punishable under Sections 408, 420, 467, 468, 471, 120-B of I.P.C., pending in the court of Chief Judicial Magistrate, Tehri.

3) Learned counsel for the petitioner did not press the petition. The petition under Section 482 of Cr.P.C. is accordingly dismissed as not pressed.

4) Otherwise also, from perusal of the material on record and looking into the facts of the case, it cannot be said at this stage that no offence is made out against the petitioner. The submissions made by learned

counsel for the petitioner relate to the disputed questions of fact, which cannot be adjudicated upon by this court under Section 482 of Cr.P.C. At this stage only a *prima facie* case is to be seen in the light of the law laid down by the Supreme Court in cases of **R.P. Kapoor vs. State of Punjab, AIR 1960 SC 866; State of Haryana vs. Bhajan Lal, 1992 SCC (Crl) 426; State of Bihar vs. P.P. Sharma, 1992 SCC (Crl) 192 and Zandu Pharmaceuticals Works Ltd. vs. Mohd. Saraful Haqe and another, 2005 SCC (Crl) 283 (para 10).**

5) Learned counsel for the petitioner made an alternative prayer for directing the Magistrate concerned to expedite the disposal of the bail application of the petitioner if he surrenders before the court.

6) No party will feel prejudiced if a direction is issued by this court to expedite the hearing of the bail application of the petitioner provided sufficient opportunity is given to the learned prosecutor to oppose the same and bring desired documents on record.

7) Learned counsel for the petitioner submitted that the petitioner was not named in the first information report. It is also submitted that the first information report was registered at the instance of

complainant / respondent No. 2 only after obtaining orders under Section 156(3) of Cr.P.C.. It is further submitted that the petitioner has been falsely implicated in the case. Money was already refunded to the villagers (labourers), copy of receipts whereof have been made available on the record. Lastly, it is submitted that the arrest of the petitioner was stayed by this court vide order dated 22.02.2011.

8) Considering the facts and circumstances as enumerated above, it is directed that in case the present petitioner surrenders before the Magistrate concerned and moves application for bail, the same shall be expedited. It is made clear that the prosecutor opposing the bail application shall be given adequate opportunity of hearing and placing necessary documents which might be found necessary for proper disposal of bail application.

9) With these observations, petition under Section 482 of Cr.P.C. is finally disposed of. (Urgency Application No. 2408 of 2012 also stands disposed of).

(U.C. Dhyani, J.)

Dt. May 25, 2012.
Negi

