

Court No. - 55**Case :-** APPLICATION U/S 482 No. - 9795 of 2002**Applicant :-** Radhey Krishna Pandey**Opposite Party :-** State Of U.P. & Another**Counsel for Applicant :-** Ashwini Kumar Awasthi, Manish Tiwari**Counsel for Opposite Party :-** Govt. Advocate, Surendra Prasad**Hon'ble Shashi Kant, J.**

Heard Shri Manish Tiwari, learned counsel for the applicant, Shri Vishwa Jyoti Sahai, learned A.G.A. for the State of U.P. and perused the record.

This application under Section 482 Cr.P.C. has been filed seeking quashing of order dated 13.09.2002, passed by Additional Sessions Judge, Court No. 1, Bhadohi, Gyanpur in Bail Application No. 381 of 2002, arising out of Case Crime No. 314 of 2000, under Sections 467, 468, 471, 420 I.P.C., at Police Station – Gyanpur, District – Sant Ravidas Nagar/Bhadohi.

Learned counsel for applicant contends that while deciding the Bail Application No. 381 of 2002 of accused Kade Deen and one another (Annexure No. 9 to the affidavit filed in support of this application), the court below has wrongly and illegally recorded following findings in respect of the applicant :

“उपरोक्त से अभियुक्तगण के विरुद्ध मजिस्ट्रेट द्वारा परीक्षण अपराधों का आरोप है तथा अभियुक्तगण द्वारा प्रश्नगत फर्जी आदेश प्राप्त नहीं किया गया है बल्कि अभियोजन के प्रपत्रों से उक्त आदेश राधेकृष्ण पाण्डेय द्वारा स्वयं चकबन्दी आयुक्त से प्राप्त करना पाया जाता है।”

Neither the applicant was arrayed as party in the aforesaid bail application nor he was present before the court and nor any opportunity of hearing has been afforded to him. Moreover, above finding was neither required nor desired for deciding the above referred bail application. In view of above, aforesaid finding is not sustainable in the eyes of law and is liable to be expunged.

Learned counsel for the applicant has placed reliance on the decision of Hon'ble Apex Court in **Satish Jaggi Vs. State of Chattisgarh and others [2007 (11) SCC 195]**, where in paragraph no. 2, the Court observed as under :

"2. Normally in the offence of non-bailable also, bail can be granted if the facts and circumstances so demand. He has already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the Court can only go into the question of the prima facie case established for granting bail, it cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

Learned A.G.A. opposed the prayer for quashing of the above portion from the bail order, but conceded that applicant was not party in the aforesaid bail application and above finding was not necessary for disposal of the Bail Application.

It is clear from the above referred arguments of learned counsel for the parties that above finding has been passed behind the back of the applicant without providing him any opportunity of hearing and it was not necessary for disposal of the bail application in question.

In view of the above, the application is allowed.

Above referred portion of the findings recorded by the court below (Annexure No.9) is hereby, expunged.

It is clarified that the rest portion of the order (Annexure No. 9) will remain intact and will not affected it in anyway by expunging of the above portion.

Order Date :- 25.8.2017

A. Mandhani/A. Verma