

Case :- APPLICATION U/S 482 No. - 11908 of 2019

Applicant :- Govind Singh @ Dara Singh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Kavita Tomar, Jai Raj Singh Tomar

Counsel for Opposite Party :- G.A.

Hon'ble Ajit Kumar, J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.

2. By means of this application U/s 482 Cr.P.C., applicant has prayed for quashing of the entire proceeding of Case No. 1590 of 2008, State v. Govind Singh @ Dara Singh, arising out of Case Crime No. 288 of 2008, under Sections 419, 420, 406 IPC, P.S. Mangalpur, District Kanpur Dehat.

3. At the very outset learned counsel for the applicant submits that applicant is ready to face the criminal proceedings at this stage, however, he wants that in case if the applicant surrenders/ appears pursuant to the charge sheet dated 24.08.2008 in question before the court below within certain period as may be prescribed by this Court, his bail application should be considered in accordance with the settled principles laid down by the Full Bench of this Court in the case of ***Amrawati and another Vs. State of U.P.*** reported in **2004 (57) ALR 290** as well as judgement passed by Hon'ble Apex Court reported in **2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh Vs. State of U.P.**

4. In the case of ***Amrawati (supra)*** seven Judges Full Bench of this Court was considering the issue regarding correctness of the judgment of five Judges Full Bench in the case of ***Dr. Vinod Narain v. State of U.P., 1995 (32) ACC 375*** wherein it had come to be observed "*once disclosure of cognizable offence is made, arrest of the accused or suspect is a "must" for there is no other known method by which he may be brought before the Court for trial. The words "if necessary" in Section 157 may at best make available a discretion to an Investigating Officer in a given case to defer arresting an accused or suspect if there is reasonable doubt about his identity. It is not possible to subscribe to the view that the word 'arrest' is made discretionary or that any other connotation may be extendable than what is noted in the preceding lines.*"

5. While referring various provisions contained in the Code of Criminal Procedure, 1973, the Full Bench took judicial notice

of the valuable rights of a citizen with regard to his liberty and any violation thereof without due process of law as amounting to breach of fundamental right guaranteed under Article 21 of the Constitution of India. In the concluding paragraph-47 of the judgment the Full Bench answered the question thus:-

"47. In view of the above we answer the questions referred to the Full Bench as follows:

(1) Even if cognizable offence is disclosed, in the FIR or complaint the arrest of the accused is not a must, rather the police officer should be guided by the decision of the Supreme Court in Joginder Kumar v. State of U.P., 1994 Cr LJ 1981 before deciding whether to make an arrest or not.

(2) The High Court should ordinarily not direct any Subordinate Court to decide the bail application the same day, as that would be interfering with the judicial discretion of the Court hearing the bail application. However, as stated above, when the bail application is under Section 437 Cr.P.C. ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application under Section 439 Cr.P.C. it is in the discretion of the learned Sessions Judge considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.

(3) The decision in Dr. Vinod Narain v. State of U.P. (supra) is incorrect and is substituted accordingly by this judgment."

(emphasis added)

6. The judgment in the case of **Amrawati** (*supra*) came to be considered by the Apex Court in the case of **Lal Kamendra Pratap Singh v. State of U.P., 2009 (3) ADJ 322 (SC)**. In the above case, the Court was dealing with not only quashing of the first information report but that too at the stage where charge sheet had already been submitted. However, approving the ratio of the judgment of the Full Bench of this Court in the case of **Amrawati** (*supra*) the Apex Court in its concluding paragraphs observed thus:-

"We fully agree with the view of the High in Amaravati's case (supra), and we direct that the said decision be followed by all Courts in U.P. in letter and spirit, particularly since the provision for anticipatory bail does not exist in U.P. In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation, as held by this Court in Joginder Kumar's case (supra). Also, arrest is not a must in all cases of cognizable offences, and in deciding whether to arrest or not the police officer must be guided and act according to the principles laid down in Joginder Kumar's case (supra).

Since, charge sheet has been filed and cognizance has been taken, and

on the facts of this case, in our opinion, this is not a fit case for quashing the first information report. The Appeal is dismissed, However, the appellant is granted time to appear before the trial Court on or before 15th April, 2009 and to file an application for bail. If such an application is filed, the trial Court shall consider the same on its own merits in accordance with law, and if it so deems fit, grant interim bail to the appellant pending the final disposal of his bail application.

Let a copy of this judgment be sent to the Registrar General of the Allahabad High Court who will circulate it to all Hon'ble Judges of the High Court and send copies to all District Judges in the State."

(emphasis added)

7. From the bare perusal of the judgment so passed by the Apex Court in the case of ***Lal Kamendra Pratap Singh*** (*supra*), it clearly transpires that the trial court shall have to consider the bail application on merit in accordance with law and keeping in view the observations made in the case of ***Amrawati*** (*supra*); and further in the light of guaranteed fundamental right under Article 21 of the Constitution, the trial Court is to consider the grant of interim bail if a person is to be sent to jail for pending final disposal of his bail application.

8. In view of the above since the applicant has undertaken through his Counsel that he intended to surrender to face the trial, it is hereby provided that in the event the applicant surrenders before the court concerned within 30 days from today, his bail application including interim bail application shall be considered in the light of the observations of the Apex Court in the case of ***Lal Kamendra Pratap Singh*** (*supra*).

9. Meanwhile, as one time measure for the undertaking given by the applicant, it is provided that for a period of 30 days from today no coercive measures shall be taken against the applicant pursuant to the Case No. 1590 of 2008, State v. Govind Singh @ Dara Singh, arising out of Case Crime No. 288 of 2008, under Sections 419, 420, 406 IPC, P.S. Mangalpur, District Kanpur Dehat.

10. This application, accordingly, stands **disposed of**.

Order Date :- 30.3.2019

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