

Court No. - 14

Case :- APPLICATION U/S 482 No. - 4202 of 2023

Applicant :- Habib And Others

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

Counsel for Applicant :- Amit Kumar Awasthi, Madhumay Misra

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Shri Amit Kumar Awasthi, learned counsel for the applicants, Shri Tilak Raj Singh, learned AGA for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicants **Habib, Saleem, Naieem and Guudu** with a prayer to quash the further proceedings of Case No. 8 of 2023 arising out of case crime no. 478/2021 under Sections 323/325/504/506/308 I.P.C., Police Station Pasgawan, District Kheri pending in the court of Additional Chief Judicial Magistrate-III, Lakhimpur Kheri, impugned chargesheet and cognizance/summoning order dated 23.12.2022.

The contention of the learned counsel for the applicants is that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

Per contra, the learned AGA has contended that from the allegations made in the complaint prima facie offence is made out against the applicants. The innocence of the applicants cannot be adjudged at the pre trial stage. Therefore, the applicants do not deserve any indulgence.

From the perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the applicants.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the

following cases:-(i) **R.P. Kapoor Vs. State of Punjab**, AIR 1960 S.C. 866, (ii) **State of Haryana Vs. Bhajanlal**, 1992 SCC (Cri.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Cri.)192 and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another**, (Para-10) 2005 SCC (Cri.)283.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar**, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the charge sheet, cognizance/summoning order and criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer made for quashing is refused. The applicants have ample opportunity to raise all the objections at the appropriate stage.

The Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773** was pleased to observe as under:-

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

"Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts.

Requisite Conditions

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the chargesheet (Siddharth v. State of UP, 2021 SCC OnLine SC 615)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits."

CATEGORY C

Same as Category B & D with the additional condition of

compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc.

4. Needless to say that the category A deals with both police cases and complaint cases.

5. The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions."

Thus, without commenting anything on the merits of the case the present application moved on behalf of the applicanta is finally **disposed of** in terms that the applicants may move an appropriate regular bail application under Section 439 Cr.P.C. before the trial court within 30 days from today and if such an application is moved within the period stipulated herein-before, the trial court shall be under an obligation to dispose of the same strictly, in accordance with the law as laid down by Hon'ble Supreme Court in **Satender Kumar Antil (supra)** after hearing the Public Prosecutor.

Order Date :- 28.4.2023

GSY