

Court No. - 16

Case :- APPLICATION U/S 482 No. - 2873 of 2024

Applicant :- Salamuddin Alias Islamuddin

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

Counsel for Applicant :- Shiv Pal Singh, Ambrish Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Shri Shiv Pal Singh, learned counsel for the applicant as well as the learned AGA for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicant, namely, Salamuddin alias Islamuddin, with a prayer to quash the Non Bailable Warrant order dated 22.2.2024 passed by the Court of learned Judicial Magistrate-I, Bahraich, in Case No. 3714 of 2020, State v. Jahiruddin & ors., arising out of Chargesheet No. A31/2020 dated 29.01.2020 in Case Crime No. 0024/2020, under Sections 323, 504, 325 I.P.C., Police Station Risia, District Bahraich.

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

Per contra, the learned A.G.A. has contended that from the allegations made in the FIR *prima facie* offence is made out against the applicant. The innocence of the applicant cannot be adjudged at the pre-trial stage. Therefore, the applicant does 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, *prima facie* it does not appear that no offence has been made out against the applicant.

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 (Crl.)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 continued. 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 non-bailable warrant/ 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 for quashing of non-bailable warrant is refused. There is no merit in this case. The applicant has ample opportunity to raise all the objections at the appropriate stage.

With the aforesaid observations, this application stands **disposed of**, however, the applicant is directed to appear and surrender before the court below and apply for bail within **6 weeks** from today, and his prayer for bail shall be considered expeditiously in accordance with law and as per law after hearing the Public Prosecutor.

(Shamim Ahmed, J.)

Order Date :- 29.3.2024

A.Nigam