

Waris Ali @ Sonu And Others vs State Of U.P. Thru. Prin. Secy. Home ... on 7 December, 2022

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 12

Case :- APPLICATION U/S 482 No. - 9080 of 2022

Applicant :- Waris Ali @ Sonu And Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Secrett. U.P. Lko. And Anot

Counsel for Applicant :- Pawan Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Heard Pawan Kumar Sharma, learned counsel for applicants as well as learned Additional Government Advocate for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicants namely Waris Ali @ Sonu, Haseena Begam and Mubarak Ahmad with the prayer to quash police report (charge sheet) dated 15.03.2021 filed in Case Crime No. 12 of 2021, under Sections 498-A 323, 504, 506 IPC and 3/4 Dowry Prohibition Act and 3/4 the Muslim Women (Protection of Right on Marriage) Act at Police Station Mahila Thana, District Gonda and summoning order dated 29.10.2021 and further proceeding in pursuance of summoning order vide Case No. 642 of 2021 (State Vs. Waris Ali and others), pending in the court of learned FTC (JD)-Ist, Gonda.

Learned counsel for the applicants submits that false F.I.R. was lodged against the applicants under Sections 498-A 323, 504, 506 IPC and 3/4 Dowry Prohibition Act and 3/4 the Muslim Women (Protection of Right on Marriage) Act, however, the allegations of the F.I.R. have not been investigated in right perspective and charge sheet has been filed. It is also submitted that the concerned magistrate has also not taken care to visualize that no offence is emerging against the

applicants and in a mechanical way, the magistrate has taken cognizance and had issued the process.

It is next submitted that all the offence, wherein the charge sheet has been filed, are punishable with upto 7 years of imprisonment and are covered by the law laid down by the Hon'ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and others* : (2021) 10 SCC 773, *Aman Preet Singh Vs. C.B.I. through Director* : 2021 SCC OnLine SC 941 and *Siddharth v. State of UP* : 2021 SCC OnLine SC 615, thus appropriate direction be given to the trial court for the purpose of expeditious disposal of the bail application, which may be moved by the applicants.

Learned A.G.A. on the other hand submits that in the F.I.R. as well as in the material collected during the course of investigation prima facie commission of cognizable offence is emerging, therefore, the application is not having substance so far as the prayer of quashment of the proceedings before the court below is concerned.

From the perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against applicant. All the submissions made at the bar, relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in proceedings under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in the cases of *R.P. Kapur Vs. State of Punjab*, A.I.R. 1960 S.C. 866, *State of Haryana Vs. Bhajan Lal*, 1992 SCC (Cr.) 426, *State of Bihar Vs. P.P.Sharma*, 1992 SCC (Cr.) 192, *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq*, another (Para-10) 2005 SCC (Cr.) 283, *Parabatbhai Ahir & Ors. Vs. State of Gujarat* AIR 2017 SC 4843 and lastly *State of Gujrat Vs Afroz Mohammed Hasanfatta* reported in MANU/SC/0139/2019.

Therefore, keeping in view the facts and circumstances of the case, the prayer for quashing the Charge-sheet, summoning order as well as all proceedings of the aforesaid case is hereby refused.

Hon'ble Supreme Court in the cases of *Hussain and Ors. Vs. Union of India (UOI) and Ors.* reported in MANU/SC/0274/2017, *In Re: To issue certain Guidelines Regarding inadequacies and deficiencies in Criminal Trials v. State of Andhra Pradesh and others*, MANU/SC/0292/2021 and *Satender Kumar Antil Vs. Central Bureau of Investigation and others* : (2021) 10 SCC 773 have given various directions to criminal Courts for expeditious disposal of Bail applications. The ratio of above mentioned decisions is quite clear that, in the backdrop of Article 21 of the Constitution of India as the personal liberty of a person is at stake, the bail applications should be decided, expeditiously.

Hon'ble Supreme Court in *Siddharth v. State of UP* : 2021 SCC OnLine SC 615 opined as follows:

"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed

non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

The Hon'ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and others* : (2021) 10 SCC 773 had held 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. (emphasis mine) 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."

The directions of Hon'ble Supreme Court in Satender Kumar Antil (supra) has been again reiterated in the recent judgement in Aman Preet Singh Vs. C.B.I. through Director : 2021 SCC OnLine SC 941 by the Hon'ble Supreme Court and it is held as under:

"9. In our view, the purport of Section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in Siddharth v. State of Uttar Pradesh (Criminal Appeal No. 838/2021), 2021 SCC OnLine SC 615). In fact we put to learned senior counsel whether he has come across any view taken by this Court qua the said provision. Learned counsel also refers to judgments of the High Court which we have referred to in that judgment while referring to some judicial pronouncements of this

Court on the general principles of bail. The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in Court on its own Motion v. Central Bureau of Investigation (2004) 72 DRJ 629 have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:

"26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.

Directions for Criminal Courts:

(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the chargesheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not

being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

XXXXXXXXXX"

10. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

11. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

The above mentioned law reports would reveal that the Hon'ble Supreme Court has chalked out a complete mechanism for the offences punishable with upto 7 years of imprisonment in the above *Satender Kumar Antil* (supra), *Aman Preet Singh* (supra) and *Siddharth* (supra) thus, without going into merits and demerits of the allegations and counter allegations of the parties, the instant application moved by the applicants is finally disposed of in terms that the applicants may move appropriate regular bail application 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 in accordance with the law mentioned herein-above.

It is further provided that the trial court shall also explore possibility of settlement of matrimonial discorded relations between the parties through the instrumentality of mediation after obtaining consent from the parties.

Order Date :- 7.12.2022 Muk