

# Anup Kumar Singh vs State Of U.P. And Another on 16 February, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Court No. - 52

Case :- APPLICATION U/S 482 No. - 4302 of 2023

Applicant :- Anup Kumar Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Bhriguram Ji, Ashutosh Kumar Nishad, Prabhat Kumar, Sandip Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Shiv Shanker Prasad, J.

1. This application under Section 482 Cr.P.C. has been preferred by the applicant for the following relief:

"PRAYER It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this application and quash the impugned order dated 05/01/2023 passed by District and Session Judge Mirzapur and cancelled the Anticipatory bail Application No. 529/2022 Surendra Kumar V/S Anup Kumar Singh in case crime no. 30/2021 U/S 419, 420, 467, 471 I.P.C., P.S.- Kotwali Katra, District Mirzapur, against the applicant and It is also restore the Anticipatory bail, which has already been granted vide dated 15/09/2022 in case crime no. 30/2021 U/S 419, 420, 467, 471 I.P.C., P.S.- Kotwali Katra, District- Mirzapur till the disposal of the Trial.

It is also prayed that this Hon'ble Court may kindly pleased to stay the further proceedings in case crime no. 30/2021 U/S 419, 420, 467, 471 I.P.C., P.S.- Kotwali

Katra, District- Mirzapur, otherwise applicant/petitioner suffer irreparable loss and injury, and/or pass such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

2. This case is classic example of how a person, who is an accused wastes the precious time of the High Court by filing petition/application one after another; concealing the material fact as well as avoiding the process of Court like non-bailable warrant, proceedings initiated under Section 82 Cr.P.C.

3. I have heard the learned counsel for the applicant and Mr. Jitendra Kumar Jaiswal, learned A.G.A. for the State.

#### CASE OF THE APPLICANT

4. Earlier the applicant has lodged a First Information Report dated 6th March, 2020 against the opposite party no 2 which came to be registered as Case Crime No. 53 of 2020 under Sections 419, 420, 468 & 471 I.P.C. Police Station- Kotwali Katra, District- Mirzapur, a copy of which has been enclosed as Annexure No.1 to the affidavit accompanying the present application.

5. As a counter blast to the aforesaid FIR, opposite party no. 2 lodge the First Information Report on 21st February, 2021 against the applicant which was registered as case crime no. 30 of 2021 under Sections 419, 420, 468 and 471 I.P.C., Police Station-Kotwali Katra, District- Mirzapur, a copy of which has been enclosed as Annexure No.2 to this affidavit.

6. After lodgement of the aforesaid FIR against the applicant, he moved an Anticipatory Bail Application No.1225 of 2021 which was rejected by the Sessions Judge Mirzapur vide dated 19.10.2021 by observing that no apprehension has been established in the bail application. Not being satisfied with the aforesaid order, the applicant moved an Anticipatory bail application No.4527/2022 before this Court. The said bail application has been dismissed as not pressed by this Court vide order dated 28th July, 2022. For ready reference, order dated 28th July, 2022 reads as follows:

"Heard Sri Pavan Kishore, learned counsel for the applicant, learned AGA and Sri Shailesh Pandey, learned counsel for the complainant.

At the very outset learned counsel for the applicant has submitted that he does not want to press this application as the applicant is willing to appear before the learned court below where the proceedings are pending consideration.

Accordingly, the present application is dismissed being not pressed.

Consigned to records."

7. After taking some time, the applicant filed second anticipatory bail application before court below on 2nd September, 2022, which was numbered as Anticipatory bail application No. 1558/2022. This second bail application was allowed by the court below vide order dated 15th September, 2022. After obtaining the said order, the applicant was following each and every condition as mentioned in the order of court below granting anticipatory bail to the applicant.

8. It is surprising that the informant/opposite party no.2 filed a bail cancellation application before court below on 8th November, 2022, which was not pressed by informant, whereafter again on 9th November, 2022, he filed second bail cancellation application Under Section 439 (2) Cr.P.C., which was registered as Bail Cancellation Application no.529 of 2022. The court below without going through the fact of the case and without following due procedure known to law has rejected the anticipatory bail application of the applicant vide order dated 5th January, 2023.

9. Learned counsel for the applicant submits that as per settled law, if an accused breaches any condition mentioned in the order granting anticipatory bail to him earlier, the court of law granting the same can reject the bail application under Section 439 Cr.P.C., while in the present case the applicant has not breached any of the conditions mentioned in the order dated 15th September, 2022 granted anticipatory bail to the applicant. In support of his case, learned counsel for the applicant has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of Daulat Ram and Others v. State of Haryana (1995) 1 SCC 349, State (Delhi Admn) v. Sanjay Gandhi (1978) 2 SCC 411, Kashmira Singh v. Duman Singh (1996) 4 SCC 693, CBI v. Subramani Gopalkrishnan (2011) 5 SCC 296, X v. State of Telangana. (2020) 16 SCC 511, wherein the Hon'ble Supreme Court has opined that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. It has further been opined that bail granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it conducive to allow fair trial. Learned counsel for the applicant, therefore, submits that the court below without following provisions of law has cancelled the anticipatory bail of the applicant, which is liable to be quashed.

10. On the cumulative strength of the aforesaid, learned counsel for the applicant submits that this Court may allow this application and quash the impugned order dated 5th January, 2023 passed by District and Session Judge Mirzapur cancelling the anticipatory bail application of the applicant and restore the order dated 15th September, 2022 granting anticipatory bail to the applicant.

#### CONCEALMENT OF MATERIAL FACT

11. Mr. Jitendra Kumar Jaiswal, learned A.G.A. has raised preliminary objection to the maintainability of the present application by submitting that this is the third applications filed by the applicant under Section 482 Cr.P.C. Earlier he has filed two applications under Section 482 Cr.P.C. being Application U/S Nos. 16846 of 2021 (Anoop Singh Vs. State) and 23322 of 2021 (Anoop Singh Vs. State of U.p. & Another) but he has concealed the said fact in the present application. In support of his plea, he has drawn attention of the Court to paragraph no.2 of the affidavit accompanying the present application. For ready reference the same is being quoted herein below:

"2. That this is a first Criminal Misc. Application (482) before this Hon'ble court and no any Cri. Writ Petition, Cri. Misc. application (482) is pending before this Hon'ble court or any other court or Lucknow Bench."

12. Learned A.G.A., therefore, submits that since the applicant has not approached this Court with clean hands by filing this third application under Section 482 Cr.P.C., it is liable to be dismissed with exemplary cost for concealment of material fact.

13. To the aforesaid submissions of the learned A.G.A., though the learned counsel for the applicant has placed the copies of the orders passed in the earlier two applications of the applicant before this Court, but on a pointed query made by this Court as to why he has concealed the material fact, he could not answer the same.

#### MAINTAINABILITY

14. Mr. Jitendra Kumar Jaiswal, learned A.G.A. has also raised preliminary objection to the maintainability of the present application by submitting that this is the third application filed by the applicant under Section 482 Cr.P.C. He, therefore, submits that successive applications under Section 482 Cr.P.C. cannot be entertained and this third application is liable to be rejected as not maintainable.

15. In reply, learned counsel for the applicant submits that it is no doubt true that this is the third application filed by the applicant under Section 482 Cr.P.C. but the same is not maintainable in view of the judgment and order of the Hon'ble Supreme Court in the case of Vinod Kumar, IAS vs. Union of India & Others in Writ Petition (s) (Criminal) No(s). 255 of 2021 decided on 29th June, 2021. The relevant portion of the said judgment has been referred by the learned counsel for the applicant, which is being quoted herein-below:

"The law on point as held by this Court in "Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh & Ors." reported in SCC (1975) 3 706 is clear that dismissal of an earlier 482 petition does not bar filing of subsequent petition under Section 482, in case the facts so justify."

WHETHER THE APPLICANT IS ENTITLED TO GRANT ANTICIPATORY BAIL WHEN AS A MATTER OF FACT NON-BAILABLE WARRANT AS WELL AS PROCEEDINGS UNDER SECTION 82 CR.P.C. HAVE BEEN INITIATED AGAINST HIM?

16. It is submitted by learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. It is further submitted that although proceedings under Section 82 Cr.P.C. have been initiated against the applicant yet no prima facie case is made out against the applicant. It is further submitted that mere issuance of non-bailable warrant and initiation of proceedings under Section 82 Cr.P.C. can be the basis for cancelling the anticipatory bail earlier granted to the applicant. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. In support of his case learned counsel for the

applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Dolat Ram & Ors. Vs. The State of Haryana reported in (1994) Spp. 6 S.C.R. It is also submitted that he has fully cooperated with the investigating agency. He was not arrested during investigation. It is further submitted that if applicant is allowed on anticipatory bail, he will cooperate with the Trial Court. There is no chance of him fleeing away from the Courts of law. There is no criminal history of the applicant. Applicant undertakes that he will not misuse the liberty and will cooperate. Applicant has apprehension of his arrest by the police any time.

17. On the other hand, learned A.G.A. opposed the prayer and argued that proceedings under Section 82 Cr.P.C. have been initiated against the applicant, as he did not appear before the court concerned despite service of summon/notice/bailable and non-bailable warrants is continuing till today. Applicant is not cooperating to the Court concerned. In support of his submissions, learned A.G.A. relied upon the law laid down by the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Pradeep Sharma reported in (2014) 2 SCC 171 and in the case of Prem Shanker Prasad Vs. State of Bihar reported in AIR OnLine 2021 SC 915 and further argued that applicant is not entitled to be released on anticipatory bail. A prima facie case is made out against him.

#### MERIT OF THE IMPUGNED ORDER CANCELLING THE ANTICIPATORY BAIL APPLICATION OF THE APPLICANT

18. Learned counsel for the applicant submits that since the order impugned passed by the court below in a mechanical manner, the same cannot be legally sustained and is hereby set aside and the order granting anticipatory bail to the applicant be restored.

19. Per contra, learned A.G.A. submits that while passing the impugned order the court below has recorded categorical finding fact, as such there is no illegality or infirmity in the same.

20. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present application including the order impugned.

21. Now this Court comes on the issue of maintainability of this application under Section 482 Cr.P.C. It is no doubt true that this is the third application under Section 482 Cr.P.C. which has been filed by the applicant but from the perusal of the orders of this Court dated 21st September, 2021 and dated 5th May, 2022 passed in the first and second applications under Section 482 Cr.P.C. filed by the applicant bearing Nos. Application U/S 482 Cr.P.C. No. 16846 of 2021 (Anoop Singh Vs. State of U.P. & Another) and Application U/S 482 Cr.P.C. No. 23322 of 2022 (Anoop Singh Vs. State of U.P. & Another), copies of which have been placed before this Court today.

22. Perusal of the order dated 21st September, 2021 passed in first application being Application U/S 482 Cr.P.C. No. 16846 of 2021 (Anoop Singh Vs. State of U.P. & Another) indicates that applicant has challenged the order dated 26th October, 2021 issuing non-bailable warrant against the applicant passed in the aforesaid criminal case, whereas from the order dated 5th May, 2022 it is clear that the applicant has challenged the charge sheet dated 15.03.2021 as well as entire proceedings of Case No. 1085 of 2021, arising out of Case Crime No. 30 of 2021, under Section 419,

420, 468, 471 of I.P.C., P.S. Kotwali Katra, District Mirzapur, pending in the court of Chief Judicial Magistrate, Mirzapur with a further prayer to stay further proceeding in the aforesaid case. In the present applicant i.e. third application, the applicant has challenged the order dated 5th January, 2023 cancelling the anticipatory bail earlier granted to the applicant.

23. It would be worthwhile to reproduce orders 21st September, 2021 and dated 5th May, 2022 passed by this Court in the first and second application under Section 482 Cr.P.C. by the applicant, which read as follows:

Order dated 21st September, 2021:

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed with a prayer to quash the charge sheet dated 15.03.2021 as well as entire proceedings of Case No. 1085 of 2021, arising out of Case Crime No. 30 of 2021, under Section 419, 420, 468, 471 of I.P.C., P.S. Kotwali Katra, District Mirzapur, pending in the court of Chief Judicial Magistrate, Mirzapur with a further prayer to stay further proceeding in the aforesaid case.

Learned counsel for the applicant submitted that the First Information Report was lodged at the instance of the private respondent against the applicant, is wholly illegal, concocted and has been lodged with false and baseless averments. The opposite party no. 2 is a person of criminal intent and a large number of criminal cases are pending against him and he had initiated the present malicious proceedings against the applicant as a counter blast to the criminal case lodged by applicant on 06.03.2020 against him which has been registered at Crime No. 53 of 2020, under Section 419, 420, 468, 471 I.P.C., P.S. Kotwali Katra, District Mirzapur. No offence is made out against the applicant and private respondent no. 2 has no locus-standi to lodge the F.I.R. The applicant has no criminal antecedents, hence, this application.

Per contra, learned A.G.A. vehemently opposed the above submission.

Perusal of the record reveals that an F.I.R. was lodged by Surendra Kumar Singh on 21.02.2021 at P.S. Kotwali Katra, District Mirzapur, under Section 419, 420, 468, 471 of I.P.C. After investigation, the police submitted the charge sheet against the applicant and found offences under Section 419, 420, 468, 471 of I.P.C. proved. In the charge sheet, it has been stated that the applicant Anoop Kumar has mentioned different dates of birth at different places. At one place his date of year mentioned as 1969 and at other place, it is mentioned as 1975. He obtained two Arm Licenses. It has also been stated that there is contradiction with regard to date of birth in the affidavit and application.

In M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others, 2020 SCC Online SC 850, the Hon'ble Apex Court has held as under:

"iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare case (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule."

Following other authorities can be cited on the aforesaid point: R. P. Kapur vs. The State Of Punjab, AIR 1960 SC 866, State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604, State of Bihar and Anr. Vs. P.P. Sharma, AIR 1991 SC 1260 lastly Zandu Pharmaceutical Works Ltd. and Ors. Vs. Md. Sharaful Haque and Ors., AIR 2005 SC 9.

All the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in proceedings u/s 482 Cr.P.C. This Court cannot embark upon the factual enquiry as to the truthfulness of statement of witnesses in proceedings under Section 482 Cr.P.C.

Learned counsel for the applicant relied upon the judgment passed by Hon'ble Apex Court in Mohammed Ibrahim and others v. State of Bihar and another, (2009) 3 SCC (Cri) 929.

have gone through the aforesaid citation, the facts of this case are totally different from the aforesaid case, hence, the relief cannot be granted in view of the aforesaid authority.

In view of the above, I am of the considered opinion that the Application U/s 482 Cr.P.C. is not maintainable in the present case.

Accordingly, the prayer for quashing the proceedings is refused.

This application U/s 482 Cr.P.C. is hereby, dismissed."

Order dated 5th May, 2022:

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24. From perusal of the aforesaid three prayer made in all the three applications filed by the applicant under Section 482 Cr.P.C., it is apparently clear that all the three applications have been filed for different cause of action and on different facts.

25. The Hon'ble Supreme Court of India in the case of Anil Khadiwala Vs. State Govt. of NCT of Delhi reported in 2019 (17) SC 1002, relying upon the earlier judgment of the Hon'ble Surpeme Court in the case of Superintendent And Remembrancer Vs. Mohan Singh And Ors. reported in AIR 1975 SC 1002 has opined that successive application under Section 482 Cr.P.C. under the changed circumstances is maintainable. Relevant portion whereof is being quoted herein-below:

"8. In Mohan Singh (supra), it was held that a successive application under Section 482 . under changed circumstances was maintainable and the dismissal of the earlier application was no bar to the same, observing:

"2. .... Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561-A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding.

It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the



respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years....."

26. From the aforesaid legal positions, this Court finds substance in the submission made by the learned counsel for the applicant and holds that this third application filed by the applicant for the different relief as also under the changed circumstances is maintainable

27. So far as the preliminary objection raised by the learned A.G.A. for the State qua the concealment of fact in filing the present application, is concerned, this Court may record that in paragraph-2 of the affidavit accompanying the present application, it has specifically been stated that "this is a first criminal misc. application (482) before this Court Hon'ble Court," when as matter of fact the applicant has earlier filed two applications giving rise to the same criminal case. For the reasons best known to the applicant, he has concealed the aforesaid fact while filing the present third application under Section 482 Cr.P.C., meaning thereby that the applicant has not approached this Court with clean hands, which amounts to interference with the administration of justice.

28. In *M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr.*, reported in AIR 1970 SC 898; *State of Haryana Vs. Karnal Distillery* reported in AIR 1977 SC 781; and *Sabia Khan & Ors. Vs. State of U.P. & Ors.* reported in (1999) 1 SCC 271, the Hon'ble Supreme Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court.

29. In *Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors.*, reported in AIR 1996 SC 1947, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in *King Vs. General Commissioner*, reported in (1917) 1 KB 486, wherein it has been observed as under:-

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....."

30. In Abdul Rahman Vs. Prasony Bai & Anr., AIR 2003 SC 718; and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., reported in (2004) 7 SCC 166, the Hon'ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that had it not been suppressed, it would have led any fact on the merit of the case.

31. In K.D. Sharma vs. SAIL, reported in (2008) 12 SCC 481, the Apex Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same law was reiterated in G. Jayashree vs. Bhagwandas S. Patel reported in (2009) 3 SCC 141.

32. The Hon'ble Supreme Court of India has repeatedly held that filing of false affidavit and concealment of material facts amounts to interference in the administration of justice and as such is criminal contempt of Court. In Dhananjay Sharma versus State of Haryana & ors., reported in AIR 1995 SC 1795, wherein in paragraphs 39 and 40, the Apex Court has held as follows:

"39. The question, therefore, which now requires our consideration is as to what action, is required to be taken against the respondents.

40. Section 2 (c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any Court: (2) prejudice or interfere or tend to interfere.....Thus, any conduct, which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt.  
....."

33. The Apex Court in the case of Sunkara Lakshminarasamma & Anr. Versus Sagi Subba Raju & Ors. reported in (2009) 7 SCC 460 held that filing of false affidavit knowingly is a contempt and exemplary cost be imposed.

34. In Afzal & Anr. Versus State of Haryana & Ors., reported in JT 1996 (1) SC 328, the Apex Court in paragraph-32 has held as follows:

"32. The question then is: whether he committed contempt in the proceedings of this Court? Section 2 (b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the

administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. ...."

35. In *Dhananjay Sharma vs. State of Haryana & others* reported AIR 1995 SC 1795, in paragraph-40 the Supreme Court has held as follows:

"40. ....Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. ...."

36. In *Sabia Khan & Ors. Vs. State of U.P. & Ors.*, (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

37. In view of the aforesaid, this Court finds substance in the submission made by the learned A.G.A. for the State that this Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant like the applicant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. In the case in hand, the applicant has concealed the material fact by filing this third application and he has not approached this Court with clean hands, his application is not only liable to be rejected on this ground alone but also the applicant should be punished with exemplary cost.

38. Qua the submission raised by the learned A.G.A. that since the proceedings under Section 82 Cr.P.C. have been initiated against the applicant, his anticipatory bail application cannot be entertained, this Court also find substance in it.

39. In *Lavesh Vs. State of (NCT of Delhi)* reported in (2012) 8 SCC 730, the Hon'ble Supreme Court has considered the scope of granting relief under Section 428 Cr.P.C. vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of 82 Cr.P.C. In para 12, the Hon'ble Supreme Court has held as under:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail." It is clear

from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case in hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under Section 82 of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Section 302 and 120-B read with Section 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail."

40. In State of Madhya Pradesh Vs. Pradeep Sharma as well as in the case of Prem Shanker Prasad Vs. State of Bihar (Supra), the Hon'ble Supreme Court relying upon the judgment of the Hon'ble Supreme Court in the case of Lavesha (Supra) has held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

41 From the aforesaid legal positions as settled by the Hon'ble Supreme Court, this Court holds that the applicant against whom proceedings 82 Cr.P.C. have been initiated by the court below after issuance of summons/bailable warrant/non-bailable warrant is not entitled to grant anticipatory bail. Anticipatory bail filed by such person is not maintainable as also the same cannot be entertained by this Court in exercise of powers under Section 482 Cr.P.C.

42. Lastly, this Court comes on the merit of the order impugned. While passing the order impugned the court below has recorded that though the fact has been mentioned in the second anticipatory bail application before the court below that the first anticipatory bail application was rejected due to non-mentioning of "apprehension to arrest", but after that before the Hon'ble High Court, the applicant has withdrawn his anticipatory bail application stating that applicant/accused is willing to appear before the lower court and this fact has not been mentioned in the anticipatory second bail application filed before the court below. The fact that he has obtained 15 days protection from the

Hon'ble High Court, when non-bailable warrant has been issued against him, on the assurance that he shall appear before the court below on the due date, has also not been mentioned in the second anticipatory bail application. The court below has further recorded that above facts should have been mentioned in the second anticipatory bail application which has been allowed by the said court. The fact that the first anticipatory bail application was rejected only because apprehension to arrest was not recorded. The court below has also recorded that the first anticipatory bail application was rejected by that court on 19th October, 2021 on the basis of non-apprehension to arrest. Thereafter, the second anticipatory bail application was not presented before that Court but before the Hon'ble High Court, by means of Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 4527/2022. From perusal of the numbers of the first anticipatory bail application filed before the court below as well as from the anticipatory bail application filed before this Court, it is clear that the anticipatory bail application was presented before the Hon'ble High Court in the year 2022 while the first anticipatory bail application was rejected by that court below on 19.10.2021. Therefore, the court below has opined that either the applicant/accused should have appeared before the learned lower court according to his own statement recorded in the order of this Court or the second anticipatory bail application should have been presented before the Hon'ble High Court, again, where his first anticipatory bail application was rejected due to his non-coercion. Since the statements regarding the submission of the anticipatory bail application before the Hon'ble High Court were material statements in the facts and circumstances of this case, which were not mentioned in the bail application, the court below has come to the conclusion that not mentioning in the second anticipatory bail application was omission/concealment of material facts. On the basis of the aforesaid findings, the court below has passed the order impugned cancelling the anticipatory bail granted earlier to the applicant.

43. On examination of the order impugned, this Court finds that the court below has recorded categorical finding of fact and has rightly cancelled the anticipatory bail granted earlier to the applicant, which warrants no interference by this Court in exercise of powers under Section 482 Cr.P.C., as there is no illegality or infirmity in it.

44. In view of the deliberations and discussions made above, this Court holds that a accused-applicant who conceals facts and files a false affidavit in the High Court and who has made a mockery of the orders of the lower court by avoiding process of summon, bailable warrant, non-bailable warrant and the proceedings under Section 82 Cr.P.C. is not entitled to get leniency, mercy and justice in any way and that too from the Court which exercises inherent power under Section 482 Cr.P.C.

45. Accordingly, the present application is dismissed with cost of Rs. 10,000/- to be paid by the applicant to the High Court Legal Services Authority, Allahabad within a month from today. In case of default, the same shall be recovered by the District Magistrate, Mirzapur from his arrears of land revenue.

46. A copy of this order shall be given to the learned A.G.A. who shall communicate the District Magistrate, Mirzapur for necessary compliance of this order.

(Shiv Shanker Prasad, J.) Order Date :- 16.2.2023 Sushil/-