

Pradeep Kumar Singh vs State Of U.P. And Others on 2 April, 2010

Court No. - 49

Case :- APPLICATION U/S 482 No. - 9996 of 2010

Petitioner :- Pradeep Kumar Singh
Respondent :- State Of U.P. And Others
Petitioner Counsel :- Rakesh Kr. Soni
Respondent Counsel :- Govt. Advocate

Hon'ble Rajesh Dayal Khare,J.

Heard learned counsel for the applicant, Sri V. P. Pandey holding brief of Sri H. P. Dubey, learned counsel, who has put in appearance on behalf of opposite party no. 3 and learned AGA for the State-respondent.

The present 482 application has been filed for quashing of the chargesheet dated 11.12.2008 filed in case no. 1667 of 2008 under section 135 of Electricity Act, pending before the Additional Sessions Judge, Electricity Act, Bareilly.

Learned counsel for the applicant has contended that he has already deposited the amount of Rs.20,000/- pursuant to the earlier order of this Court dated 5.12.2008 passed in Criminal Misc. Writ Petition No. 21946 of 2008, copy of which has been filed as Annexure-3 to the accompanying affidavit. Therefore the filing of the chargesheet is bad in law.

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 the applicants. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court 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 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 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge under Section 239, 245(2) or 227/228, Cr.P.C. as the case may through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

The prayer for quashing the chargesheet is refused.

However, in the recent decision of the Supreme Court dated 23.03.2009 in Criminal Appeal No. 538 of 2009, *Lal Kamendra Pratap Singh v. State of U.P.*, which has been directed to be circulated in the High Court and in subordinate Courts in U.P., it has been observed that in appropriate cases the Court concerned may consider releasing an accused on interim bail, pending consideration of his regular bail, and that arrest was not a must in each case when an First Information Report /Complaint was lodged.

The Full Bench of the Allahabad High Court in *Amrawati v. State of U.P.*, 2005 Cri. L.J. 755 has been specifically approved in this decision. In this regard the Full Bench has held in *Amarawati*:

1. Even if a 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.L.J. 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.

In the light of the aforesaid observations of the Apex Court in *Lal Kamendra Pratap Singh v. State of U.P.* and the observations of the Full Bench of this Court in *Amarawati* it is provided that if an application is moved before the competent Magistrate within 3 weeks, a date may be fixed for appearance of the applicant in about a week thereafter. The applicant may not be arrested without permission of the Magistrate between the date of moving of the application for surrender and the date fixed for his appearance in the Court. In the meantime the concerned Court may ask the prosecution to obtain instructions from the Investigating Officer and thereafter dispose of the bail application at the earliest in accordance with the decision in *Amrawati's* case. It will also be open for the Court concerned to release the applicant on interim bail in an appropriate case on such terms and conditions that the concerned Court deems fit and proper till the next date of hearing of the bail application, if the hearing of the case is adjourned or the Court for any reason is not in a position to finally dispose of the bail application on that day, or some further instructions are needed.

It is made clear that the order granting interim bail pending hearing of a regular bail application may be passed in appropriate cases, but the powers ought not to be exercised where;

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror

stricken victims and society at large and for protecting witnesses.

- (ii) The case involves an offence under the U.P. Gangsters Act and in similar statutory provisions.
- (iii) The accused is likely to abscond and evade the processes of law.
- (iv) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- (v) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.
- (vi) The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/Competent Court feels that it is not a fit case for releasing the appellant on interim bail pending the hearing of the regular bail.
- (vii) An order of interim bail can also not be passed by a Magistrate who is not empowered to grant regular bail in offences punishable with death or imprisonment for life or under the other circumstances enumerated in Section 437 Cr.P.C.
- (viii) If the Public Prosecutor/ Investigating Officer can satisfy the Magistrate/Court concerned that there is a bonafide need for custodial interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate order.

These directions are necessary as the need to grant plenary powers to the police to investigate and unravel the circumstances of a crime are as important as the need to protect a respectable person from being unnecessarily sent to jail or for restraining the police from taking persons in custody for minor isolated offences where it may strictly not be necessary for the police to arrest an accused at the stage of investigation.

With these observations the application is disposed of. Order Date :- 2.4.2010 yachna/-