

Court No. - 66

Case :- APPLICATION U/S 482 No. - 25838 of 2022

Applicant :- Abbas Ansari And Another

Opposite Party :- State Of U.P.And 2 Others

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

List revised.

Sri Upendra Upadhyay, learned counsel for the applicants and Sri Ratnendu Kumar Singh, learned counsel for the State are present.

On 06.09.2022 the following order was passed:-

"Heard Sri Upendra Upadhyay, learned counsel for the applicants and Sri Ratnendu Kumar Singh, learned counsel for the State.

Learned State counsel prays for two days' time to seek instructions in the matter. Prayer is allowed.

List on 9.9.2022 as fresh."

On 15.09.2022 the following order was passed:-

"Sri Upendra Upadhyay, learned counsel for the applicants and Sri Ratnendu Kumar Singh, learned counsel for the State are present.

Learned counsel for the State states that the applicant no.1 has a criminal history which has not been disclosed in the affidavit and the averment in para 9 of the affidavit is vague. He prays for and is granted two weeks time to file counter affidavit. One week, thereafter to file rejoinder affidavit.

List on 14.10.2022."

Today when the matter was taken up learned counsel for the State states that due to some difficulty the counter affidavit could not be prepared and as such prays for 10 days time again to file the same.

Learned counsel for the applicants seriously opposes the same and states that the matter has been lingering on since 06.09.2022 and initially learned counsel for the State was granted time to seek instructions after which he was granted time to file counter affidavit but there is no counter affidavit filed and in the meantime, the Investigating Officer has applied for issuance of non-bailable warrant against the applicants. He states that as such the interest of the applicants be protected as the applicants are pursuing the remedy available to them at this

stage by filing the present petition and as the State has not filed any counter affidavit even after about a month of the order directing to file the same. Learned counsel for the applicants states that it is only because of the inaction of the State before this Court the case is not being heard.

It is about a month since time has been granted to the learned counsel for the State to file counter affidavit but no counter affidavit has been filed and further prayer for time is being prayed for the same. If this is so then the applicants surely need some protection.

Till the next date of listing, the order dated 23.05.2022 passed by the Special Judge (M.P./M.L.A.) Court / Additional Chief Judicial Magistrate (Senior Division), Mau, shall remained stayed.

Let the matter be listed on 22.11.2022 within the first five cases.

This order has been passed only because of the inaction of the State of not filing any counter affidavit.

Order Date :- 14.10.2022

AS Rathore

(Samit Gopal,J.)