

Court No. - 87

Case :- APPLICATION U/S 482 No. - 18987 of 2022

Applicant :- Dr. Ashish Mittal

Opposite Party :- State of U.P.

Counsel for Applicant :- Anjali Singh

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash Tripathi,J.

1. Heard Ms. Anjali Singh, learned counsel for the applicant and Sri Vinod Kant, learned AAG assisted by Sri Bhaiya Ghanshyam Singh and Sri Amit Kumar Singh, learned A.G.A. for the State.

2. The present application has been preferred to quash the NBW dated 18.06.2022 passed by the learned In-charge Additional Chief Judicial Magistrate, Court No.7, Allahabad in Case Crime No.0118 of 2022 under Sections 143, 144, 145, 147, 148, 149, 153-A, 153-B, 295-A, 201, 511, 307, 332, 333, 353, 395, 435, 436, 427, 504, 505(2), 506, 120-B IPC, Section 4/5 of the Explosive Substance Act, Section 7 of Criminal Law Amendment Act, Section 83 of Juvenile Justice (Care and Protection of Children) Act, Section 3/4 Prevention of Damage to Public Property Act, Police Station- Khuldabad, District-Prayagraj.

3. It is submitted by learned counsel for the applicant that applicant is MBBS doctor, previously he was posted in AIIMS and thereafter, doing practice in Allahabad and works for improvement in Medical Education and Research System. In 1982-1986, applicant was president of the All India Medical Students Association and All India Junior Doctor Federation. Applicant is also doing social work and at present he is the National General Secretary of Akhil Bhartiya Kisan Mazdoor Sabha. Applicant has no concern with the mob activity as alleged in the FIR and applicant was served with a Challan Notice No. NIL of 2022 under Sections 107/116 CrPC on 09.06.2022 pursuant thereto, on 10.06.2022, applicant was present in Court from 10:00 am to 04:00 pm, since the Presiding Officer i.e. ACJM II himself was not present as he was on duty in riot area in Kareilly Atala. Applicant has given security and bonds to Rs.10,00,000/- which was duly filled and signed by the applicant. The genesis of the dispute as per the allegations in the FIR started from *masjid*, when the followers of a particular religion had assembled to offer *namaz* and immediately thereafter, with a preconceived mind, has started a violent protest, raised slogans against a particular religion.

Applicant does not belong to the said community and he had not attended the assembly. FIR has been lodged against seventy persons named and five thousand unknown persons. Learned counsel for the applicant has placed reliance upon the order passed by a Co-ordinate Bench of this Court vide order dated 05.04.2019 passed in Application U/s482 No.12091 of 2019. Perused impugned order by which ACJM, Court No.7 Allahabad issued non-bailable warrant against the applicant during investigation.

Learned counsel for the applicant has also placed reliance upon law laid down by Hon'ble Apex Court in **State through CBI vs. Dawood Ibrahim Kaskar & Ors. (2000) 10 SCC 438**, in which the Apex Court has held that the Magistrate has power to issue warrant during investigation also, but such power can be exercised for securing appearance of the accused in court alone, and not for aid of the police in investigation. He has submitted that the order impugned in this application was passed to secure appearance of the applicant before police during investigation, and not before the court.

4. Notice on behalf of opposite party no. 1 has been accepted by learned A.G.A. Issue notice to opposite party no.2 returnable at an early date. Applicant is a person against whom five thousand prize has been declared by police.

5. Opposite party may file counter affidavits within two weeks. Rejoinder affidavit may be filed within one week, thereafter.

6. List this case on 22.08.2022 as fresh before appropriate Bench.

7. Only till then, no coercive action shall be taken against the applicant subject to the condition that applicant shall cooperate with the police investigation.

8. The case shall not be treated as tied up or part heard to this Bench.

Order Date :- 29.7.2022

Sharad/-