A.F.R.

Reserved on 05.01.2023

Delivered on 16.01.2023

Court No.-46

Case:- CRIMINAL MISC. WRIT PETITION No.-14344/2022

Petitioner :- Nafisa And 4 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ajatshatru Pandey

Counsel for Respondent :- G.A.,Kamlesh Kumar Tiwari,Manoj Kumar Srivastava

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Gajendra Kumar,J.

(Per- Hon'ble Gajendra Kumar,J.)

1. At the very outset, learned counsel for the petitioners states that he does not propose to file any rejoinder affidavit in response to the counter affidavit filed by the respondents.

2. Heard Sri Ajatshatru Pandey, learned counsel for the petitioners and learned counsel for the State-respondents.

3. The instant petition has been filed on behalf of the petitioners with a prayer to quash the FIR dated 07.08.2022 giving rise to Case Crime No.0582 of 2022, under Sections 384, 420, 195, 506, 120-B, 211 IPC, Police Station-Cantt., District-Gorakhpur as well as not to arrest the petitioners in pursuance of the impugned FIR.

4. Prosecution story in brief is as follows:

Petitioner no.1 (Nafisa) is leading a Gang as "Nafisa Gang" and in her team, there are five other members (co-accused)

namely, Bindrawati (petitioner no.2), Soni (named accused in the impugned FIR), Aarti (petitioner no.3), Indrawati (petitioner no.4) and Tara Chauhan (petitioner no.5) are the Members of the said Gang and the aforesaid gang is being guided/protected by co-accused, namely, Madhav Tiwari, Advocate (named accused in the impugned FIR). It has further been alleged that aforesaid Gang is involved in filing the several vague Applications under Section 156(3) Cr.P.C./complaint cases as well as FIRs regarding gang rape and various Sections of IPC & SC/ST Act against several innocent persons and by lodging the same, they used to abstract money.

5. Learned counsel for the petitioners submitted that they are innocent and have been falsely implicated in the present case due to ulterior motive. Instant case is nothing but a counter-blast of earlier cases, lodged by the petitioners at various point of time against respondent no.4 and other accused persons and only with a view to mount pressure upon the petitioners and compromise in the earlier matters, present FIR has been lodged. Even in an Application under Section 156(3) Cr.P.C. moved by the petitioner no.1 against respondent no.4/informant (Khalid @ Jiaurrahman) and others regarding an incident, which is said to have taken place on 04.09.2016 at 10:00 a.m., as the aforesaid accused persons were pressurising upon the petitioner no.1 to compromise the aforesaid case, and when she denied the same, then all the accused persons (respondent no.4 and other co-accused persons) entered inside her house forcibly and brutally beaten her with '*lathi-danda*' and tore her clothes, due to which, she received grievous injuries. The said application was treated as complaint case on

05.01.2017, and, thereafter, statements of the witnesses under Section 200 and under Section 202 Cr.P.C. were recorded and the accused persons including the informant were summoned by the court below on 28.08.2019. Respondent no.4/informant and his associates are persons of criminal in nature and on several occasions, they had committed serious crime, for which, FIRs had been lodged by the petitioners against them. Petitioners allege false implication. Petitioners never tried to blackmail any person and there is no gang as has been alleged by the respondent no.4 in the impugned FIR. There is no cogent evidence available on record against the petitioners so as to implicate them in the present case.

6. Per contra, learned counsel for the respondents vehemently opposed the contentions aforesaid and submitted that petition itself is not maintainable under Article 226 of the Constitution of India. It is pointed out that the conduct of the petitioners is required to be seen in the present matter. It has further submitted that informant/respondent no.4 has been falsely implicated by the petitioners in several cases as has been narrated in the memo of the writ petition and even in one case registered as Case Crime No.182 of 2016, Final Report has also been submitted by the Investigating Officer concerned, thereafter, a protest petition was filed by the petitioner no.1 and the said protest petition was allowed and Final Report bearing No.146 of 2017 was rejected by the court below and the same was treated as a complaint case on 03.03.2020. Thereafter, the court below had summoned the informant/respondent no.4 and other accused persons under Sections 376-D and 506 IPC. Against the summoning order, they (respondents in the present case)

had filed Criminal Misc. Application U/S 482 No.28592 of 2022 (Shahnaj Ansari and 3 Others Vs. State of U.P. and another), in which, interim protection was granted to them by the learned Single Judge vide order dated 10.10.2022.

7. Learned counsel for the respondents has further submitted that investigation is yet to be carried out in the matter. At this stage, it cannot be ascertained whether the authorities are filing a charge sheet against the petitioners or closure report is being submitted. Issuance of direction for taking no coercive action is also not permissible in view of the law laid down by the Hon'ble Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others; 2021 SCC Online SC 315** as well as in the case of **State of Telangana Vs. Habib Abdullah Jeelani; (2017) 2 SCC 779**, wherein the Hon'ble Supreme Court has highly condemned the issuance of directions by the High Courts in a casual manner. It is submitted that the statutory provisions are available and the petitioners should adhere to the statutory provisions available to him under law and should have at least filed an application for grant of anticipatory bail under Section 438 of Cr.P.C. Without even approaching the competent Courts for availing the remedy of anticipatory bail, he has directly filed this petition under Article 226 of the Constitution of India. There are statutory provisions under Section 482 of Cr.P.C. for seeking for quashment of an FIR. Bypassing the abovenoted statutory provisions, this petition under Article 226 of the Constitution of India has been filed seeking quashment of the proceedings along with an FIR which is not permissible under the law. It has further submitted that petitioners are involved in filing of such types of FIRs as well as complaint cases against the innocent

persons for raising the illegal demands and are running a Gang in the name of "Nafisa Gang" with the help of one Madhav Tiwari, Advocate. As such, the grounds taken therein by the counsel for the petitioners are not sustainable in the eyes of law and petition is liable to be dismissed.

7. Considering the facts and circumstances of the case and having heard learned counsel for the parties and after perusal of the aforesaid dictum by the Hon'ble Supreme Court, it is apparently clear that no such orders for not arresting or not taking any coercive action can be passed in the pending investigation into the matter. The petitioners are having a remedy to approach the concerning Courts by filing an anticipatory bail application under Section 438 of Cr.P.C. and, thereafter, can take a recourse under Section 482 of Cr.P.C. wherein the High Court is having an inherent power for quashment of FIR but in the present case without following the dictum of the Hon'ble Supreme Court, instant petition under Article 226 of the Constitution of India has been filed seeking quashment of FIR as well as staying the arrest of the petitioners, alleging that the petitioners are unnecessarily being harassed. However, the fact remains that bare perusal of the FIR which has been registered against the petitioners prima facie makes out a cognizable case for which investigation is required in the matter.

16. The issuance of such orders by High Court was taken into consideration by the Supreme Court in the case of Habib Abdullah Jeelani **(supra)** and was again taken note of by the Hon'ble Supreme Court in the case of Neeharika **(supra)** which reads as under :-

"67. This Court in the case of Habib Abdullah Jeelani ***(supra)****, as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr.P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr.P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr.P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.*

68. In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 Cr.P.C. to the effect that if the petitioner-accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are de hors the powers conferred under Section 438 Cr.P.C. That thereafter, this Court in paragraph 25 has observed as under:

"25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mind that the culture of adjudication is stabilised when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."

69. We are at pains to note that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra), deprecating such orders passed by the High Courts of not to arrest during the pendency of the investigation, even when the quashing petitions under Section 482 Cr.P.C. or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts

are passing such 15 orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.

70. In the recent decision of this Court in the case of Ravuri Krishna Murthy (supra), this bench set aside the similar order passed by the Andhra Pradesh High Court of granting a blanket order of protection from arrest, even after coming to the conclusion that no case for quashing was established. The High Court while disposing of the quashing petition and while refusing to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C. directed to complete the investigation into the crime without arresting the second petitioner - A2 and file a final report, if any, in accordance with law. The High Court also further passed an order that the second petitioner - A2 to appear before the investigating agency as and when required and cooperate with the investigating agency. After considering the decision of this Court in the case of Habib Abdullah Jeelani (supra), this Court set aside the order passed by the High Court restraining the investigating officer from arresting the second accused.

71. Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C, as

observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India.

72. Now so far as the legality of the impugned interim order passed by the High Court directing the investigating agency/police "not to adopt any coercive steps" against the accused is concerned, for the reasons stated hereinbelow, the same is unsustainable:

(i) that such a blanket interim order passed by the High Court affects the powers of the investigating agency to investigate into the cognizable offences, which otherwise is a statutory right/duty of the police under the relevant provisions of the Cr.P.C.;

(ii) that the interim order is a cryptic order;

(iii) that no reasons whatsoever have been assigned by the High Court, while passing such a blanket order of "no coercive steps to be adopted" by the police;

(iv) that it is not clear what the High Court meant by passing the order of "not to adopt any coercive steps", as it is clear from the impugned interim order that it was brought to the notice of the High Court that so far as the accused are concerned, they are already protected by the interim protection granted by the learned Sessions Court, and therefore there was no further reason and/or justification for the High Court to pass such an interim order of "no coercive steps to be adopted". If the High Court meant by passing such an interim order of "no coercive steps" directing the investigating agency/police not to further investigate, in that case, such a blanket order without assigning any reasons whatsoever and without even permitting the investigating agency to further investigate into the allegations of the cognizable offence is otherwise unsustainable. It has affected the right of the investigating agency to investigate into the cognizable offences. While passing such a blanket order, the High Court has not indicated any reasons."

10. The aforesaid aspect was considered by the Hon'ble Supreme Court in the case of Neeharika Infrastructure **(supra)** wherein after a detailed analysis of various provisions of criminal law and various judgments passed by the Hon'ble Supreme Court has drawn conclusion in para 80 of the judgment which reads as under :-

"***80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would***

be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/ complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

(ii) Courts would not thwart any investigation into the cognizable offences;

(iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

(iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (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;

(viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

(ix) The functions of the judiciary and the police are complementary, not overlapping;

(x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

(xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts

that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/ summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

(xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

(xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

(xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be

considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

(xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be

passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

(xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

11. It is seen that the Hon'ble Supreme Court in the aforesaid case has gone to an extent that no such orders not to arrest or no coercive steps either during the investigation or till the investigation is completed or till the final report or charge sheet is being filed under Section 173(3) of Cr.P.C. while dismissing or disposing of the quashing of petition shall be passed under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India.

12. The Hon'ble Supreme Court has further observed that even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation after considering the broad parameters then also the reasons are required to be recorded while passing an interim order so that it can demonstrate the application of mind by the learned Court. In the present case, it is evident from the impugned FIR as well as complaint so filed by the respondent no.4 on 25.04.2022, wherein after direction of respondent no.2/Senior Superintendent of Police, Gorakhpur, the concerned Circle

Officer, after investigating the matter, had submitted his report on 29.05.2022/30.05.2022 stating therein that *"petitioners are involved in running a Gang in the name of "Nafisa Gang" under the guidance of Madhav Tiwari, Advocate and is a active Gang"*, as such, *prima facie,* the involvement of the members of the gang as has been alleged in the complaint dated 25.04.2022 under the protection of Madhav Tiwari, Advocate is made out. In such circumstances, when clearly a case of cognizable offence is made out no such blanket orders can be passed. The authorities are required to complete an investigation into the matter and persons showing themselves to be an innocent person can take a recourse under the relevant provisions of criminal law that is under Section 438 of Cr.P.C. for seeking an anticipatory bail in the matter.

20. The Hon'ble Supreme Court in the case of **Nivedita Sharma Vs. Cellular Operators Association of India; (2011) 14 SCC 337,** has held that *"where hierarchy of appeals was provided by the statute, a party must exhaust the statutory remedies before resorting to writ jurisdiction for relief, but inspite of having alternative remedy the writ petition has been preferred seeking multiple reliefs, therefore, the petition was not entertained being devoid of merits is not maintainable and is dismissed."* In the present case, without exhausting the remedy of seeking anticipatory bail under Section 438 of Cr.P.C. or approaching this Court by way of filing a petition under Section 482 of Cr.P.C. petition seeking quashment of an FIR or a criminal proceedings, he has taken a recourse to file a writ petition under Article 226 of the Constitution of India.

15. Looking to the contents of the FIR, a prima facie case is made out against the petitioners, which requires a detailed investigation to be carried out by the Authorities. In such circumstances, the case does not fall under the category of rarest of the rare cases, therefore, the relief praying for quashment of FIR and for interim relief not to arrest the petitioners, without adhering to the statutory provisions of criminal jurisprudence, this Court refrains from entertaining the writ petition under Article 226 of the Constitution of India.

15. With the aforesaid observations, the writ petition stands **dismissed.**

16. However, the petitioners are at liberty to file appropriate application under Section 438 of Cr.P.C. seeking anticipatory bail and, thereafter, may file an Application under Section 482 of Cr.P.C. seeking quashment of FIR.

Order Date :-16.01.2023
Ashutosh

(Gajendra Kumar, J.) (Anjani Kumar Mishra, J.)