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Court No. - 66

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/
S 438 CR.P.C. No. - 11900 of 2022

Applicant :- Swami Chinmiyanand Saraswati Pupil

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

Counsel for Applicant :- Abhinav Gaur, Ankit Shukla, Chandra
Prakash Pandey, Ramanuj Tiwari, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Ankit Shukla, learned counsel for the applicant, Sri M. C. Chaturvedi, learned Senior Advocate / Additional Advocate General for the State of U.P. assisted by Sri B.B. Upadhyay, learned AGA for the State of U.P. and perused the records.
2. The present anticipatory bail application under Section 438 Cr.P.C. has been filed by the applicant - **Swami Chinmiyanand Saraswati**, seeking anticipatory bail, in the event of arrest in **Case Crime No. 1423 of 2011 under Sections 376, 506 IPC, Police Station Kotwali, District Shahjahanpur.**
3. The facts arising out in the present case are that on 14.11.2011, the opposite party no. 2 moved a letter before the Chief Minister of Uttar Pradesh alleging illegal de,tention, wrongful confinement, sexual assault and abortion with the prayer to get a FIR lodged against the applicant. On the said application, a FIR was lodged on 30.11.2011 as Case Crime No. 1423 of 2011, under Sections 343, 376, 506, 307, 323, 312 IPC, Police Station

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Kotwali, District Shahjahanpur. The allegations in the FIR are that the first informant who is the opposite party no. 2 in the present petition is a resident of Budaun having political background and personal interest in politics, she met the applicant Chinmiyanand Saraswati, resident of Mumuchha Ashram, Shahjahanpur and was being impressed for getting political and spiritual consciousness by the views of the applicant and since the year 2001 came in his contact and started living in his Delhi residence. She visited many committees and religious functions and started having different feeling and getting knowledge up to the year 2004. She became the disciple of the accused. She started having faith on him more than her father and brother. In the year 2004, she was taken to Parmarth Ashram, Haridwar for various religious ceremonies where attitude of applicant changed towards her after which she tried to run away from the said place. In the year 2005, on the strength of the personal guards of the accused, she was detained in a car and brought to Mumuchha Ashram, Shahjahanpur and kept there under confinement. She was being watched by unknown people having fire-arms. She did not agree for establishing physical relationship but with conspiracy of the cook, some substance was mixed in her food and was given to her after which she became senseless and then under an intoxicated condition, the accused in spite of opposing it, raped her. She could not do anything. Her video was also captured. Since then she used to be sexually assaulted. She used to be kept under watch of armed guards. She even used to visit outside the campus but with people who instructed her not to talk to anyone. She became pregnant twice but the pregnancy was aborted in Bareilly and Lucknow. She was assaulted while being pregnant.

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4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that initially after lodging of the FIR, the applicant challenged the same before this Court in Criminal Misc. Writ Petition No. 24293 of 2011 (Swami Chinmayanand Saraswati Vs. State of U.P. and others) in which vide order dated 22.12.2011 passed by a Division Bench of this Court it was ordered that till the next date of listing or till submission of charge sheet whichever is earlier, no coercive measure be taken against the petitioner therein. The said order is annexure no. 3 to the affidavit and is quoted here-in-below:-

“Learned A.G.A. has accepted notice on behalf of respondent nos.1 and 2, while Sri V.D.Chauhan, learned counsel has entered appearance on behalf of the respondent no.3.

Both may file counter affidavit within three weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List in the week commencing 30th of January 2012.

Apart from the other arguments, it is urged that the falsity of the first information report lodged on 30.11.2011 would be evident if it is read along with the blog posted by the complainant on the Face Book of 13th of October 2011. It is urged that the FIR is only a step in aid for blackmailing the petitioner, who refused the complainant to continue to stay in the Ashram, if she wanted to contest elections. It is also urged that inordinate delay and no support from medical evidence points to the fact that the allegations are concocted. On the arguments and the facts disclosed, the petitioner is

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entitled to interim protection.

Accordingly, till the next date of listing or till submission of charge sheet whichever is earlier, no coercive measure be taken against the petitioner in case Crime No.1423 of 2011 under Sections 342, 376, 506, 307, 323, 313 IPC P.S. Kotwali Sadar District Shahjahanpur, it goes without saying that the petitioner will make himself available for investigation as and when required by the investigating officer.”

5. It is argued that subsequently the said writ petition was disposed of vide order dated 16.7.2012 passed by a Division Bench of this Court and a protection was granted to the applicant, the petitioner therein for stay of his arrest during the pendency of investigation. The said order is placed before the Court which is annexure no. 4 to the present affidavit filed in support of anticipatory bail application and is quoted here-in-below:-

“Rejoinder affidavit filed today is taken on record.

This writ petition has been filed with a prayer to quash the F.I.R. dated 30.11.2011 registered as Case Crime No. 1423 of 2011 under Sections 342, 376, 506, 307, 323 and 313, I.P.C., Police Station Kotwali Sadar, District Shahjahanpur.

We have heard learned counsel for the petitioners and the learned AGA and perused the record.

The arrest of the petitioners was stayed by an interim order passed in this writ petition in respect of aforesaid case. The investigation had not been stayed. It is not known whether the investigation has been completed

yet or not.

In the case of Mahendra Lal Das v State of Bihar: 2002 SCC (Crl) 110, it has been held by the Hon'ble Supreme Court that while interference by Courts at investigation stage is not called for, the investigating agency cannot be given latitude of protracting the conclusion of the investigation without any limit of time.

No useful purpose would be served in keeping this petition pending any longer. Accordingly, we dispose of this writ petition with the following directions:

1.The investigation will be completed within three months of the date on which a certified copy of this order along with a self-attested copy of this writ petition is presented before the Investigating Officer;

2.The petitioners will not be arrested during pendency and for the purpose of investigation, provided a certified copy of this order is presented before the police officer as directed above within 15 days from today;

3.Two copies of the order shall also be presented within 15 days before the S.S.P/S.P and CJM concerned who shall monitor the investigation as provided by the Apex Court in the case of Sakiri Vasu v. State of U.P.: AIR 2008 SC, 907 and ensure that the investigation is completed within the time stipulated by the High Court;

4.If copies of the order are not presented within the time aforesaid before the Investigating officer, S.S.P./ S.P. and CJM, the stay of arrest will not operate;

5.The accused will cooperate with the investigation and

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in case of non-cooperation or otherwise if the Investigating Officer is of the opinion that for any other valid reason the arrest of accused is necessary during or for the purpose of investigation, it will be open to the investigating officer to apply in this writ petition by means of a miscellaneous application giving details of non-cooperation as also details of what kind of cooperation is expected of the accused for completing investigation or why the arrest is otherwise necessary for that interim stay of arrest granted hereby may be vacated;

6. In case the investigation is not completed within the aforesaid time of three months, for some unavoidable reason or due to slackness on part of the investigating officer the CJM concerned shall inform this Court, with the reason for the delay in concluding the investigation within the time specified above. The Registrar General shall place the information in pending Cr. Misc. Writ Petition No. 8495 of 2006, Kamlesh and another v. State of U.P. and others where this Court inter alia is monitoring matters with respect to writ petitions which have been disposed off with directions for completing the investigation in three months.

7. If a report under section 173(2) Cr.P.C. is decided to be submitted to the Court of Magistrate, in column no. 3 of the prescribed form of the report under section 173(2) Cr.P.C. it will be mentioned that the accused have not been arrested on account of the stay order granted by this Court and the Magistrate shall take

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expeditious steps for appearance/ arrest of the accused;

8.If the accused appear before the Court concerned within 3 weeks of the submission of the police report under section 173(2) Cr.P.C. and applies for bail, the bail application shall be disposed of expeditiously in accordance with the observations of the Full Bench of this Court in the case of Amrawati and another v. State of U.P., 2004(57) ALR 290, affirmed by the Supreme Court in the case of Lal Kamendra Pratap Singh v. State of U.P.: 2009 (2) Crime 4 (SC), and reiterated by the Division Bench of this Court in the case of Sheoraj Singh @ Chuttan v. State of U.P. & Others: 2009(65) ACC 781.”

6. It is argued that subsequently a charge sheet dated 23.1.2012 was submitted against the applicant under Sections 376, 506 IPC. In so far as the offences under Sections 342, 323, 307, 313 IPC are concerned, the same were dropped against him. The copy of the charge sheet has been placed before the Court which is annexure no. 11 to the present affidavit filed in support of anticipatory bail application. It is argued that on the said charge sheet, cognizance was taken vide order dated 29.10.2012 and the applicant was summoned. Against the same, the applicant preferred a Criminal Misc. Application U/S 482 Cr.P.C. No. 43082 of 2012 (Swami Chinmayanand Saraswati Vs. State of U.P. and another) in which this Court vide order dated 14.12.2012 directed that till the next date, further proceedings of the case shall remain stayed. The said order is placed before the Court which is annexure no. 12 to the present affidavit filed in support of

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anticipatory bail application, the same is quoted here-in-below:-

“Heard learned counsel for the applicant.

The applicant has earlier filed criminal writ petition before this Court against the proceedings arising out of Case Crime No. 1423 of 2011 under Sections 342, 376, 506, 307, 323, 313 I.P.C. The Division Bench of this Court on 22.12.2011 stayed the arrest of the applicant. There is inordinate delay in filing the F.I.R. and there is no medical evidence to support the charge. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. in which it was stated that she has not married to the applicant but she treated him as husband. Investigating Officer also in his report mentioned that there is no evidence of wrongful confinement or abduction of the prosecutrix. The medical evidence does not support that rape was committed.

Since the prosecutrix was restrained to continue to stay in the Ashram as she wanted to contest the elections, she has launched the present prosecution to malign the image of the applicant.

Notice on behalf of opposite party no. 1 has been accepted by learned A.G.A.

Issue notice to opposite party no. 2 returnable within four weeks.

List on 17.1.2013.

Till the next date, further proceedings of Case No. 4179 of 2012, (State Vs. Swami Chinmayanand Saraswati),

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Case Crime No. 1423 of 2011, under Sections 376, 506 I.P.C., Police Station Kotwali, District Shahjahanpur shall remain stayed.”

7. It is argued that in the meantime the State Government recommended for withdrawal of the prosecution of the present case and the District Magistrate directed the Public Prosecutor to file an application for withdrawal of the prosecution of the said case and as such the said application under Section 482 Cr.P.C. in which interim order was passed on 14.12.2012 was got rejected as not pressed on 16.2.2018. The said order is placed before the Court which is annexure no. 13 to the present affidavit filed in support of anticipatory bail application, the same is quoted here-in-below:-

“Shri R.K.S. Chauhan and Shri N.K. Singh, learned counsel for the applicant and learned A.G.A. for the State are present.

Learned counsel for the applicant submits that applicant does not want to press the application.

Learned A.G.A. for the State concede that nobody can be forced to proceed with the case.

The application is accordingly rejected as not pressed.

Interim order, if any, stand vacated.

Office is directed to communicate the order to the court concerned.”

8. In the meantime an application under Section 321 Cr.P.C. was filed before the C.J.M. Shahjahanpur which came to be dismissed vide order dated 24.5.2018. Against the said order dated 24.5.2018, charge-sheet dated 23.10.2012 and against the

entire proceedings, a Criminal Misc. Application U/S 482 Cr.P.C. No. 23160 of 2018 (Swami Chinmayanand Saraswati Vs. State of U.P. and another) was filed in which a coordinate Bench of this Court vide order dated 25.7.2018 directed that till the next date of listing, no coercive measure shall be taken against the applicant in the said case. The said order is placed before the Court which is annexure no. 14 to the present affidavit filed in support of anticipatory bail application, the same is quoted here-in-below:-

“Heard learned counsel for the applicant and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed to quash the impugned order dated 24.05.2018, charge sheet dated 23.10.2012 as well as the entire proceedings of Case No. 4179 of 2012 (State Vs. Chinmayanand Saraswati), arising out of Case Crime No. 1423 of 2011, under Sections- 376, 506 I.P.C., Police Station- Kotwali, District- Shahjahanpur, pending in the court of C.J.M., Shahjahanpur.

Learned counsel for the applicant submits that present 482 Cr.P.C. application has become necessary because the earlier application was got dismissed as withdrawn in view of the proceedings having been initiated under Section 321 Cr.P.C. by the State to withdraw the prosecution.

Subsequently, it has come on record that the application under Section 321 Cr.P.C. was in fact filed by the public prosecutor on 12.03.2018. It is thus submitted that the rejection of the said application has given rise to a fresh cause of action to maintain the

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second 482 Cr.P.C. application.

Accordingly, the present application is being entertained.

On merits, it has been submitted that the order dated 24.05.2018 has been passed on consideration of extraneous material contrary to the law laid down by the Supreme Court. In absence of any ground to reject the application under Section 321 Cr.P.C., the learned Magistrate could not have rejected such application under influence of a letter written by stranger to the dispute and on consideration of evidence and other material which are not required to be examined, at this stage.

Matter requires consideration.

Notice on behalf of opposite party no. 1 has been accepted by learned A.G.A.

Issue notice to opposite party no.2, fixing 07.9.2018.

Opposite parties may file their counter affidavits within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List on 07.09.2018.

Till the next date of listing, no coercive measure shall be taken against the applicant in the aforesaid case.”

9. In the said application under Section 482 Cr.P.C., the first informant of the present case who was the opposite party no. 2 therein filed a counter affidavit dated 8.12.2020 in which in para no. 4 and 5, it was stated that since the State Government has

withdrawn the prosecution, she is not interested in further pursuing the matter of prosecution of the applicant without entering into the merits of the case. The said counter affidavit is annexure no. 15 to the present affidavit filed in support of anticipatory bail application. Subsequently the Criminal Misc. Application u/s 482 Cr.P.C. No. 23160 of 2018 came to be dismissed by coordinate Bench of this Court vide order dated 30.9.2022, the said order is placed before the Court which is annexure no. 16 to the present affidavit filed in support of anticipatory bail application, the same is quoted here-in-below:-

“[1] Heard Sri Dileep Kumar, Senior learned Advocate assisted by Sri Rajshri Gupta, Sri R.K.S Chauhan and Sri Manish Singh, learned counsels for the applicant, Sri Anurag Pandey, learned counsel for opposite party no. 2, Sri A.K. Sand, learned AGA-I assisted by Sri Ajay Kumar Sharma, learned A.G.A for the State and Sri Sandeep Shukla, Advocate assisted by Sri Rafat Raza Khan Advocate for the "proposed intervener" Sri B.P. Gautam.

[2] Pleadings have been exchanged between the parties, and Counter affidavits have been filed by opposite party no.2 Sadhvi Chidarpita Gautam@Ms Komal Gupta and Mr. Patanjali Mishra, learned A.G.A. have filed their respective counter affidavits on behalf of the State which is already on record. Interestingly, an 'Intervening application' under Chapter XXII Rule 5 of the High Court Rules on behalf of Sri B.P. Gautam, filed by Sri Sandeep Shukla and Sri Rafat Raza Khan Advocate is also on record with the prayer to permit the

applicant (Mr. B.P. Gautam, in the capacity of alleged husband of opposite party no.2) be also heard. At the outset, Sri Sandeep Shukla, Advocate was given fullest of the opportunity and audience by the court to establish his case and claim proposed respondent.

[3] This petition, invoking extra-ordinary power of the Court under section 482 Cr.P.C. assailing the legality and validity of the order dated 24.05.2018 passed by the Chief Judicial Magistrate, Shahjahanpur in Case No. 1423 of 2011 (State v. Chinmayanand Saraswati), under Sections 376 and 506 IPC, P.S. Kotwali, Shajahanpur is for judicial scrutiny, whereby the learned Magistrate has declined to accord permission to the application given by the Prosecuting Officer under section 321 Cr.P.C. i.e. withdrawal of prosecution against the applicant, named above. Thus, this is the focal issue of the entire controversy. In addition to this, since Sri B.P. Gautam, alleged husband of opposite party no. 2, has moved an "Intervening Application" to be impleaded and heard in the matter and therefore at the threshold stage, the disposal of aforesaid Intervening application is imperative as an ancillary issue to the primary one i.e. validity of the order dated 24.05.2018, passed by learned Chief Judicial Magistrate, Shahjahanpur.

[4] So far as Intervening application on behalf of Mr. B.P. Gautam S/o Naresh Pal Singh, alleged husband of Ms. Chidarpita Gautam @Komal Gupta is concerned, it is relevant that opposite party no.2, the real victim, has

already engaged her counsel, Sri Anurag Kumar Pandey, who has filed a detailed counter affidavit on her behalf and she is actively contesting the case on her behalf and at no point of time, she has ever authorized Mr. B.P. Gautam to contest the case on her behalf.

Disposal of the Intervening Application

[5] The Court has perused the Intervening Application, sworn by Sri B.P. Gautam, who sought permission of the Court to intervene in the present application filed under section 482 Cr.P.C., in addition to opposite party no. 2.

[6] The Court wonders that when the victim herself is being duly represented in her count, then what is the locus standi of Mr. B.P. Gautam to intervene into the present issue. In this regard, the Court had an occasion to look into the definition of "victim" as provided under section 2(wa) of Cr.P.C. which reads thus:

"victim" means a person who has suffered any loss or injury caused by reason of the act or commission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

[7] In this regard, learned A.G.A submits that though in the year 2011, Mr. B.P. Gautam, a local journalist of Shahjahanpur/Budaun, married man, without divorcing his earlier wife, got married with Ms. Chidarpita Gautam@Komal Gupta but it seems that this relationship was full of turmoil, where Ms. Chidarpita Gautam@Komal Gupta initiated proceedings under

section 12 of Domestic Violence Act, a Divorce Petition under section 13 (1) of the Hindu Marriage Act, a proceeding under section 125 Cr.P.C. and all the proceedings are pending before the respective competent courts. Thus, it is apparent that they are rivals in different proceedings and thus, no stretch would fall within the ambit of either 'guardian or legal heir'. Mr. B.P. Gautam, without her consent or any authority, is trying to represent opposite party no. 2 by filing "Intervening Application". When opposite party no.2, the real victim, is already represented by her counsel, then Sri B.P. Gautam, alleged husband, would occupy the back seat, specially under the present scenario of the case, whereby he is a contesting party/rival in number of proceedings against her, pending in different courts of law, including Divorce proceedings. This 'Intervening Application' is nothing but an attempt to gain popularity through opposite party no.2.

*[8] Learned A.G.A has relied upon a recent judgement of Hon'ble Apex Court in the case of **Jagjeet Singh and others v Ashish Mishra @Monu in Criminal Appeal No. 632 of 2022 decided on 18.04.2022.** Learned A.G.A. has also relied upon the Full Bench Judgment of this Court in the case of **Mast Ram Tiwari Vs. State of U.P. reported in (2018) 2 ADJ 518** , some extracts of para no.22 of which is quoted hereinbelow :-*

"22..... Though, we are not called upon, in the present case, to consider the scope of the word 'victim', what appears to us from its plain

reading, is that it is classified in two categories - (i) a person who has suffered any loss or injury caused by the reason of the act or omission attributed to the accused; and (ii) the guardian or legal heirs of such 'victim'. The expression 'guardian' or 'legal heir' used in the definition clause under Section 2 (wa), in our opinion, deserves to be construed in the broad and general sense, so as to include all those on whom the estate of the deceased dwells....."

*Thus, the guardian or legal heir of such victim would come into play only when the victim is incompetent or incapable to defend his/herself but where the victim herself is in a position to engage her counsel and contesting the case with her all might, then, in that event, her guardian or legal heir of the victim, would have no role to play in the presence of such victim. The opposite party no.2 is a major girl, physically and financially sound, then she has got no reason to engage or ask Mr. B.P. Gautam to contest her case on her behalf. Therefore, **the Intervening Application**, filed on behalf of Mr. B.P. Gautam is, hereby, **rejected**.*

Adjudication on focal issue i.e. rejection of application under section 321 Cr.P.C.

[9] Revisiting to the principal issue, applicability of Section 321 Cr.P.C., which deals about withdrawal from the prosecution in the present case. In this regard, let's have certain old quotation which gives beacon light to adjudicate instant controversy :-

"Justice, though due to accused is due to the accuser also. The concept of fairness must not be strained until it is narrowed it is a filament. We are to keep the balance true."

This Court could not resist the thundering sanskrit

sholka quoted hereinbelow which remained haunting throughout the adjudication of the case and till the dictation of the judgment, :-

नीरक्षीरविवेके हंस आलस्यं त्वं एव तनुषे चेत।

विश्वस्मिन् अधुना अन्यः कुलव्रतम पालयिष्यति कः। ।

(हिंदी अर्थ - ऐ हंस, यदि तुम दूध और पानी में फर्क करना छोड़ दोगे तो तुम्हारे कुलव्रत का पालन इस विश्व में कौन करेगा। यदि बुद्धिमान व्यक्ति ही इस संसार में अपना कर्तव्य त्याग देंगे तो निष्पक्ष व्यवहार कौन करेगा?)

*[10] The judgment of Hon'ble Mr. Justice Benjamin N. Cordozo in **Snyder v. Massachusetts, 291 U.S. 97 (1934)**, it was categorically observed that :-*

"Every civilized State has obligation to protect its citizen in all spheres of life. This is one of the predominant duties of the State in the modern era. The duty of the State in civil sphere case to ensure and protect the people's right and in the criminal sphere is to protect people from the culprit/s and to maintain law and order in the society. Therefore, the administration of justice is ferment pillar of the society This is to fuel the legal justice, which ensures uniformity and certainty in the administration."

*[11] Hon'ble Mr Justice V.R. Krishna Iyer expressed the stake of victim of a crime in **Re: Rattan Singh v. State of Punjab [1974 (4) SCC 701]** as under:*

"...It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the victim, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature..."

[12] In criminology, offence committed by a person,

who is never against particular individual but against the whole society (State), therefore, in criminal matters, the State itself is a party. The criminal prosecution of a criminal case is conducted by a Public Prosecutor. Section 321 of the Cr.P.C. enables the Public Prosecutor or the Assistant Public Prosecutor to withdraw from a prosecution of any person either generally or in respect of anyone for more of the offences for which he is tried. For this issue, the consent of the Court is necessary and imperative.

[13] Taking the guidance and recourse from the aforesaid observations, it is mandatory to spell out brief skeleton facts of the case, which has given rise to the present controversy ;

[14] Visiting to the present disputation upraised on behalf of Swami Chinmayanand Sarawati, an ex-Minister for State of Home in the Central Government during 1999-2004, approached this Court for invocation of extra-ordinary power of this Court under section 482 Cr.P.C. with the prayer to allow the application and to secure ends of justice as well as quash the order dated 24.05.2018 (annexure no. XXIV of the affidavit), passed by the Chief Judicial Magistrate, Shahjahanpur rejecting the application under section 321 Cr.P.C. filed by the Public Prosecutor/Prosecuting Officer to withdraw the prosecution of Criminal Case No.4179 of 2012 (State v. Swami Chinmayanand Saraswati) arising out of Case Crime No.1423 of 2011, P.S. Kotwali, District Shahjahanpur, under section 376 and

506 IPC and to accord consent for withdrawal of the case. Secondly, in addition to the above, charge sheet no. 147 of 2012 dated 23.10.2012 and order of taking cognizance passed in the said charge sheet dated 29.10.2012 may also be quashed and entire proceedings of Criminal Case No.4179 of 2012 (State v. Swami Chinmayanand Saraswati) based on the impugned charge sheet no.147 of 2012 may also be quashed as the same is gross abuse of process of Court and to pass any further order in favour of the applicant, which the Court may deem fit and proper.

[15] So far as the second part of the prayer for quashing of the charge sheet and cognizance order dated 29.10.2012 is concerned, learned counsel for the applicant drew attention of this Court that on the earlier occasion, the applicant approached to the Court by filing an application under section 482 Cr.P.C., No.43082 of 2012 wherein on 14.12.2012, a co-ordinate Bench of this Court, while issuing notice to opposite party no.2 had stayed further proceedings of Case No.2179 of 2012 (State v. Swami Chinmayanand Saraswati). However, on 02.02.2018 an application was moved by the present applicant to withdraw the aforesaid Criminal Miscellaneous Application No.43082 of 2012 which was allowed on 16.02.2018 without granting any liberty to file a fresh petition with regard to same issue.

[16] Subsequently, since the applicant himself withdrew the aforesaid petition with the same prayer,

*thus, the second part of the prayer challenging the charge sheet and the summoning order is now incompetent and, accordingly, **rejected**.*

[17] Now, entertaining the first part of the prayer whereby the concerned Chief Judicial Magistrate on 24.05.2018 has rejected the application moved by Public Prosecutor for withdrawing the prosecution against the applicant in exercise of power under section 321 Cr.P.C.

[18] To appreciate the controversy involved, it is mandatory to give a bird's eye view to the entire facts of the case, especially after the perusal of paragraphs 5 to 13 of the petition which speaks out the warped agenda of the case itself. Learned counsel for the applicant has tried to create a hype, an aura around the applicant by submitting, that the applicant is a man of high spiritual, ethical moral political values and saint of high pedestal. In addition to this, he was a political giant at one point of time and a vibrant social worker. Impressed by the spiritual and socio-political qualities of the applicant, the complainant, opposite party no.2 met with him at his official accommodation in the year 2001 at New Delhi and delighted to find him a spiritually giant, a dedicated social worker and a vibrant political personality. She tried to develop affinity with him when she was in her teens. Thereafter, she expressed her willingness and desire to turn as a Sanyasini and requested him to give her Deeksha (consecration). During the period of 2002-2004, the applicant had

consecrated (Deeksha) and given her a new name "Sadhvi Chidarpita" and thus, opposite party no.2 became his disciple, started treating him as her Guru. In the year 2005, she observed certain radical changes in the attitude of her Guru, who was trying to shift his main seat Mumuksha Ashram at Shahjahanpur to the aforesaid reincarnated Sadhvi. All these developments in the life of opposite party no. 2 she has narrated in her facebook page (annexure 5 to the petition). In her same posts, she admits that she has actively participated in the management activities of the aforesaid Ashram, Sukhdevanand P.G. College and other educational institutions run by Mumuksha Ashram and she became part and parcel of the management.

[19] It has been argued by Sri Dileep Kumar, learned Senior Advocate appearing for the applicant, that opposite party no. 2 remained in the company of the applicant at Mumuksha Ashram, Shahjahanpur where the applicant asked her to complete her graduation, post-graduation and to complete her L.L.B course. She completed her aforesaid education, while residing in the Ashram and became integral part of his profession and private life of applicant-Swami Chinmayanand Saraswati. It has been pointed out by the learned counsel for the applicant that opposite party no.2 remained in the company of the applicant at Mumuksha Ashram, Shahjahanpur. Further, she was made member of Shanker Mumuksha Vidyapeeth.

[20] It seems that while she was in the company of the

applicant she was craving high aspirations and hankering hopes for her future and, therefore, tried to impress upon the applicant to exploit his political affiliations to let her contest Assembly Election of 2012. The applicant seems to dump her aforesaid pipe-dreams and from this stage the bickering between them ignited. On 01.10.2011, opposite party no. 2 deserted Mumuksha Ashram after resigning from all the given posts, educational institutions and on July 2011 got married with one Mr. B.P. Gautam, a free-lance journalist, who started living with his second wife Ms. Komal Gupta.

[21] From the record, it is apparent that on 14.11.2011 opposite party no.2 wrote a letter to the then Chief Minister, U.P. with the allegations of wrongful confinement, illegal detention, sexual assault and abortion and requested him to get her FIR lodged in the matter against the applicant. Consequently, on 30.11.2011, case crime no.1423 of 2011 was registered against the sole named accused person, under sections 342, 376, 506, 307, 323, 312 IPC wherein the FIR running between three hand written pages, whereby she narrated her nightmare faced by her with the hands of the applicant during 2001-2011 wherein she accused the applicant for establishing physical relationship with her perforce, administering some intoxicants in her food and thereafter brutally ravishing her. Not only this, her obscene audio-visual videos and porn photographs were taken and her further

exploitation begun. She further states that during this process, she was impregnated twice and for the first time at Bareilly and for the second time at Lucknow, she was got aborted. Not only this, when she was pregnant, assaulted mercilessly by the applicant's goons.

[22] After lodging of the FIR, the police got her medically examined, her statements under sections 161 and 164 Cr.P.C. was got recorded. The concerned doctors in medical report were unable to give any opinion about rape or about the said abortion. They also did not find any injury around the neck or other parts of the body of opposite party. 2. Since, all the offence were serious in nature and cognizable, therefore, the applicant approached this Court by filing Criminal Miscellaneous Writ Petition No. 2493 of 2011 whereupon a co-ordinate Bench of this Court on 22.11.2012 have rescued the applicant from the wrath of the police. The writ petition was eventually disposed of by the Division Bench of this Court vide order dated 16.07.2022 wherein the arrest of the petitioner was stayed upto the filing of the report under section 173(2) Cr.P.C.

[23] After concluding the evidences, the Investigating officer of the case, dropped all the sections of the Indian Penal Code except sections 376 and 506 IPC and the learned Magistrate concerned had taken cognizance of the referred offence against the applicant on 02.12.2011.

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[24] The Court had the occasion to peruse the statements of the victim recorded sections 161 Cr.P.C. (annexure no. 13 of the petition) in which the question-answer was put by the Investigation Officer wherein the victim has reiterated the version of the FIR by giving a detailed reply that the applicant initially raised her aspirations sky high and impressed her psyche so that she may come under his aura and to an extent the applicant has succeeded in winning over her confidence. On the question as to whether she has married the applicant or not, she replied that though she has not married because in 'Saraswasti Sampraday', marriage is prohibited but still, she considered the applicant as husband. In 164 Cr.P.C. statement, she has almost reiterated the same version but has admitted that in July 2011, she got married with one B.P. Gautam at Budaun and left Mumuksha Ashram on 28th August, 2011.

[25] At this juncture, it is borned out from the record of the case that on the earlier occasion, the applicant by means of Application U/S 482 No. 43082 of 2012, had challenged the charge sheet as well the summoning order whereupon co-ordinate Bench of this Court on 14.12.2012 stayed the proceedings of the case and issued notice to opposite party no.2. This interim order have lasted upto 2018 whereby on 02.02.2018 an application was moved on behalf of the applicant to withdraw the aforesaid 482 application and vacate the interim order dated 14.12.2012 for the reasons best

known to the applicant and accordingly the said application was entertained and acceded by yet another Bench of this Court, whereby the aforesaid 482 application was rejected as 'not pressed' and interim order was vacated and Office of the Court was ordered to communicate this order to the court concerned. It is interesting to point out here that as soon as the said 482 application was rejected as not pressed on 16.02.2018 an Under Secretary of Government of Uttar Pradesh wrote a letter to the District Magistrate, Shahjahanpur whereby directing the Public Prosecutor to withdraw the prosecution against the applicant. The said order by the Under Secretary of the Government of Uttar Pradesh dated 06.03.2018 is quoted herein below:

संख्या-48 डब्लूसी/ सात-न्याय-5 2018-19/डब्लूसी

प्रेषक,

अरूण कुमार राय,

अनु सचिव,

उत्तर प्रदेश शासन।

सेवा में,

जिला मजिस्ट्रेट,

शाहजहांपुर।

न्याय अनुभाग-5 (फौजदारी) / लखनऊ: दिनांक- 06.03.2018

विषय- मु०अ०सं०- 1423/2011, धारा 376, 506 भा०दं०वि थाना कोतवाली जनपद शाहजहांपुर राज्य बनाम चिन्मयानन्द सरस्वती के अभियोग के वापसी के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या- 395/न्याय सहायक/2018 दिनांक 31.01.2018 के सन्दर्भ में मुझे यह कहने का निर्देश हुआ है कि वाद सम्बन्धी उपलब्ध आख्या/पत्रादि पर समुचित विचारोपरान्त शासन ने उक्त चिन्मयानन्द सरस्वती के अभियोग को वापस लिये जाने हेतु लोक अभियोग मा० न्यायालय में प्रार्थना पत्र प्रस्तुत किये जाने की

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लिखित अनुमति ले लिया है

2. अतः श्री राज्यपाल महोदय उपर्युक्त वाद में चिन्मयानन्द सरस्वती के अभियोग को वापस लेने हेतु लोक अभियोजक द्वारा न्यायालय में प्रार्थना करने की अनुमति प्रदान करते हैं।

3. कृपया उपर्युक्त के अनुक्रम में दण्ड प्रक्रिया संहिता (सी०आर०पी०सी०) की धारा-321 में उल्लिखित प्राविधानों का अनुपालन कराते हुये अग्रतर कार्यवाही करने का कष्ट करें।

भवदीय,

ह०अप

(अरूण कुमार राय)

अनु सचिव।

ह०अप०

07.03.2018

[26] While annexing aforesaid letter of the Under Secretary, Government of Uttar Pradesh, the District Magistrate, Shahjahanpur on 9th March 2018 wrote a letter to the Senior Public Prosecutor (Shahjahanpur) to get the prosecution withdrawn against the applicant. "Obeying and adhering" to the directions of the Senior Executive Bosses, the Senior Public Prosecutor, Shahjahanpur on 12.03.2018 gave an application in the court of the Chief Judicial Magistrate, Shahjahanpur prepared an application under section 321 Cr.P.C. which reads thus:

न्यायालय मुख्य न्यायिक मजिस्ट्रेट, जनपद शाहजहांपुर

वाद सं०

राज्य बनाम स्वामी चिन्मयानन्द सरस्वती

अ०सं०- 1423/2011

धारा 376/506 भा०दं०वि०

थाना कोतवाली, शाहजहांपुर।

प्रार्थना पत्र अन्तर्गत धारा 321 दं०प्र०सं०

महोदय,

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निवेदन है कि उ० प्र० शासन द्वारा अपने पत्र सं० 48 डब्लू०सी०/सात-न्याय-5-2018-10 डब्लू०सी० /2017 दिनांक 06.03.18 के द्वारा सूचित किया गया है कि उपरोक्त वाद के सम्पूर्ण तथ्यों एवं उपलब्ध आख्या/पत्रादि पर समुचित विचारोपरान्त शासन ने उक्त वाद में स्वामी चिन्मयानन्द सरस्वती के अभियोग को वापस लिये जाने हेतु लोक अभियोजक को माननीय न्यायालय में प्रार्थना पत्र प्रस्तुत किये जाने की लिखित अनुमति देने का निर्णय लिया है। महामहिम राज्यपाल महोदय द्वारा उपरोक्त वाद में स्वामी चिन्मयानन्द सरस्वती के अभियोग को वापस लेने हेतु प्रार्थी लोक अभियोजक को माननीय न्यायालय में प्रार्थना पत्र प्रस्तुत करने की अनुमति प्रदान की गयी है। शासन का उपरोक्त पत्र माननीय न्यायालय के अवलोकनार्थ इस प्रार्थना पत्र के साथ संलग्न करके दाखिल किया जा रहा है।

प्रार्थी द्वारा अपने स्वतंत्र मस्तिष्क का प्रयोग करते हुए पत्रावली का परिशीलन किया गया तथा उक्त वाद को जनहित एवं न्यायहित में वापस लिये जाने के शासन के उपरोक्त निर्णय से सहमत है।

अतः माननीय न्यायालय से विन्नम प्रार्थना है कि उपरोक्त वाद के अभियोजन को वापस लेने एवं पत्रावली को तदनुसार निस्तारित किये जाने का आदेश पारित करने की कृपा करे। क्योंकि राज्य उपरोक्त वाद का अभियोजन नहीं करना चाहता है।

दिनांक: 12.03.2018

भवदीय
ह०अप०
(विनोद कुमार सिंह)
अभियोजन अधिकारी
शाहजहांपुर

[27] A plain reading of the application speaks volumes about a total non-application of mind by the Senior Prosecution Officer, Shahajahanpur wherein he submits that he has applied his "स्वतंत्र मस्तिष्क (independent mind)", perused the record of the case and in the interest of public and of justice, he is in the agreement with the decision taken by the Government of U.P. to withdraw the prosecution against the applicant. This is simply a farce hoax and mirage to cover up the mandatory requirement of the law that the

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public prosecutor shall apply his judicial mind while filing this application under section 321 Cr.P.C. The law mandates that something more is required in the application as against the alleged "स्वतंत्र मस्तिष्क"(independent mind).

[28] This is the biggest misfortune, anomaly, ridiculousness and absurdity on the part of Senior Prosecution Officer, Shahjahanpur, dancing to the tune of the State Government, conveniently rushed to the court concerned within three days from receipt of the letter of the District Magistrate, Shahjahanpur and have submitted the above application on 12.03.2018 itself.

[29] When the aforesaid application filed by the Senior Prosecuting Officer, Shahjahanpur was pending in the court of the Chief Judicial Magistrate, Shahjahanpur for its disposal, on 24th May 2021, opposite party no.2 filed an application requesting the court to reject the aforesaid application of the Senior Prosecuting Officer under section 321 Cr.P.C. (annexure no. 33). She has opposed the said application and decision of the State Government truth and nail as she was real victim of the atrocities committed by the applicant upon her, but, state government for the obvious reasons, have decided to withdraw the prosecution against the applicant.

[30] Learned counsel for the applicant has drawn attention of the Court to annexure no. 25, a letter written by a former Judge of this Court Hon'ble Mr. Justice Kamleshwar Nath (since retired) to the District

Judge, Shahjahanpur wherein he sought certain information relying upon the news item published in Times of India(Lucknow Edition dated 10.04.2018) whereby he requested to apprise him through e-mail regarding the queries sought by him as under -:

(a) The case number of the Criminal Case and its date of the registration/institution between the particular parties

(b) As to whether the High Court has stayed the arrest of the accused Chinmayanand and the stay order.

(c) Whether the proceedings of the aforesaid criminal case has been stayed?

[31] After receipt of the aforesaid mail dated 16.04.2018, the said letter was forwarded to the Chief Judicial Magistrate, Shahjahanpur for his reply, who on 18.04.2018 had given pointwise reply to the queries made by Hon'ble Mr. Justice Kamleshwar Nath (since retired) referring to a news item.

[32] Strenuous arguments advanced by Sri Dileep Kumar with the submission that this mail sent by the aforesaid Ex. Judge of the High Court created undue pressure upon the learned Chief Judicial Magistrate, Shahjahanpur and over-influenced by it, the concerned Chief Judicial Magistrate decided the application of Senior Prosecuting Officer, Shahjahanpur dated 12.03.2018 rejecting the application under section 321 Cr.P.C.

[33] Pursuant to the parent order of this Court dated 14.12.2012 in the instant application filed under section 482 Cr.P.C., notices were issued to opposite party no. 2 and the learned A.G.A, who have filed their respective counter affidavits, which are on record.

[34] Sri Anurag Pandey, learned counsel for opposite party no.2 filed his Vakalatnama as well as counter affidavit dated 08.12.2020. The Court had the opportunity to look into the counter affidavit, sworn by Sadhvi Chidapita Gautam@Komal Gupta, who in paragraph 4 of the affidavit averred as under :

"That the deponent contested the proceedings and approached the higher authorities concerned including his excellency, the Government of U.P. The deponent came to know that his excellency the Hon'ble Governor called for the report from the District Magistrate Shahajahanpur/prosecutor and the matter has been finally dropped. Now, the deponent is fully satisfied with the decision of State Government for withdrawal of prosecution and the deponent/complainant is not interested in further perusing the matter of prosecution of the applicant and she has no objection in withdrawal of prosecution of the applicant without entering into the merit of the case."

[35] From the above averments of opposite party no.2, it is emphatically clear that she has now in the agreement with the decision of the State Government and has further submitted that she is no more interested in prosecuting the applicant in the aforesaid criminal case.

Though, learned A.G.A has filed counter affidavit on behalf of the State. The said counter

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affidavit was sworn by Sri Shiv Prasad Dubey, who is the Circle Officer, Jalalabad, district Shahjahanpur. In his counter affidavit wherein he spelled out skeleton facts of the case and has mentioned therein that after thorough investigation, the police has already submitted charge sheet under sections 376 and 506 IPC against the applicant and the court of competent jurisdiction has taken cognizance thereafter. The victim has supported prosecution case in her statements recorded under Sections 161 and 164 Cr.P.C. Not only this, she opposed the application under section 321 Cr.P.C. filed by the Senior Prosecuting Officer, Shahjahanpur by giving an application to the court concerned (annexed to the main petition, annexure 23-A, dated 24th May 2018).

[36] However, in paragraph 61 of the counter affidavit, there is denial of content of paragraph 76 whereby it has been mentioned that the Senior Prosecuting Officer, Shahjahanpur has submitted that the court concerned, after assessing material on record, has rejected the application filed by the Senior Prosecuting Officer, Shahjahanpur and has requested the court to reject the application filed under section 482 Cr.P.C. by Swami Chinmayanand Saraswati.

After exchange of the pleadings, there are following salient and distinguishing features of the case for the sake of brevity, which are as follows:

(i) The applicant is the sole accused of the present criminal case, and opposite party no.2, who has

levelled most abhorring allegations against the applicant, has virtually mercilessly crushed her chastity and ruined the relationship between Guru and Shishya (Teacher and disciple). The poor girl had been sexually exploited by the applicant as she has reiterated in her statements recorded under sections 161 and 164 Cr.P.C.

(ii) The police after thorough investigation submitted a charge sheet under sections 376 and 506 IPC against the applicant on 23.01.2012 and the concerned learned Magistrate has taken cognizance on 29.10.2012 for the aforesaid offence, dropping all other allied sections.

[37] The applicant filed first application under section 482 Cr.P.C No. 43082 of 2012 (Swami Chinmayanand Sarawati v. State of U.P.) and on 14.12.2012 a coordinate Bench of this Court, while issuing notice to the applicant and opposite party no. 2 has stayed further proceedings of the case No. 4179 of 2012 (State v. Chinmayanand Sarawati) and this interim order continued to operate till 16.02.2018, when the applicant himself had withdrawn the aforesaid 482 application without any leave or liberty to file afresh. This action speaks volumes about ulterior designs of the applicant.

[38] This sudden change in the situation i.e. withdrawal of the earlier 482 Cr.P.C. application on 16.02.2018 and the communication by the Under Secretary, Government of U.P. dated 06.03.2018 communicating the decision taken by the Government of U.P. to

withdraw the prosecution against the applicant to the District Magistrate, Shahajahanpur requesting to pass appropriate order for such withdrawal, speaks volume and need no explanation. There is a change in the establishment after U.P. Assembly Elections in the year 2017 and within a short span of time, withdrawing the prosecution against the applicant that too in a heinous crime under section 376 IPC, the proximity of the time, in decision taking by the State Government and the relevant person in whose favour this withdrawal of the prosecution has been made by the State Government, if taken cumulatively, then the reason would be obvious which needs no elaboration.

[39] As mentioned above, the Senior Prosecuting Officer, Shahjahanpur after having "sermons" from his political bosses and executive, blindly put his figure of approval by making a mention in the application under section 321 Cr.P.C., that after applying his so-called "स्वतंत्र मस्तिष्क (independent mind)", he is of the view that the aforesaid criminal case should be withdrawn against the applicant "in the larger interest of public and the interest of justice."

[40] This application was opposed by opposite party no.2 by filing the application dated 24th May, 2018 and now she has wriggled out from her earlier stand by filing an affidavit, relevant paragraph 4, mentioned above. Lastly, Sri Dileep Kumar, learned Senior Advocate appearing for the applicant gave much emphasis upon the e-mail sent by a former Judge of

this Court, Mr Justice Kameshwar Nath and Ex Lok Ayukt, Karnataka, who simply enquired about the status of the case from the District Judge, Shahjahanpur by painting on altogether different canvass colouring that the above referred e-mail had adversely influenced the interest of the applicant, the application under section 321 Cr.P.C. was rejected by the court concerned.

Legal Discussions:

[41] For the proper appreciation of the controversy involved, it is imperative to spell out the provisions of Section 321 Cr.P.C. which reads as under:

321. Withdrawal from prosecution. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;*
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences: Provided that where such offence-*
 - (i) was against any law relating to a matter to which the executive power of the Union extends, or*
 - (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or*
 - (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or*
 - (iv) was committed by a person in the service of*

the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

Legislative intent

[42] Any crime is said to be committed not against just any individual but against the entire society. Since, the entire society is endangered by an act/offence of accused and the entire society cannot practically sue the accused but State arrogates power and responsibility to initiate prosecution against the offender. It is not a case where the private individual can initiate a prosecution or he/she/they cannot be represented by a counsel of his/her/their choice but such counsel will have to be supervised by Public Prosecutor or Assistant Public Prosecutor. Thus, generally the Public Prosecutor or Assistant Public Prosecutor is the authority who is responsible to conduct the case against the accused in the court of law.

[43] There may be some of occasion wherein the Public Prosecutor does not find enough evidence to proceed further and press the prosecution case against

the accused or that he realises that furthering the prosecution case will lead to negating the prosecution evidence or that furthering the prosecution case may not be in the interest of public justice, peace and tranquillity. The legislature provided leeway to the Public Prosecutor and, thus, State Government to end such cases, furthering which the larger public interest may be compromised.

[44] Under these circumstances, Section 321 Cr.P.C. provides a discretion to Public Prosecutor to withdraw from the prosecution, with the consent of the Court wherein he or she thinks that such withdrawal will lead to a larger public interest.

*[45] In the celebrated judgement **Sheo Nandan Paswan v. State of Bihar [1987 1 SCC page 288]**, it has been mentioned that although the section provides no ground on which withdrawal can be filed by Public Prosecutor, the essential inherent condition read into the section by the Supreme Court is that the withdrawal should be in the interest of administration of justice. It is the responsibility of the respective Government, in which withdrawal application has been filed, to scrutinize the reason behind the withdrawal and verify it accordingly. Furthermore, it is the duty of the court to see that the Public Prosecutor actually applies his free mind and not just act as mere mechanical agent of the State Government.*

[46] Now the million dollar question arises as to "what exactly constitute the public interest ?" The condition

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that a Public Prosecutor can seek a withdrawal from the prosecution on the basis of securing greater public interest has proven to be a vague and the executive has numerous times misused this vagueness on this condition of securing its self-serving political interest.

[47] Although, an exhaustive definition of the public interest is difficult to prepare, however, the court had evaluated and proved over a period of time the scales of public interest in the light of the facts and circumstances of the case.

[48] No doubt, it is explicit prerogative of the State Government to withdraw from the prosecution and Public Prosecutor shall apply his independent and free mind to come to the conclusion as to whether the decision of the State Government falls within the ambit of 'larger public interest'. If the Public Prosecutor concludes that the prosecution should be withdrawn, then it is incumbent upon him to apply in the court with adequate and tangible reasons spelled out in the application. Using of the term स्वतंत्र मस्तिष्क , न्यायहित और जनहित is not going to touch the bar as envisaged in catena of judgements of Hon'ble Apex Court over period of time. If the Public Prosecutor defers from the decision of the State Government and concludes that the case ought not to be withdrawn, then he has got two options.

(a) Either to ask the State Government to relieve him from a particular case, or least he shall have

to resign. Or

(b) To forward the application by giving his own reasoning with the considered opinion that such application is not sustainable on the ground set out by him in the application.

[49] A Public Prosecutor is not supposed to dance to the tune of the State Government nor he is supposed to act as a post office or act under the dictate and command of the State Government. He has to act objectively as he is also an officer of the Court. At the same time, the Court is also free to assess, whether a prima facie case is made out or not. If the Court is satisfied then after assigning a reason, has also power to reject the same but it cannot be said that the Public Prosecutor's action will be illegal, if he receives a communication/instructions from the State Government. However, a Public Prosecutor cannot file an application for withdrawal from the prosecution on his own without getting a proper signal from the State Government.

Role of a Public Prosecutor

*[50] In the case of **Subhash Chandra v Chandigarh Administration [1980 (2) SCC 155]** it was held that the Public Prosecutor who alone is entitled to pray for withdrawal, is to act not as a part of executive but as a judicial limb and in praying for withdrawal, he is to exercise his independent discretion even if it incurs the displeasure of his master affecting continuance of his*

office.

[51] *Permission for withdrawal from prosecution cannot be granted mechanically. Withdrawal must be for proper administration of justice and only in the public interest. Hon'ble the Apex Court in the case of **Abdul Kareem and others v. State of Karnataka [2008 SCC page 710]** held that an application under section 321 Cr.P.C. could not be allowed only on the ground that the State Government has taken a decision for withdrawing the prosecution and such an order could not be passed after examining facts and circumstances of the case.*

[52] *What the Court has to see as to whether the application has been made in good faith and in the interest of public policy and justice and not to thwart or stifle the process of law. The Court after considering the facts and circumstances of each case has to see whether the application suffers from improprieties or illegalities as would cause a manifest injustice if consent was given.*

[53] *Lastly, in the case of **Rajendra Kumar v State through Special Police (establishment) [1980 page 3 SCC page 435]** Hon'ble the Supreme Court has held that it shall be duty of the Public Prosecutor to inform the grounds for withdrawal to the Court and it shall be duty of the Court to authorize a search of the reason, which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so as*

the public Prosecutor, its 'Ministers of Justice'. Both have a duty to protect the administration of Criminal Justice against possible abuse or misuse by the Executive by resort to the provisions of Section 321 Cr.P.C. The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case.

Duty of the Government

[54] Before instructing a Public Prosecutor for withdrawal from the prosecution, the State Government should also consider the matter carefully and find in which consideration is made, should contain its reason. When the matter is for a benefit of the society, there is no scope of its being confidential, if this procedure is followed, the chances of favouritism or extraneous political persuasion would be curbed to the great extent.

[55] All these legal guidelines have been pronounced by Hon'ble the Apex Court on numerous occasions. Revisiting the instant case on the aforesaid, herein neither the Under Secretary of the State of U.P., while issuing the impugned letter to the District Magistrate, Shahjahanpur dated 06.03.2018 (annexure no. 31] has spelled out a single good reason for the alleged withdrawal of the prosecution against the applicant. "समुचित विचारोपरांत शासन ने उक्त चिन्मयानन्द सरसवती के अभियोग वापस लेने हेतु लोक अभियोजक माननीय न्यायालय में प्रार्थना पत्र प्रस्तुत किये जाने की लिखित अनुमति ले लिया है". This

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by itself, is nowhere near of initiating any reason for withdrawal of the prosecution. Similarly after receipt of the aforesaid letter, the so-called use of स्वतंत्र मस्तिष्क by the Public Prosecutor is nothing but a mockery of justice, sham and hoax and facade which clearly indicates that the Senior Public Prosecutor concerned has simply bowed down on the toes of his executive/political majesty.

*[56] The Court is duty-bound to refer recent judgement of Hon'ble the Apex Court herein, which has cleared off all the confusions and seeping of interpretation i.e. **State of Kerala v. K. Ajit and others [Criminal Appeal No. 698 of 2021 decided on 28th July 2021.***

*[57] Learned counsel for the applicant has relied upon the following three judgements i.e. (1) **Aishwarya Chaudhary v. State of Uttar Pradesh (Application 482 No. 44691 of 2018 decided on 15.05.2019** (2) **Abdul Kareem and others v. State of Karnataka [2008 SCC page 710]** (3) **Rahul Agarwal v. Rakesh Jain [2005 SCC (Cri) 506]***

[58] This Court has keenly perused all the aforesaid judgements and from the conclusions of the same, it establishes that they primarily have focussed upon the role of judiciary in deciding the application under section 321 Cr.P.C. There is no quarrel to the legal preposition that under section 321 Cr.P.C., the consent of the Court connotes a supervisory and not adjudicatory manner and the Court has to see that the application moved by the Public Prosecutor for

withdrawal of the prosecution has been properly made in a good faith and in the interest of public tranquillity and justice and not to just thwart or stifle process of law but the issue represented in these cases, have no application in the present controversy. In as much as stated above, there is no quarrel to the legal proposition but certainly if executives over-step its boundary, it creates a fault line against any functionary, healthy and liberal democracy.

*Hon'ble Mr. Justice Untawalia presiding over the case of **Union of India v. Sankal chandHimatwal Sheth [AIR 1977 SC 2328]** has explained the role of judiciary as "the judiciary is like a watching tower above all the big structures of the other limbs of State. From the top of its respective towers, the highest judiciary either by it in the State or in the Centre keeps a watch like a sentinel on the functions of the other limbs of the State as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme."*

[59] Hon'ble the Supreme Court has held in numerous of the cases that though, the post of the Public Prosecutor and the Assistant Public Prosecutor constitute executive posts, they should not act merely as post office between court and the State while exercising the power under section 321 Cr.P.C., they should act with a judicial mind without any interference. Similarly, the court also may grant consent while granting the withdrawal from the prosecution, after

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holding in-depth probe and scrutiny of all the factual circumstances of the case and after due application of mind. The power assigned under this section is a judicial discretionary power and has to be applied in a judicial manner.

[60] At the cost of repetition, withdrawal of a case could be done only with the consent of the court on the motion initiated by the Public Prosecution. It is upon the Public Prosecutor must be acting in a good faith and that the court is satisfied that exercise of the discretion by a Public Prosecutor is proper and sound, based on reasoning and uninfluenced by extraneous reasons or vague expressions just to assist the political bosses. Normally courts cannot question the decision of the Public Prosecutor under this Section unless it comes to the conclusion that the Public Prosecutor has not applied his mind or his decision is biased, coloured, tainted or motivated one and not sub-serving the public policy. The court has a special duty in this regard as it is an ultimate depository of legislative confidence in granting its consent to withdraw from the prosecution.

[61] Last but not the least, the Court has laid its hand to a recent judgement which has given a new emphasis to the interpretations of section 321 Cr.P.C., which are as under :-

(a) State of Kerala v. K. Ajith [Criminal Appeal No. 297 of 2021, decided on 27.07.2021]

AND

(b) Ashwini Kumar Upadhyay v. Union of India [Writ Petition No. 699 of 2016 dated 10.08.2012], part of which is quoted hereinunder :-

"We are inclined to address the first two issues by this order as these issues are of immediate concern and may be easily disposed of. It may not be out of context to state that issues no. 3 and 4 give rise to substantive question of law which may require some elaborate arguments, which will be taken up on a subsequent date.

Misuse of Prosecutor's Power u/s 321 of Cr.P.C.

Learned amicus has drawn our attention to various instances across the country, wherein various State Governments have resorted to withdrawal of numerous criminal cases pending against M.P./M.L.A. by utilising the power vested under Section 321, Cr.P.C. It merits mentioning that the power under Section 321, Cr.P.C. is a responsibility which is to be utilized in public interest, and cannot be used for extraneous and political considerations. This power is required to be utilized with utmost good faith to serve the larger public interest. Recently, this Court in State of Kerala Vs. K. Ajith, (2021) SCC Online SC 510, held as under :-

"The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the CrPC can now be formulated :-

(i) Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

(ii) The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent

of the court to withdraw from the prosecution;

(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that :-

(a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent sub-serves the administration of justice; and ;

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there

has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."

In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former M.P./M.L.A. shall be withdrawn without the leave of the High Court in the respective suo-motu writ petitions registered in pursuance of our order dated 16.09.2020. The High Courts are requested to examine the withdrawals, whether pending or disposed of since 16.09.2020, in light of guidelines laid down by this Court."

*[62] In addition to these guidelines, there is yet another judgement of the Full Bench of this Court i.e. **Criminal Writ (Public Interest Litigation) No. 16507 of 2015** in re withdrawal of criminal cases by the State Government in **Ram Narain Yadav v. State of U.P. and others**. The Full Bench lead by Hon'ble Mr. Justice VK Shukla (as His Lordship then was) replying to the references in the shape of three questions as under:*

- "1. Whether the power of withdrawal "1. Whether the power of withdrawal can be exercised by State Government under Section 321 of Code of Criminal Procedure in a whimsical or arbitrary manner or it is required to be exercised for the considerations, just, valid and judicially tenable?*
- 2. Whether decision taken by State Government for withdrawal of cases communicated to Public Prosecutor with direction to proceed ahead is open to judicial review or not in a writ jurisdiction under Article of the Constitution of India?*
- 3. Whether State Government should not be required to make scrutiny of various criminal cases pending in Subordinate Courts to find out if*

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they deserve withdrawal in exercise of powers under section 321 Cr.P.C. irrespective of fact that accused or anyone else has approached the government for this purpose or not? "

[63] The Full Bench replied to the aforesaid queries in a lucid manner quoted herein below:

"Issue No. I: State Government is not at all free to exercise its authority under Section 321 Cr.P.C. in whimsical or arbitrary manner or for extraneous considerations apart from just and valid reasons.

Issue No. II: The decision taken by the State Government for withdrawal of the case communicated to the Public Prosecutor, is open to judicial review under Article 226 of the Constitution of India on the same parameters as are prescribed for invoking the authority of judicial review.

Issue No. III: The State Government is free to act under the parameters provided for to make scrutiny of criminal cases pending in subordinate courts to find out as to whether they deserve withdrawal under section 321 Cr.P.C. or not as it is in the realm of the policy decision, and call on the said score has to be taken by the State Government and same has to be based on the parameters required to be observed while moving an application for withdrawal of prosecution under section 321 Cr.P.C."

[64] Now, comparing the impugned order dated 24.05.2018 passed by the Chief Judicial Magistrate, Shahjahnapur (annexure no. 24) on the aforesaid guidelines set up by Hon'ble Apex Court and the Hon'ble Full Bench of this Court. In the impugned order, the Chief Judicial Magistrate, Shahjahanpur has pointed out that this is the case relating to the rape and

exploiting the chastity of a woman while filing an application under section 321 Cr.P.C., the learned Senior Presiding Officer at no stage, has pointed out as to how the withdrawal of this prosecution would sub serve the objective of public interest or interest of justice.

[65] As mentioned above, there has to be a cogent and tangible reason, which must be spelled out in such application filed under section 321 Cr.P.C., using the vague phrases "स्वतंत्र मस्तिष्क, न्यायहित और जनहित" is putting the entire facts of the case in the long dark and unending tunnel, which has got no destination. The Senior Prosecuting Officer has not even mentioned on which material he has applied his own independent mind and has drawn the conclusion that the withdrawal of the prosecution would meet end of justice or in the interest of public at large. Mere mentioning of the phrase "स्वतंत्र मस्तिष्क "(independent mind) casts serious doubt as to whether the concerned Senior Prosecution Officer is an officer of the court or an agent to the executive. While to the number of the decisions and relying upon the victim's statements recorded under section 161 and 164 Cr.P.C., and taking into account her opposition (annexure 23-A) dated 24th May 2018, the Court after marshalling the case on facts and atrocities faced by the opposite party no. 2, clearly mention that since cognizance of the offence was taken, the prosecution has not shown the grounds taken for withdrawal of the prosecution and,

accordingly, rejected the application filed under section 321 Cr.P.C.

*[66] After going through the impugned judgement with the connotes spelled out by Hon'ble Apex Court while deciding **Ashwini Upadhyaya's (Supra)**, dated 10.08.2021, the Court is of the considered opinion that the entire process of withdrawing the prosecution against the applicant is well short off the standards set up by Hon'ble Apex Court in this regard and thus do not call for any interference from this Court. So far as learned counsel for the applicant lastly has submitted that opposition no. 2, herself, has given a counter affidavit and its paragraph 4, she averred that she is in the agreement with the decision taken by the State Government deserves no further discussion, as the same lady filing objection dated 24th May 2018 (annexure no. 24-A) of the affidavit. Thus, it could be clearly said that she had been won over by the applicant and, therefore, do not deserve any adjudication in this regard and her said stand shall be seen at the time of the charge.*

[67] From the aforesaid discussion, this Court is of view that no case to exercise the power under section 321 Cr.P.C. is made out in favour of the applicant and deserves to be rejected.

Last but not the least, provision of Section 321 Cr.P.C. are completely antithesis of popular couplet from RAMCHARITMANAS :-

समरथ कहूं नहीं दोष गोसाईं, रवि पावक सुरसरि की नाईं.

In our criminal dispensation system, we cannot afford to pick and choose depending upon the caste, creed, religion, political affiliation, financial capacity etc. The application of law should be one and uniform to all top to bottom. "Weak never suck the blood of mighty, as it is done with might and therefore, a weak always remain enemic and sometimes dead." This is the binding duty of court of law to come with the side of weak and provides adequate shelter and opportunity for his survival.

[68] However, it has been given to understand that the applicant is an old man of 76 years, suffering from number of age relating ailments, got his eyes surgically operated and the concerned doctor has advised him for bed rest.

[69] Taking into account the humanitarian approach, if the applicant surrenders before the concerned Magistrate on or before 30th October 2022 and applies for bail, his bail application shall be adjudicated and decided strictly in accordance with law. Till 30th October, 2022 from today, no coercive action shall be taken against the applicant in the aforementioned case.

[70] With the aforesaid judgement and order, the instant petition is finally disposed of.

[71] Copy of the order shall be communicated to the concerned authorities within four days forthwith.

10. It is argued that against the said order dated 30.09.2022, the applicant preferred a Special Leave to Appeal (Crl.) No. 10004 of

2022 (Swami Chinmayanad Saraswati Vs. State of U.P and another) which was dismissed by the Apex Court in which it was clarified that the observation in the order of the High Court were limited for consideration of the application for withdrawal of the prosecution and would not weigh with the trial court while conducting the trial. Since in the order dated 30.9.2022 this Court, on humanitarian approach directed that if the applicant surrenders before the concerned Magistrate on or before 30.11.2022 and applies for bail, his bail application shall be adjudicated and decided strictly in accordance with law and till 30.10.2022 from the order, no coercive action shall be taken against him, the said time to surrender was extended till 30.11.2022 by the Apex Court. The said order is placed before the Court which is annexure no. 17 to the present affidavit filed in support of anticipatory bail application, the same is quoted here-in-below:-

“We are not inclined to interfere with the impugned judgment and order passed by the High Court. The special leave petition is, accordingly, dismissed.

However, we clarify that the observations made in the impugned validitler of the High Court were Limited for consideration of the application for withdrawal of the prosecution and would not weigh with the Trial Court while conducting the trial.

The time to surrender by the petitioner herein is extended till 30.11.2022.

Pending application(s), if any, shall stand disposed of.”

11. Learned counsel for the applicant argued that the applicant is an old and infirm person aged about 75 years having several

sickness, para 59 to the affidavit filed in support of anticipatory bail application has been placed before the Court. The medical documents being annexure no. 18 have been placed before the Court. While placing para 61 of the affidavit, it is argued that the applicant has Ashrams in certain places of the country and is also managing trustee of various trusts which are imparting education, religious and academic education. Para 62 of the affidavit has been placed before the Court to argue that there are five educational institutions through which apart from religious and spiritual education, regular academic courses in various subjects are being taught. Para 63 of the affidavit has been placed before the Court to argue that there are number of medical hospitals which are being run under the supervision of the applicant. It is argued that the applicant has no criminal antecedents as stated in para 66 of the affidavit. It is argued that the applicant cooperated during the investigation and made himself available for it as and when needed. It is argued that since the applicant was given a protective order during the period of investigation, he may be granted anticipatory bail till the conclusion of trial. The applicant is a spiritual and educational personality. It is argued that although vide order dated 30.9.2022 passed in Application U/S 482 Cr.P.C, it was directed that if the applicant surrenders within 30 days, his bail application be decided by the court concerned in accordance with law and the said time was extended by the Apex Court by an order dated 14.11.2022 but the same would not in any manner restrict the applicant and bind him for not exploring his remedy available under law under Section 438 Cr.P.C. for anticipatory bail. Learned counsel for the applicant has placed reliance upon the order of the Apex Court in the case of **Vinod Kumar Sharma and**

another Vs. State of U.P. and another : 2021 SCC OnLine SC 3225. It is further argued that even if the application U/S 482 Cr.P.C. of the applicant has been dismissed, the same would again come in the way of the applicant in filing an application for anticipatory bail under Section 438 Cr.P.C. To buttress the submission, learned counsel for the applicant has placed before the Court the order of the Apex Court in the case of **Kamlesh and another Vs. The State of Rajasthan and another : 2019 SCC OnLine SC 1822.** It is argued that as such the applicant be granted anticipatory bail.

12. Learned counsel for the State although opposed the prayer for anticipatory bail but could not dispute the factual position with regards to protection granted to the applicant during the pendency of investigation, the fact that the State Government has decided to withdraw the prosecution of the applicant and further that the applicant is 75 years of age and is associated with various educational, religious and medical institutions.

13. The matter requires consideration.

14. Learned A.G.A. has accepted notice on behalf of State of U.P. / opposite party no. 1.

15. Let notice be issued to the opposite party no. 2 through registered post A.D. and through C.J.M. concerned returnable within three weeks.

16. Steps be taken within a week.

17. Learned A.G.A. as well as opposite party no. 2 may file their respective counter affidavits, if any, within four weeks from today. Rejoinder affidavit(s), if any, may be filed by the applicant within one week thereafter.

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18. List this case on **6.2.2023**.

19. Till the next date of listing, in the event of arrest of the applicant - **Swami Chinmiyanand Saraswati**, involved in the aforesaid case shall be released on **interim anticipatory bail** on furnishing a personal bond of Rs. 1,00,000/- (Rupees One lakh) with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) the applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him / her from disclosing such facts to the Court.

(iii) the applicant shall not leave India without the previous permission of the Court and if he has a passport, the same shall be deposited by him before the concerned court forthwith.

20. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled / vacated and the applicant shall be taken into custody, forthwith.

21. Further, in default of any of the condition(s), the court concerned is at liberty to pass appropriate order(s) for enforcing and compelling the same.

(Samit Gopal, J.)

Order Date :- 19.12.2022

Gaurav