

Court No. - 71

Case :- APPLICATION U/S 482 No. - 39782 of 2024

Applicant :- Vikas

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

Counsel for Applicant :- Deepak Rana, Harsh Tiwari, Vimlendu Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vimlendu Tripathi alongwith Mr. Harsh Tiwari and Mr. Deepak Rana, the learned counsel for applicant and the learned A.G.A. for State/opposite Party-1.

2. Perused the record.

3. Applicant-Vikas, who is a charge sheeted accused, has approached this Court by means of present application under section 482 Cr.P.C. with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and to quash the impugned summoning and cognizance order dated 23.02.2024 passed by the court of learned Additional Civil Judge (Junior Division)/ Judicial Magistrate Court no. 4, Ghaziabad as well as impugned charge-sheet dated 29.08.2023 and the entire proceedings in Case No. 85 of 2024 arising out of Case Crime No. 177 of 2023 u/s 376, 328, & 506 of IPC, Police Station-Tronica City, District-Ghaziabad pending before the court of Addl. Civil Judge (Junior Division), Court No. 4, Ghaziabad, so that justice may be done.

And during the pendency of instant criminal misc. application, this Hon'ble Court may further be pleased to stay the further

proceedings of Case No. 85 of 2024 arising out of Case Crime No. 177 of 2023 u/s 376, 328, & 506 of IPC, Police Station-Tronica City, District-Ghaziabad pending before the court of Addl. Civil Judge (Junior Division), Court No. 4, Ghaziabad, otherwise the applicant shall suffer irreparable loss and injury and/or pass such other and further order which this Hon'ble court may deem fit and proper under the facts and circumstances of the case."

4. Learned counsel for applicant submits that though the applicant is a named and charge sheeted accused yet present application is liable to be allowed. In furtherance of aforesaid submission, the learned counsel for applicant invited the attention of Court to the pleading raised in support of present application. With reference to above, it is submitted by the learned counsel for applicant that it is an admitted case to the prosecutrix that the occurrence giving rise to present criminal proceedings occurred on 26.04.2022. However, the application under Section 156 (3) Cr.P.C. was filed by first informant/prosecutrix on 16.06.2022 i.e. after 52 days of the occurrence. As such the application under Section 156 (3) Cr.P.C. was filed with delay. However, neither in the application under Section 156 (3) Cr.P.C. nor in the statement of the prosecutrix/first informant, any explanation has come forward with regard to delay in filing the aforesaid application. On the above premise, the learned counsel for applicant submits that since there is an unexplained delay in filing the application under Section 156 (3) Cr.P.C. therefore, prosecution of applicant cannot be sustained. To buttress his submission, he has relied upon the judgements of Supreme Court in **P. Ramchandra Rao Vs. State of Karnataka (2002) 4 SCC 578**, **P. Rajagopal And Ors. Vs. The State of Tamil Nadu, AIR 2019 SC 2866/2019(5) SCC 403**, **Hasmukhlal**

D. Vora and Another Vs. State of U.P. (2022) 15 SCC 164, Sekaran Vs. State of Tamil Nadu (2024) 2 SCC 176 and Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh, 2024 SCC OnLine SC 938. Much emphasis was laid on the judgement of Apex Court in **Shivendra Pratap Singh Thakur @ Banti (supra)** wherein Apex Court quashed the criminal proceedings on the ground that there is an unexplained inordinate delay of 39 days in lodging the F.I.R. On the above conspectus, the learned counsel for applicant submits that present application is liable to be allowed by this Court.

5. It is then contended by the learned counsel for applicant that at the time of occurrence i.e. 26.06.2022, the applicant was residing at NOIDA. Upon complaint made by the prosecutrix, an enquiry was conducted by the Police at District-Gautam Buddh Nagar, which fact is evident from the document occurring at page 189 of paper book. In the said enquiry, the police upon investigation duly concluded that both the parties are major and are in consensual relation with each other. As such no offence is made out against applicant. On the above premise, the learned counsel for applicant submits that only to overcome the effect of the enquiry report referred to above, the application under Section 156 (3) was filed in the District Court, Ghaziabad. As such present criminal proceedings are not only malicious but also an abuse of the process of the Court.

6. Per contra the learned A.G.A. for State-opposite party-1 has vehemently opposed this application. Learned A.G.A. submits that during course of investigation sufficient material was gathered by the Investigating Officer against applicant, on the basis of above, criminality alleged to have been committed by applicants is prima-

facie established. Consequently the Investigating Officer has submitted the police report/charge sheet against applicant. As such, no indulgence be granted by this Court in favour of applicants. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

7. Having heard the learned counsel for applicant and the learned A.G.A. for State and upon perusal of record, this Court finds that matter requires consideration.

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

9. Issue notice to opposite party-2.

10. All the opposite parties may file their respective counter affidavits on before the date fixed in the notice.

11. List for admission on 20.02.2025.

12. Considering the facts and circumstances of case and also the submissions urged by the learned counsel for applicant in support of present application as noted herein above, as an interim measure, it is hereby provided that until further orders of this Court further proceedings of Case No. 85 of 2024 (State Vs. Vikas) arising out of Case Crime No. 177 of 2023 u/s 376, 328, & 506 of IPC, Police Station- Tronica City, District-Ghaziabad pending before the court of Addl. Civil Judge (Junior Division), Court No. 4, Ghaziabad, shall remain stayed.

Order Date :- 9.1.2025

YK