

**In Chamber**

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**Case :-** CRIMINAL MISC. WRIT PETITION No. - 898 of 2022

**Petitioner :-** Kartik Chaudhary

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Himanshu Srivastava, Madan Lal Srivastava

**Counsel for Respondent :-** A.G.A.

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Deepak Verma, J.**

Supplementary affidavit filed today, is taken on record.

Heard Shri Madan Lal Srivastava, learned counsel for the petitioner and Shri J.K. Uapdhyay, learned AGA for the State.

This writ petition is directed against an order dated 31.01.2022 passed by the second respondent, the Commissioner Aligarh Division, Aligarh in Case No.130 of 2022 (Kartik Vs. State of U.P. under Section 6 of the U.P. Control of Goondas Act, 1970, whereby a stay application filed by the petitioner in his appeal has been rejected.

The contention of learned counsel for the petitioner is that the proceedings under the Gundas Control Act were initiated against him for political considerations. There are three cases against the petitioner but he is on bail in each of them. He has never been convicted nor he has any criminal history.

Apart from the ground of politically motivated proceedings, it has also been submitted that the wife of the petitioner is contesting the Assembly Elections, polling for which is to be held on 10.02.2022 and therefore, also the petitioner was and is entitled to an interim order in his favour.

It has next been submitted that initial notice issued to the petitioner was for 14.01.2022, on which date a general date was fixed in other cases. However, in case of the petitioner, the general order was modified and the matter was fixed for 27.01.2022, on which date, the petitioner appeared and filed his objection and was duly heard. On 28.01.2022, the next day, the order of externment was passed. The petitioner preferred an appeal under Section 6 of the U.P. Control of Goondas Act, 1970, wherein on 31.01.2022, the stay application was rejected while admitting the appeal.

It is next contended that once the appeal was being admitted, it

was incumbent upon the Court to have granted interim protection to the petitioner, in view of Section 6(3) of the U.P. Control of Gundas Act, 1970.

Lastly it has been contended that in similar circumstances, the High Court in Criminal Misc. Writ Petition no.16997 of 2016 (Pawan Kumar Vs. State of U.P. & others) vide order dated 26.07.2016 had granted a limited stay of the order of the externment while issuing directions for the expeditious disposal of the appeal, itself.

He has prayed for similar protection be granted to the petitioner at least for the period of 15 days or even 10 days, so that he can participate and canvass for his wife in forth coming U.P. Assembly Elections.

Learned AGA on the other hand submitted that the writ petition itself is not maintainable as it is directed against an order rejecting a stay application. The appeal filed by the petitioner is still pending and therefore, the merits of the appeal itself should not be subject matter of consideration by this Court as any observation or finding is liable to seriously prejudice either of the parties in the appeal, itself. He has supported the order, which rejects the stay application filed by the petitioner.

We have considered the submissions made by counsel for the parties and perused the record.

It is not in dispute that an order of externment was passed against the petitioner and that he has preferred an appeal, which has been admitted and is pending consideration. The petitioner at the moment is only aggrieved by the rejection of the stay application primarily on the ground that he will be not be able to canvass for his wife who is a candidate in the forthcoming U.P. Assembly Elections, polling for which is fixed for 10.02.2022.

Merely, because the petitioner's wife is a candidate is the forthcoming U.P. Assembly Elections, the same cannot be a ground for granting relief to the petitioner. The order of externment has been passed after hearing the petitioner and the stay application in the consequential appeal has been rejected also after hearing the petitioner.

The ground that is sought to be urged is that the matter had been preponed only for political considerations is an aspect which is subject matter of the appeal, which is pending consideration. Therefore, this Court refuses to enter into this aspect of the matter at least for the reason of judicial propriety. Even

otherwise, the same is a disputed question of fact, which cannot be subject matter of a writ petition. There is no occasion for Judicial Review on this ground, as the appellate authority is yet to pass an order on this submission.

It appears that the stay application has been rejected on the ground of pendency of at least three criminal cases against the petitioner, two of which are under Sections 420, 467, 468, 471 and other allied sections. In both these cases, charge sheets have been filed against the petitioner. The third case is a case under Sections 307, 504, 336, 427 IPC, registered against the petitioner in January 2021. It appears that on the basis of the aforesaid three cases, a case under the Gangsters Act has also been registered against the petitioner.

In the aforesaid circumstances and since there is material, which prima facie cannot lead to a conclusion that the petitioner is being harassed politically, no ground for interference is made out at this stage.

All the cases, against the petitioner are of a period long before the Assembly Elections were declared and therefore, it is difficult to come to the conclusion that the proceedings against the petitioner are politically motivated. Moreover, it is not the petitioner himself, who is contesting the elections but his wife who is under no restraining order and can freely canvass. This is an additional ground why no interference is required.

The contention of learned counsel for the petitioner is that he is entitled to the same benefit as has been granted by the High Court in Pawan Kumar's case.

It would be relevant to note that the facts of the instant case are distinguishable. The order of the High Court in Pawan Kumar specifically records that the appeal filed by Pawan Kumar was pending after rejection of the stay application but was being adjourned repeatedly and the matter was protracting and was not liable to be disposed of or decided expeditiously, frustrating the very purpose of filing the appeal. These observations clearly distinguish the case of the petitioner. The appeal of the petitioner has been preferred on 31.01.2022 merely a week back.

There is nothing on record to show that the matter has been adjourned at the instance of either the opposite party in appeal or at the instance of the Court concerned. The petitioner is therefore, not entitled to any benefit under the order cited on his behalf.

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The last issue which requires consideration is the submission of counsel for the petitioner that since the appeal filed by him had been admitted, he was entitled to interim protection in view of Section 6(3) of the U.P. Control of Gundas Act, 1970. The said provision reads as follows -

*"(3) The Commissioner may either confirm the order, with or without modification, or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit."*

The crucial word occurring in Sub-section 3 of Section 6 is "may" (underlined above for emphasis ) necessarily means that grant of an interim order is not mandatory. It is within the discretion of the Court looking into the facts and circumstances of the case to either stay, the order of externment or to refuse to do so.

The impugned order has considered the submissions and rejected the stay application. It cannot be said that the order is a mechanical order or has been passed without application of mind. Therefore, even this submission of counsel for the petitioner does not appeal to this Court.

It would be relevant to note that there are several cases against the petitioner including one under Sections 307 IPC and in case, he has been ordered to be externed in exercise of powers conferred by the U.P. Control of Gundas Act 1970, especially when the Assembly Elections are due during which the administration is required to maintain law and order. This, in our opinion, is another circumstance against the petitioner.

For the reasons given above, this Court refuses to grant any relief to the petitioner. The writ petition on the submissions made has no substance and is dismissed.

However, the second respondent, the Commissioner, Aligarh Division, Aligarh is directed to dispose of the appeal of the petitioner on its merits after hearing all concerned within a period of six weeks from the date a certified copy of this order is filed before him.

**Order Date :- 6.2.2022**

RKM