

**Court No. - 49**

**Case :- APPLICATION U/S 482 No. - 9093 of 2023**

**Applicant :- Randeep Singh Surjewala**

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

**Counsel for Applicant :- Akhilesh Singh, Shivam Yadav**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Rajiv Gupta, J.**

Heard Shri G.S. Chaturvedi, Senior Advocate assisted by Shri Akhilesh Singh, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The present application under Section 482 Cr.P.C. has been filed for quashing the entire proceedings of Case No. 2983 of 2010 (State Vs. Vijay Shanker Pandey and Others), arising out of Case Crime No. 391 of 2000, under Sections 147, 332, 353, 336, 333, 427 IPC, Section 7 of Criminal Law Amendment Act, Section 3 of Prevention of Damage to Public Property Act, Police Station Cantt., District Varanasi, pending in the court of Additional Sessions Judge-I/ Special Judge (MP/ MLA Court), Varanasi.

Learned counsel for the applicant has submitted that from perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicant and the present case has been instituted with a malafide intention for the purpose of harassment, as such, entire proceedings be quashed.

Learned counsel for the applicant has pointed out certain documents and statements in support of his contention.

Learned counsel for the applicant has next submitted that the applicant has already been directed to be released on bail.

Per contra, learned AGA has submitted that from perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicant and as such, entire proceedings cannot be quashed.

From perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

At this stage, only prima facie case is to be seen in the light of the law laid down by Hon'ble Supreme Court in the cases of *R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283.* The disputed defence of the accused cannot be considered at this stage.

Moreover, the applicant had already been directed to be released on bail and he has got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused has a right to file a discharge application before the trial court and the trial court may decide his discharge application, if there is no evidence against him.

The prayer for quashing the entire proceedings is therefore refused.

However, it is directed that in case the applicant files an application for discharge before the court below through counsel within a period of two weeks, the same be considered and decided expeditiously within six weeks.

For a period of two months or till the disposal of the discharge application, whichever is earlier, no coercive action be taken against the applicant.

With the aforesaid directions, the application under Section 482 Cr.P.C. is finally **disposed off.**

**Order Date :- 20.3.2023**

Nadim