

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 5658 of 2022

Petitioner :- Vikas Kumar Alias Vikas Agrahari

Respondent :- State Of U.P. Thru. Its Secy. Home Deptt. Lko. And Others

Counsel for Petitioner :- Sukh Deo Singh, Anamika Singh, Paritosh Shukla

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

(1) The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner, **Vikas Kumar alias Vikas Agrahari**, seeking the following reliefs :-

- i. Issue a Writ, order or direction in the nature of *Certiorari* quashing the impugned FIR dated 23/05/2022 lodged by the Respondent No.4 bearing FIR No. 262/2022 U/Ss. 417, 376, 504, 506 IPC, P.S. Gosaiganj, District Sultanpur, as contained in Annexure-1 to this Writ Petition.
- ii. Issue a Writ, order or direction in the nature of *Mandamus* commanding and directing the Respondents Authorities not to arrest the Petitioners on the basis of the impugned FIR dated 23/05/2022 bearing FIR No. 262/2022, U/Ss. 417, 376, 504, 506 IPC, P.S. Gosaiganj, District Sultanpur.
- iii. Such other and further order or direction as this Hon'ble Court may deem fit and proper.

(2) Heard Ms. Anamika Singh, learned Counsel for the petitioner and Mr. D.S. Rana, learned Additional Government Advocate for the State/respondents and perused the material brought on record.

- (3) Learned Additional Government Advocate has raised a preliminary objection that earlier the petitioner had preferred Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 1011 of 2022 : *Vikas Kumar alias Vikas Agrahari*, praying therein to grant anticipatory bail in the F.I.R. dated 23.05.2022, bearing No. 262 of 2022, under Sections 417, 376, 504, 506 I.P.C., Police Station Gosaiganj, District Sultanpur. The learned Single Judge of this Court, vide order dated 30.06.2022, disposed of the aforesaid anticipatory bail application with the following observations and directions :-

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

The instant application has been filed for quashing the FIR No. 262 of 2022, under Sections 417, 376, 504, 506 IPC, P.S. Gosaiganj, District Sultanpur.

Learned counsel for the applicant submits that FIR was lodged against the applicant on 23.05.2022, under Section 417, 376, 504, 506 IPC. He submits that applicant has been falsely implicated in the present case.

On the other hand, learned AGA has opposed the contention aforesaid and submits that applicant was involved in committing the aforesaid offence.

At this stage, learned counsel for the applicant submits that he does not want to press the application and seek liberty to file bail application before the learned trial court which may be decided in view of law laid by Hon'ble Supreme Court in order dated 7.10.2021 passed in Petition for Special Leave to Appeal (Cri) No.5191 of 2021 **Satender Kumar Antil versus Central Bureau of Investigation and another.**

Learned A.G.A. has no objection to the prayer made by learned counsel for the petitioners.

On due consideration to the submissions of learned counsel for the parties', it is provided that in case, the applicant appears before the trial court within ten days' from today and files bail application, the same shall be decided expeditiously in view of law laid down in the case of **Satender Kumar Antil**

versus Central Bureau of Investigation and another (supra).

The application is disposed off accordingly.”

- (4) Learned Additional Government Advocate has further argued that instead of appearing before the trial Court and filing an application for bail before the trial Court pursuant to the order dated 30.06.2022 (supra), the petitioner had filed second Anticipatory Bail Application under Section 438 Cr.P.C., bearing No. 1145 of 2022 : *Vikas Kumar alias Vikas Agrahari*. The learned Single Judge, vide order dated 19.07.2022, disposed of the aforesaid second anticipatory bail application with the following observations and directions :-

“Heard Sri Paritosh Shukla, learned counsel for applicant, Sri S.P. Tiwari, learned A.G.A. for State and Sri Amresh Kumar Dwivedi, learned counsel for the first informant.

The present application for anticipatory bail has been filed for protection in regard to Case Crime No. 262 of 2022, under sections 417, 376, 504, 506 I.P.C., P.S. Gosaiganj, district Sultanpur.

After arguing for some time, applicant's counsel submits that the present application for anticipatory bail may be dismissed as withdrawn with liberty to file a regular bail application which may be decided keeping in view the guidelines as laid down by the Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and another**, reported in 2021 SCC Online SC 922.

Learned A.G.A. has no objection to the prayer of learned counsel for the applicant.

In view of the above, considering the aforesaid alternative prayer made by learned counsel for the applicant, it is directed that the applicant shall surrender before the concerned court below within four weeks from today and in case a regular bail application is filed, the same be

decided in view of the law laid by Supreme Court vide order dated 7.10.2021 passed in the case of **Satender Kumar Antil (supra)**.

For the period of four weeks from today or till the time of surrender of the applicant before the concerned court below, whichever is earlier, no coercive action shall be taken against the applicant- **Vikas Kumar Alias Vikas Agrahari**, in the above case.

With the above observations and directions, this application is disposed of.”

- (5) It has been argued by the learned Additional Government Advocate that again instead of surrendering himself and filing regular bail application before the trial Court pursuant to the order dated 19.07.2022, the petitioner has rushed to this Court under Article 226 of the Constitution of India by filing the instant writ petition for quashing the impugned F.I.R. without mentioning a whisper of word in the entire petition about the filing of the aforesaid two anticipatory bail applications and the orders dated 30.06.2022 (supra) and 19.07.2022 (supra) passed thereon by the learned Single Judge of this Court, respectively.
- (6) In this backdrop, submission of the learned Additional Government Advocate is that the petitioner has not come to this Court with clean hands as he concealed the aforesaid facts and also misused the process of law. He also argued that the petitioner was fully conscious about the aforesaid facts as is evident from the fact that the petitioner himself is the deponent in first and second anticipatory bail applications as well as in the instant writ petition, therefore, the instant writ petition is liable to be dismissed with exemplary costs.
- (7) On the aforesaid submissions/objections of the learned Additional Government Advocate, a query was made to the learned Counsel for the petitioner about filing of two earlier anticipatory bail

applications and the orders dated 30.06.2022 (Supra) and 19.07.2022 (Supra) passed thereon and further not disclosing of filing the two anticipatory bail applications and orders passed thereon in the instant writ petition, to which learned Counsel for the petitioner could not give any satisfactory reply for filing the present writ petition without disclosing the earlier two anticipatory bail applications and the orders passed thereon, however, she states that she has no knowledge about filing of the earlier two anticipatory bail applications filed on behalf of the petitioner and the orders passed thereon by the learned Single Judge, for which she tendered her unconditional apology for filing the present petition on behalf of the petitioner and prays that the instant writ petition be dismissed as not pressed.

- (8) It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.
- (9) The Apex Court in **Prestige Lights Ltd. V. State Bank of India** : (2007) 8 SCC 449 has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The Apex Court was held thus :

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

(10) In **Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others** : (2008) 1 SCC 560, the Apex Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

(11) The Apex Court in **Dnyandeo Sabaji Naik & Anr. vs. Pradnya Prakash Khadekar & Ors.** : (2017) 5 SCC 496 has held that it is the duty and obligation of all the Courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. Relevant observations of the Apex Court in this regard are reproduced hereunder:-

"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should

not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate

causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

- (12) In the instant case, since the petitioner has not disclosed filing of two anticipatory bail applications i.e. Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. Nos. 1011 of 2022 and 1145 of 2022 and its disposal vide orders dated 30.06.2022 and 19.07.2022, respectively; the petitioner did not surrender and file bail application pursuant to the orders dated 30.06.2022 and 19.07.2022; vide order dated 19.07.2022 passed in second anticipatory bail application i.e. Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 1145 of 2022, the learned Single Judge directed not to take any coercive action against the petitioner for the period of four weeks or till the time of surrender of the petitioner before the concerned Court below, whichever is earlier; instead of surrendering himself within four weeks pursuant to the order dated 19.07.2022 (supra), the petitioner rushed to this Court by filing the instant writ petition without disclosing the aforesaid facts, this Court is of the view that the manner upon which the petitioner filed the instant writ petition is too much and is highly deprecated. The petitioner has abused the process of law. Hence, the petitioner is not entitled for the extraordinary, equitable and discretionary relief.
- (13) On consideration of totality of the facts and circumstances of this case, particularly the fact that the petitioner has not come to this Court with clean hands and abused the process

of law, this Court deem it appropriate to dismiss the instant writ petition with costs of Rs.50,000/-.

- (14) At this stage, learned Counsel for the petitioner submits that she is a young lawyer and she tenders unconditional apology for the conduct of the petitioner, therefore, the costs may not be imposed.
- (15) Keeping in mind the aforesaid law laid down by the Apex Court as reproduced hereinabove and considering the facts and circumstances of the case, particularly the fact that the petitioner is the deponent in all the proceedings i.e. Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. Nos. 1011 of 2022 and 1145 and 2022 and also in the instant writ petition, therefore, he is well conversant with the facts and orders passed by this Court from time to time in connection with the impugned F.I.R. lodged against him but in the instant writ petition, the petitioner has concealed the material facts of filing two anticipatory bail applications earlier and also not complied with the orders passed on earlier two anticipatory bail applications, this Court is of the view that the instant writ petition attracts imposition of costs upon the petitioner.
- (16) Consequently, the instant writ petition is **dismissed** with costs, which we quantify as Rs.25,000/- (Rupees Twenty Five Thousand only). The petitioner is directed to deposit the costs of Rs.25,000/- within one month from today in the Court of Chief Judicial Magistrate, Sultanpur, who, on receipt of the same, shall transmit the same in the account of District Legal Services Authority, Sultanpur forthwith. In case the petitioner fails to deposit the aforesaid costs within the stipulated period, the Chief Judicial Magistrate, Sultanpur shall initiate proceedings against the petitioner to recover the aforesaid costs from the arrears of land revenue of the petitioner.

- (17) It is clarified that this Court is imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.
- (18) The Senior Registrar of this Court is directed to send a copy of this order to the Chief Judicial Magistrate, Sultanpur for information and necessary compliance.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 5.8.2022

Arun/Ajit/-