

Case :- APPLICATION U/S 482 No. - 44373 of 2023

Applicant :- Akhilesh Yadav

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

Counsel for Applicant :- Imran Ullah, Mohammad Khalid, Vineet Vikram

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Supplementary affidavit filed in the Court today, is taken on record.

2. This application under Section 482 Cr. P. C. has been filed for quashing the entire proceedings including summoning order of Case No. 16331 of 2023 (State Versus Akhilesh Yadav and others), arising out of Case Crime No. 78 of 2022, under Sections-188, 269, 270 I. P. C. and Section-3/4 of Epidemic Diseases Act, P. S.- Dadri, district-Gautam Budh Nagar, pending before Civil Judge (Sr. Division) / FTC / MP / MLA, Gautam Budh Nagar.

3. Heard Mr. Imran Ullah, along with Mr. Vineet Vikram, learned counsel for the applicant and Sri P. C. Srivastava, learned Additional Advocate General, State of U. P. along with Mr. J. K. Upadhyay, learned A. G. A.-I for the State.

4. The first information report was lodged against fourteen named accused persons, including applicant, and 300-400 un-known persons, alleging that on 3.2.2022 at 22.30 P. M., the applicant (President, Samajwadi Party) along with co-accused Jayant Chaudhary, while travelling from Luharli Gate, Gautam Budh Nagar in Samajwadi Rath (vehicle) towards Noida, they were welcomed by the co-accused persons and during that process a large gathering has assembled and that the guidelines of Covid-19

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were violated, which endangered spreading of pandemic. At that time the proclamation under Section 144 Cr. P. C., as well as Model Code of Conduct, was also in force and that from 22.00 hrs. to 8.00 hrs., there was prohibition on convessing and in that way, the proclamation under Section 144 Cr. P. C., Covid-19 guidelines as well as Model Code of Conduct, 2022 were violated.

5. Learned counsel for the applicant has submitted that the applicant is Ex-Chief Minister of the State of U. P. and he is wholly innocent and no prima facie case is made out against the applicant. Even as per prosecution version, on 3.2.2022 the applicant has visited area of district-Gautam Budh Nagar in relation to election campaign after prior information to the district administration and then it was the duty and responsibility of district administration and police to manage the public gathering. Learned counsel submitted that in the vehicle (rath), in which the applicant was travelling, there were only five seats and that the applicant was not suffering from Covid-19 pandemic or any other infectious disease and thus, it cannot be said that the applicant has violated any guideline of Covid-19 or did any negligent act to spread infection and thus no prima facie case under Sections 269 and 270 I. P. C. is made out. Further, the applicant is not responsible for alleged assembly of the crowd. Referring to these facts, it was submitted that no offence under Section 269, 270 I. P. C., as well as under Section-3/4 Epidemic Diseases Act, is made out. In this connection, learned counsel has placed reliance upon the judgement in the case of ***Pawan Giri and others Versus State of Haryana, (CRM-M-51595-2021 (O & M))*** decided on 7.2.2022; ***Sidak Singh Sandhu Versus U. T. Chandigarh and another, [CRM-M-19407-2022 (O & M)]*** decided on 27.7.2022 by ***Punjab and Haryana High Court and HLA SHWE and others***

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Versus State of Maharashtra, [Criminal Application (APL) No. 453 of 2020] decided on 21.9.2020. It was also submitted that on nearly similar facts, proceedings were quashed by the Lucknow Bench of this Court in the case of *Harvinder Singh alias Romi Sahni Versus State of U. P. (Application Under Section 482 Cr. P. C. No. 9190 of 2022)* decided by this Court on 13.12.2022 and in case of *Ashutosh Verma Versus State of U.P. (Application Under Section 482 Cr. P. C. No. 3194 of 2022)* decided on 17.6.2022.

6. It is further submitted that for cognizance of offence under Section 188 I. P. C., a complaint is required to be filed in accordance with the provisions of Section 195 Cr. P. C., but in the instant matter, no such complaint has been filed, thus, no cognizance under Section 188 I. P. C. could have been taken. In this connection, learned counsel has placed reliance upon the judgement of this Court in the case of *Abbas Ansari and two others Versus State of U. P. and another Neutral Citation No.-2023:AHC:176771* and the case of *Muhammed Baruk and others Versus State represented by the Sub-Inspector of Police, V. Kalathur Police Station (Crl. O. P. No. 9695 of 2022)* decided on 12.9.2023 by Madras High Court.

7. It was also pointed out that the investigation has been conducted in a most casual and mechanical manner. The similar statements have been attributed to all the witnesses and that cognizance has also been taken by the Court below in a mechanical manner without considering the facts of the matter. Referring to the facts of the matter, no prima facie case is made out at all against the applicant..

8. Sri P. C. Srivastava, learned Additional Advocate General, State

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of U. P. submitted that the first information report itself makes out a case against the applicant and co-accused persons. The applicant is an Ex Chief Minister of the State of U.P. and that the facts of the matter show that during Covid -19 pandemic while visiting the area of district-Gautam Budh Nagar for convessing, hundreds of persons have assembled and that the Covid-19 guidelines and Model Code of Conduct, issued by the Election Commission, were violated. Learned Additional Advocate General has referred the version of the first information report and statements of witnesses and it was submitted that a prima facie case is made out against the applicant. Regarding offence under Section 188 I. P. C., it was submitted that when the first information report was also lodged under other sections, i. e. Sections-269, 270 I. P. C. and Section-3/4 of Epidemic Diseases Act, there is no requirement of filing any complaint as provided under Section 195 Cr. P. C. It was submitted that the applicant may raise his defence version during trial but at this stage, considering the material on record, it cannot be said that no prima facie case is made out.

9. Considering the facts of the matter, the submissions of learned counsel for the parties and case laws cited on behalf of applicant, the matter requires consideration and hearing on merits.

10. Let a counter affidavit be filed by the opposite parties within a period of four weeks and rejoinder affidavit, if any, may be filed within a period of two weeks thereafter.

11. Put up on 22.1.2024 as fresh.

12. Considering the facts of the matter, it is directed that till the next date of listing, the proceedings in respect of applicant / accused in Case No. 16331 of 2023 (State Versus Akhilesh Yadav

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and others), arising out of Case Crime No. 78 of 2022, under Sections-188, 269, 270 I. P. C. and Section-3/4 of Epidemic Diseases Act, P. S.-Dadri, district-Gautam Budh Nagar, pending before Civil Judge (Sr. Division) / FTC / MP / MLA, Gautam Budh Nagar, shall remain stayed.

Order Date :- 5.12.2023

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