

Court No. - 15**Case :-** APPLICATION U/S 482 No. - 1093 of 2024**Applicant :-** Dr. Vinay Kumar Pandey**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Home, Lko. And 2 Others**Counsel for Applicant :-** Nadeem Murtaza, Anjani Kumar Mishra, Asma Shamim**Counsel for Opposite Party :-** G.A.**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Shri Prabhat Singh, Advocate had filed his vakalatnama on behalf of the complainant/informant, the same is taken on record.

2. Heard Shri Nadeem Murtaza, learned counsel for the applicant, Shri Rajesh Singh, learned Additional Government Advocate for the State as well as Shri Prabhat Singh, learned counsel for the complainant/informant and perused the record.

3. The instant application under Section 482 Cr.P.C. has been filed by the applicant namely **Dr. Vinay Kumar Pandey** with the prayer to quash/set-aside the impugned order dated 13.10.2023 passed by the Chief Judicial Magistrate, Gonda whereby the proceedings under Section 82(1) of CrPC have been initiated against the applicant in respect of Case Crime No. 464 of 2022 registered at PS Kotwali Nagar, District Gonda U/s 419,420,467,468,471 and 406 IPC with further prayer to quash the order dated 6.7.2023 passed by the Chief Judicial Magistrate, Gonda whereby non-bailable warrant has been issued against the applicant in the aforementioned case crime number and also to quash any consequential proceedings that may arise or have arisen in furtherance thereof.

4. With the consent of learned counsel for the parties, this application moved under Section 482 CrPC is being finally disposed of.

VERDICTUM.IN

5. Learned counsel for the applicant submits that the applicant had earlier moved an application for grant of anticipatory bail before the trial court, which was unfortunately rejected vide order dated 31.3.2023 corrected vide order dated 4.4.2023 and thereafter, the applicant had approached this Court by filing anticipatory bail application under Section 438 CrPC No. 1068 of 2023 and unfortunately, the same has also been rejected vide order dated 11.5.2020 passed therein. Thereafter, two impugned orders have been passed by the Chief Judicial Magistrate, Gonda of date 6.7.2023 whereby the process of non bailable warrant has been issued against the applicant and the order dated 13.10.2023 whereby the process of 82 CrPC has been issued against the applicant.

6. It is vehemently submitted that both the impugned orders have been passed by the Chief Judicial Magistrate, Gonda without jurisdiction and authority as on these dates i.e., 6.7.2023 and 13.10.2023, a magistrate has been designated as a designated court for MP/MLA cases and the reference of this designation has been found in the order dated 9.1.2024 passed by the Chief Judicial Magistrate, Gonda himself wherein the notification of date 24.12.2021 issued by the High Court of Judicature at Allahabad has been mentioned pertaining to conferment of jurisdiction on Ms. Sushma, Civil Judge, (J.D.), Gonda has been made to deal with the cases with regard to MP/MLA.

7. It is vehemently submitted that both these orders have been passed by the Chief Judicial Magistrate, Gonda without there being any authority or jurisdiction and are void ab initio. It is further submitted that in none of these orders, satisfaction has been recorded by the Chief Judicial Magistrate, Gonda with regard to non serving of earlier process issued by the trial court on the applicant. It is submitted that while issuing a process

VERDICTUM.IN

under Section 82 CrPC, a satisfaction is to be recorded by the issuing court that the presence of the accused could not be procured by any other process, e.g., summons, bailable warrants and non-bailable warrants, etc. and it is only thereafter the process of 82 CrPC may be issued.

8. While referring to Section 174-A of the Indian Penal Code, it is submitted that now, declaration of being proclaimed offender has also been made punishable under the Indian Penal Code and issuing of non-bailable warrants and process of 82/83 CrPC simultaneously without attempting to secure presence of the accused person by issuing summons or bailable warrants, would not only curtail personal liberty of the accused person, but would also subject him for further penalization under Section 174-A IPC. Thus extreme precaution should be taken while issuing N.B.W. and process of 82 and 83 CrPC.

9. It is further submitted that the applicant is ready to cooperate with the investigation and is intending to appear before the trial court for the purpose of moving regular bail application but it is apprehended that in the meantime, the police may arrest the applicant and it is in this background, the process of 82 CrPC has been issued without there being any satisfaction recorded that applicant is concealing himself and avoiding service of process issued by the trial court.

10. It is further submitted that since applicant is intending to appear before trial court and for that purpose he will have to make arrangements, some reasonable time be given to him for the purpose of surrender before the trial court for moving regular bail.

11. Learned A.G.A. would have no objection as apparently the impugned orders have been passed without jurisdiction and the factual matrix with regard to the Chief Judicial Magistrate,

VERDICTUM.IN

Gonda having no jurisdiction to try the cases pertaining to MP/MLA cases has not also been challenged by learned counsel for the informant/complainant, however, it is submitted by him that the applicant is avoiding his presence before the investigating officer and the trial court and if the applicant is intending to appear before the trial court for the purpose of getting regular bail, he is having no objection.

12. Having heard learned counsel for the parties and having perused the record, as it is evident from the administrative order of date 9.1.2024 passed by the Chief Judicial Magistrate, Gonda that the instant applicant has been an M.P. of a political party and thus, this case is required to be dealt with by a designated court of Magistrate constituted for the purpose. It is also evident and appears to be admitted to the parties that vide Notification No. 342/Admin (Services)/2023 issued by the High Court of Judicature at Allahabad of date 24.12.2021, Ms. Sushma was designated as the designated Magistrate for dealing with the cases of MP/MLA. Thus, it also appears to be an admitted situation that the impugned orders which have been passed by the Chief Judicial Magistrate, Gonda on 6.7.2023 and 13.10.2023 were passed when already a designated Magistrate was available and was competent to pass any order pertaining to MP/MLA. Thus, without going into further deliberation, it prima facie appears that both impugned orders of date 6.7.2023 and 13.10.2023 have been passed without any jurisdiction by the Chief Judicial Magistrate, Gonda and the said mistake attempted to be rectified by the Chief Judicial Magistrate, Gonda by passing an administrative order dated 9.1.2024 as the instant matter has been subsequently transferred by him (Chief Judicial Magistrate, Gonda) in the court of designated Magistrate constituted for the purpose of dealing with the cases of MP/MLA. It is also reflected that one of the impugned order

VERDICTUM.IN

i.e., of date 13.10.2023 whereby a process of 82 CrPC has been issued, has been passed without recording satisfaction pertaining to non-service of non-bailable warrants earlier issued, which is a condition precedent in the considered opinion of this Court.

13. Thus having regard to the aforesaid facts and circumstances of the case, the impugned orders of date 6.7.2023 and 13.10.2023 appear to have been passed without jurisdiction and before issuing process of 82 CrPC are **set aside/quashed** and the instant application U/s 482 CrPC is finally **disposed of** in terms that now the applicant may surrender/appear before the court concerned within three weeks from today i.e., till 27.02.2024, and move regular bail application under Sections 437/439 CrPC as the case may be, and if such bail application is moved by the applicant within 21 days from today, the trial court/designated court shall be under an obligation to dispose of the same, after providing an opportunity of being heard to the parties, strictly in view of the law laid down by Hon'ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and others* : (2021) 10 SCC 773 and *Aman Preet Singh Vs. C.B.I. through Director* : 2021 SCC OnLine SC 941, with expedition.

14. If the applicant would not appear before the trial court/designated court within the period stipulated herein before i.e., till 27.02.2024,, the trial court/designated court would be free to issue coercive process against the applicant in accordance with law against the applicant for securing his presence

15. In order to facilitate surrender/appearance of the applicant before the trial court/designated court for the purpose of moving a regular bail application, it is provided that the

VERDICTUM.IN

applicant shall not be arrested in the above-mentioned case, till 27.02.2024, subject to the condition that he will provide his mobile phone number to the S.H.O. of police station concerned/investigating officer of this case and will remain available on this mobile phone and will also not leave the boundaries of State of U.P. during this period.

Order Date :- 6.2.2024

Shravan/Praveen