

(2013) 01 AHC CK 0316
In the Allahabad High Court
Case No : Application No. 13389 of 2012

Nitin Agrawal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 01 AHC CK 0316

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Bala Krishna Narayana, J.—Heard learned counsel for the applicants and learned A.G.A. This application u/s 482 Cr.P.C. has been filed for quashing the charge sheet dated 25.03.2012 submitted in Case Crime No. 736 of 2011, under sections 498-A, 323, 506 IPC and section 3/ 4 of Dowry Prohibition Act, P.S. New Agra, District-Agra, pending in the court of Chief Judicial Magistrate, Agra.

2. The contention of learned counsel for the applicants is that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contention.

3. Learned A.G.A. submitted that all the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, , State of Haryana and others Vs. Ch. Bhajan Lal and others, , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and lastly Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, . The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got right of discharge under Sections 239 Cr.P.C. 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 including those which have been canvassed by him before this Court in this application.

4. The submissions made by learned AGA have force.

5. Accordingly the prayer for quashing the charge sheet is refused.

6. However, in the circumstances of the case, it is provided that if the applicants move an application for surrender before the court concerned within four weeks from today, the court concerned shall fix a date about ten days thereafter for the appearance of the applicants and in the meantime release the applicants on interim bail on such terms and conditions as the court concerned considers fit and proper till the date fixed for the disposal of the regular bail.

7. The court concerned shall after giving an opportunity of hearing to the complainant decide the regular bail application of the applicants in accordance with the observations of the Full Bench of this Court in *Amarawati and Another (Smt.) Vs. State of U.P.*, affirmed by the Supreme Court in *Lal Kamendra Pratap Singh Vs. State of U.P. and Others*, and reiterated by the Division Bench of this Court in *Sheoraj Singh alias Chuttan Vs. State of U.P. and Others*, .

8. If further instructions are needed or if adjournment of the case on the date fixed for hearing becomes unavoidable, the Court may fix another date, and may also extend the earlier order granting interim bail, if it deems fit provided that the adjournment of hearing of the regular bail on one or more dates should not exceed a total period of one month.

9. It will also be in the discretion of the Sessions/Special Judge concerned to consider granting interim bail pending consideration of the regular bail on similar terms as mentioned herein above when and if the applicants apply for bail before him.

10. In case the applicants fail to appear before the court concerned on the dates fixed it will be open to the Public Prosecutor to move an application for cancelling the order of interim/final bail and the Court concerned may pass an appropriate order on merits.

11. For a period of four weeks from today or till the applicants surrender before the court concerned, whichever is earlier, no coercive action shall be taken against them. However, it is made clear that in case the applicants fail to move an application for surrender before the court concerned within the time indicated hereinabove, this application shall stand automatically dismissed.

12. It is further provided that in case the applicants move an application for discharge along with the certified copy of this order before the court concerned, the same shall be dealt with in accordance with law at appropriate stage. With the aforesaid directions, this application is finally disposed of.