
(2015) 07 AHC CK 0078

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 17000 of 2015

Rakesh Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 145, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 308, 332, 333, 336, 353

Citation : (2015) 07 AHC CK 0078

Hon'ble Judges : Sudhir Agarwal, J;B.K. Srivastava, J

Bench : Division Bench

Advocate : Shachi Kant Mishra and Rajeev Upadhyay, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and perused the record.
2. By means of present writ petition, petitioners is seeking quashing of first information report dated 30.06.2015, registered as Case Crime No. 209 of 2015, under Sections 333, 332, 353, 308, 336, 504 I.P.C., Police Station Jaunpur, District Azamgarh.
3. From a perusal of first information report and taking the allegations contained therein to be true, it cannot be said that commission of a cognizable offence is not made out. Despite repeated query, learned counsel for the petitioners also could not show that no offence whatsoever has been made out in the aforesaid first information report. Therefore, question of its quashing in the limited scope of writ petition under Article 226 of the Constitution does not arise.
4. Learned counsel for the petitioners placed reliance on Apex Court's decision in Joginder Kumar Vs. State of U.P. and others, AIR 1994 SC 1349 : (1994) CriLJ 1981 : (1994) 2 Crimes 106 : (1994) 3 JT 423 : (1994) 2 SCALE 662 : (1994) 4 SCC 260 : (1994) 3 SCR 661 , Lal Kamendra Pratap Singh Vs. State of U.P. and

Others, (2009) 7 JT 327 : (2009) 4 SCALE 77 : (2009) 4 SCC 437 : (2009) 4 SCR 1027 : (2009) 4 UJ 1588 and this Court's decision in Amarawati and Another (Smt.) Vs. State of U.P., (2005) 1 AWC 416 : (2005) CriLJ 755 : (2005) 1 UPLBEC 155 and further contended that direction be issued for consideration of petitioners' bail application on the same day though admittedly till date no bail application has been filed by petitioners before the concerned Magistrate. There is no averment in the entire writ petition that he has moved bail application or propose to move any such application today or tomorrow but the concerned court is not ready to hear the matter expeditiously. He also requested that till then arrest of petitioners be stayed and placed certain orders of this Court wherein such directions have been issued. He pointed out that hundreds and thousands such orders have been passed by this Court and, therefore, following the principle of parity similar direction must be issued in this case also.

5. We propose to examine on this aspect of the matter with deeper scrutiny. It is not the case of petitioners that they have already surrendered or that though they have attempted to surrender but there is any illegal, unauthorised obstruction created by respondents in such endeavour of petitioners. It is also not the case that any authority of this Court or Apex Court though cited before court concerned but it has refused to consider the same or ignored. No allegations have been made that the court concerned is acting contrary to law or the Presiding Officer has any kind of bias etc. so as to pass an order without looking into the matter in accordance with law.

6. The law laid down by Apex Court by virtue of Article 145 of the Constitution of India, is binding on all courts and authorities across the nation and everybody is supposed to act in the aid and enforcement of such law laid down by Supreme Court. There is no presumption that courts below shall not follow the law laid down by Supreme Court. There is also no presumption that a decision of Supreme Court laying down certain law, if cited, in support of arguments by a party, before a court, they would not be looked into and appreciated by such court. To follow the law laid down by Supreme Court, no sanction or approval or direction of this Court is required. To ask for such direction, when there is no factual foundation in the application, is nothing but doubting the capability, approach and efficiency of subordinate courts, which is not in the larger interest of institution as such. Moreover, in absence of any factual foundation, it is well established that no futile or uncalled for directions are to be issued by this Court. Its hand are already full of work and rather extremely loaded therewith, hence entertaining cases just for futile direction, which ex facie deserved to be dismissed, would be nothing but encouraging avoidable unnecessary burden upon this Court.

7. Even otherwise a direction to follow a decision of Apex Court without appreciating, whether it applies on the facts and circumstances of the case and would be cited by parties concerned, is like anticipating something, which is not existing in praesenti and on the facts of the case, may not be applicable.

8. We may illustrate on this aspect by looking into the aforesaid decisions in detail, which the learned counsel or petitioners intended to be considered by courts below, under a direction of this Court, though we are not sure whether it would actually be cited by counsel of accused-petitioners when he would be presenting his case before court below.

9. In *Joginder Kumar (supra)*, a habeas corpus writ petition under Article 32 of the Constitution was filed before Supreme Court alleging about unlawful detention of petitioner (a practicing lawyer) by police authorities and seeking his release. The Senior Superintendent of Police, Ghaziabad appeared before Court and admitted to have detained petitioner for five days, not in detention but for taking his help in inquiry/investigation of an offence of abduction. Since the petitioner was already released by police, the Court found that relief in habeas corpus now cannot be granted. Yet it enquired as to how and in what circumstances, without informing the court concerned, an individual could be detained by police for five days. The Court found it a case of massive violation of human rights, besides the statutory legal provisions relating to arrest etc. The Court held that law of arrest is one of balancing individual rights, liberties and privileges, on the one hand; and, individual duties, obligations and responsibilities on the other hand. The Court said that an arrest cannot be made merely for the reason that a police officer is empowered under law to do so. The existence of power is one thing and justification for exercise thereof is another. Genuine, justified and satisfactory reasons must exist before a police officer should go to arrest a person so as to curtail his fundamental right of life and liberty. A person is not liable to arrest merely on suspicion of complicity of offence. Except in heinous offences, an arrest must be avoided unless there exists reason therefor. That was not a case where after inquiry or investigation by police, a charge sheet was filed and thereupon an incumbent was to surrender himself to the Court, and the power of Court either to release him on bail if so requested, or to sent him in judicial custody was under consideration.

10. This decision then was considered in *D.K. Basu Vs. State of West Bengal*, AIR 1997 SC 610 : (1997) CriLJ 743 : (1996) 4 Crimes 233 : (1997) 1 JT 1 : (1996) 9 SCALE 298 : (1997) 1 SCC 416 : (1996) 10 SCR 284 Supp : (1997) AIRSCW 233 : (1996) 8 Supreme 581 which was a public interest litigation entertained by Supreme Court taking cognizance of a letter received from Executive Chairman, Legal Aid Services, West Bengal complaining about certain custodial deaths.

11. Apparently the aforesaid decision also strictly has no application to the nature of dispute involved in this case as also the stage at which question, as to whether the petitioner should be detained in jail or not, has to be considered. Here it is not the case of exercise of power by police but the judicial discretion of Court and thereto nothing should be anticipated unless an appropriate order is passed by court concerned.

12. The decision in *Joginder Kumar (supra)* in similar circumstances has been referred and followed subsequently also in *K.K. Jerath Vs. Union Territory*,

Chandigarh and Others, AIR 1998 SC 1934 : (1998) CriLJ 2555 : (1998) 2 JT 658 : (1998) 2 SCALE 471 : (1998) 4 SCC 80 : (1998) AIRSCW 1769 : (1998) 8 Supreme 553 : (1998) 3 Supreme 318 which was a case of anticipatory bail under Section 438 Cr.P.C. apprehending arrest during a C.B.I. inquiry. It was attempted to argue that there is presumption of innocence in favour of each individual until charge against him is established and, therefore, it would not be consistent with philosophy of Constitution that such a person should be subjected to interrogation by application of psychological or ambient pressures much less physical torture. It was stressed that Apex Court has a duty to protect a citizen against such inroads of these fundamental rights. The Apex Court while dismissing petition observed that in considering a petition for grant of bail, necessarily, if public interest requires detention of citizen in custody for purposes of investigation, it would be allowed otherwise there could be hurdles in investigation even resulting in tampering of evidence. In other words the Apex Court did not find any attraction in the arguments for the reason that a bail application has to be considered in the light of already established principle through various judicial precedents and not on mere asking.

13. There are several subsequent cases also wherein the Apex Court has distinguished the cases where there was no allegation of misuse of power of arrest by police authorities and an incumbent was arrested having been found prima facie guilty of commission of a cognizable offence.

14. In respect to circumstances where a bail application has to be considered by courts, the relevant considerations have been laid down in catena of authorities which are well established and need not to be added here at. They have to be followed.

15. In Lal Kamendra Pratap Singh (supra) the matter came to be considered before the Court for quashing of a first information report. Here also apprehending arrest due to mere registration of a first information report, the matter was brought before this Court seeking quashing of first information report. The High Court dismissed the application and there against the matter was taken to Apex Court. A complaint was made that during investigation or inquiry, petitioners apprehend their arrest by police authorities in an arbitrary manner. It is in this context the Court reminded police authorities to follow the dictum and direction laid down in Joginder Kumar (supra). When the matter was pending before Supreme Court, the police completed investigation and submitted a charge sheet. The Court then declined to interfere since the charge sheet was submitted and permitted petitioners to approach the court concerned by filing a bail application. The Court approved and reminded a seven Judges decision of this Court in Smt. Amarawati and another (supra) wherein an observation was made that the absence of power of anticipatory bail in State of U.P. would not debar the concerned Court/Magistrate to grant an interim bail if there is any likelihood of delay in disposal of bail application finally.

16. We find that in an earlier case of Som Mittal Vs. Govt. of Karnataka, AIR

2008 SC 1126 : (2008) CriLJ 1610 : (2008) 2 JT 41 : (2008) 2 SCALE 108 : (2008) 3 SCC 753 : (2008) AIRSCW 1003 : (2008) 1 Supreme 598 , which was a matter relating to anticipatory bail, one of the two Judges constituting Bench (Hon"ble M. Katju, J.) has referred to and approved seven Judges decision of this Court in Smt. Amarawati and another (supra) and observed that non availability of any provision relating to anticipatory bail in State of U.P. is causing extraordinary burden on the High Court and a recommendation was made for reviving such a provision.

17. However, in none of the cases above, it has been said by Supreme Court or this Court, at any point of time, that once a charge sheet is submitted, still an accused is entitled to be released on bail, on just asking, and the courts below/ concerned Magistrate should not apply its mind to the relevant facts and circumstances which would justify whether the concerned person should be granted bail or should be detained in judicial custody. The decision in Smt. Amarawati and another (supra) says otherwise. That being so, expecting this Court to simply stay arrest while directing or permitting the person concerned to approach the court below by filing a bail application and without applying its mind to the relevant facts and circumstances in which bail can be granted, would clearly amount to travesty of justice. It would be an order not in accordance with law and without considering the relevant facts and circumstances. Such an order would clearly travel in the realm of non-application of mind. We are afraid, this Court cannot pass such an order particularly when it is declining to entertain a writ petition filed under Article 226 of the Constitution being satisfied that a prima facie case of commission of cognizable offence has been found against accused resulting in filing of a charge sheet and now the matter must be examined by concerned Magistrate/court regarding bail etc. after considering the relevant facts and circumstances.

18. We may refer here one more aspect. The manner in which the petitioners prayed that they arrest should be stayed, at the best can be placed at par with anticipatory or interim bail. In fact while granting an order of stay of arrest the court surpasses even those considerations which it is bound to take into account, when pass an order granting anticipatory bail.

19. Now it is well settled that even an order of anticipatory bail cannot be passed on mere asking but has to satisfy consideration of various relevant aspects in this regard. Some of these aspects have been considered recently by Apex Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, AIR 2011 SC 312 : (2011) 1 Crimes 109 : (2011) 1 RCR(Criminal) 126 : (2010) 12 SCALE 691 : (2011) 1 SCC 694 : (2011) 1 SCC(Cri) 514 : (2011) AIRSCW 3813 : (2010) AIRSCW 7007 : (2010) 7 Supreme 194 : (2010) 8 Supreme 353 and in paras 122 to 138 the relevant facts and circumstances which must be considered by the Court before passing an order of anticipatory bail have been noticed in detail. Though these observations are not exhaustive but the aforesaid decision clearly lays down a law that even in passing an order on anticipatory bail, a bald,

unreasoned and non-speaking order staying arrest or granting bail should not be passed as that would amount to a material illegality and irregularity and failure to exercise jurisdiction validly if relevant circumstances before passing such orders are not taken into account, weighed and assessed, and thereafter a decision is taken whether such an order would be justified or not.

20. It is true, that, several orders placed before this Court, show that directions as requested by accused petitioners to be issued to the court below, have been issued and in some of the cases arrest has also been stayed but unfortunately we do not find that before such directions the relevant law has been considered, discussed and be cited. The ultimate direction or action of Court do not constitute a binding precedent. What is binding precedent is the ratio, i.e., the law laid down by Court. A law is laid down when an issue is raised, argued and decided. In none of the orders placed before this Court, we find that any issue, whether these directions, as sought for, should be or can be issued or are justified to be issued, considered and decided. These orders, therefore, do not constitute a precedent so as to have a binding effect under the law of precedent.

21. In view of above, we do not find any justification to interfere with the impugned first information report.

22. The writ petition is accordingly dismissed.