
(2016) 02 AHC CK 0295

In the Allahabad High Court

Case No : Application U/S 482 No. 2873 of 2016

Vikash Alias Vikku Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 2, 3

Citation : (2016) 96 ACrC 337

Hon'ble Judges : Ramesh Sinha, J.

Bench : Single Bench

Advocate : Dhirendra Kumar Srivastava, Advocate, for the Applicant; G.A, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ramesh Sinha, J.— Heard Sri Dhirendra Kumar Srivastava, learned counsel for the applicant and Sri Deepak Verma, brief holder of the State, and perused the record.

2. This application under Section 482 Cr.P.C. has been filed for quashing the impugned order dated 15.12.2015, passed by the Additional District Judge, Court No.5/Special Judge, Gangster Act, Allahabad, by which permission has been granted to transfer the applicant from District jail Kaushambi to Central Jail, Fatehgarh, District Farrukhabad, during his judicial custody, in Case Crime No. 337 of 2010, under Section 2/3, U.P. Gangster and Anti Social Activities (Prevention), Act 1986, Police Station George Town, District Allahabad. He further prayed for direction to the opposite parties to keep the applicant in District jail Kaushambi or Central Jail Naini, Allahabad, during the judicial custody, in the aforesaid case.

It has been argued by the learned counsel for the applicant that applicant is facing three trial in District Allahabad for different offences and in which he

confined in jail also. He further argued that he was confined in Central Jail Naini, Allahabad and thereafter in pursuance of administrative order he was transferred to District Kaushambi, and from where he has been shifted to Central Jail, Fatehgarh, District Farrukhabad, vide order dated 15.12.2015, passed by the Additional District Judge, Court No.5/Special Judge, Gangster Act, Allahabad, on the application moved by the Superintendent District Jail Kaushambi. A copy of the same has been filed and marked as annexure no.13 to the affidavit. He further argued that as per the mandate of Hon"ble Apex Court, the opportunity of hearing should be given to the applicant before transferring him from one jail to another jail. He has placed reliance of the Judgement of Hon"ble Apex Court passed in Criminal Appeal No. 1735-1739 of 2012 (State of Maharashtra v. Saeed Sohail Sheikh), reported in LAWS(SC)-2012-11-5/TLPRE-2012-0-553.

3. He further submits that in the other two trials, which the applicant was facing, when the applicant was transferred to Central Jail Naini to District Jail Kaushambi, an explanation was called by the trial court from the Superintendent of Central Jail Naini and District Jail Kaushambi and from the District Magistrate, also. He submitted that the order which has been passed by the learned trial court is without application of mind and it is a non speaking order passed on the application moved by the Superintendent of District Jail Kaushambi.

4. The learned AGA could not disputed with the aforesaid facts which has been advanced by the learned counsel for the applicant.

5. Considering the facts and circumstances of the case, the argued of the learned counsel for the applicant have substance, and it further appears from the order dated 15.12.2015 that the order passed by the learned Additional District Judge, Court No.5/Special Judge, Gangster Act, Allahabad, is a non speaking order, and passed without giving opportunity of hearing to the applicant, which is hereby set aside, and the matter is remanded back to the trial court concerned to re-consider the application moved by the Superintendent of District Jail Kaushambi, and pass a fresh order within two weeks from the date of production of certified copy of this order before him.

6. With the aforesaid observation and direction the present applicant is disposed of finally.