

Court No. - 50

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Case :- CRIMINAL MISC. WRIT PETITION No. - 17509 of 2020

Petitioner :- Neeraj Kishor Mishra

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Prateek Kumar Srivastava, Renu Singh, Sr. Advocate (Shri V.P. Srivastava)

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Shekhar Kumar Yadav, J.

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Sri Ghan Shyam, Advocate has filed Vakalatnama on behalf of respondent no.3, which is taken on record.

Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Ms. Renu Singh, learned counsel for the petitioner, learned AGA for the State-respondents and Sri Padmakar Pandey, learned counsel for the respondent no.3.

By means of this writ petition, petitioner seek quashing of the FIR dated 11.12.2020 registered as Case Crime No.368 of 2020, under Sections 153-B (2), 505 (2) I.P.C., Police Station Patiyali, District Kasganj with a further prayer not to arrest him pursuant to the said FIR.

The allegation made in the first information report, lodged by respondent no.3, is that the incident which is alleged to have happened on 01.10.2020 at about 6.00 pm in District Hathras in respect of rape of a girl. It is alleged that "Balmiki Samaj" created disturbance by giving speeches by saying that police is inactive and tricky. It is further alleged that petitioner has said that Chief Minister is man of thick skin. The first information report further discloses that petitioner is a history-sheeter and his arm licence has already been cancelled.

Submission of learned counsel for the petitioner is that none of the offences as enumerated in the impugned first information report dated 11.12.2020 is made out. In support of his submission, learned counsel for the petitioner has relied upon Section 153 (B) (2) I.P.C., which is quoted herein below:

"Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

Learned counsel for the petitioner has further relied upon

Section 505 (2) I.P.C., which is quoted herein below:

"Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

Further submission of learned counsel for the petitioner is that in democratic country, agitation of ruling party, on any, is the Constitution right of leaders of opposition and, therefore, agitation of petitioner, on the issue of rape of a girl of "Balmiki Samaj" cannot be termed as hatred or ill-will between different religious racial, hence, no offence under Section 153 -B (2) and Section 505 (2) I.P.C. is made out.

The matter requires consideration.

Notice on behalf of respondent nos.1 and 2 has been accepted by learned A.G.A.

Let notice be issued to respondent no.3 by Registered Post A.D. returnable at an early date.

All the respondents may file their respective counter affidavits within four weeks. The petitioner shall have two weeks thereafter for filing rejoinder affidavit.

List immediately after expiry of the aforesaid period before the appropriate Bench.

Till the next date of listing or till the submission of police report under Section 173 (2) Cr.P.C., whichever is earlier, the petitioner shall not be arrested in impugned first information report dated 11.12.2020 registered as Case Crime No.368 of 2020, under Sections 153-B (2), 505 (2) I.P.C., Police Station Patiyali, District Kasganj, subject to petitioner's co-operation in the investigation.

It is made clear that this Court has not stayed the investigation of the aforesaid case.

Order Date :- 11.1.2021

Ajeet