
(2024) 7 ILRA 1186

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 10.07.2024

BEFORE

**THE HON'BLE SIDDHARTH, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.**

Crl. Misc. W.P. No. 7463 of 2024

Shobhit Nehra & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioners:

Sri Rahul Chaudhary, Sri V.P. Srivastava (Sr. Adv.), Sri Salil Singh

Counsel for the Opp. Parties:

Atul Kumar Shahi, G.A., Sri Vinay Sharan (Sr. Advocate)

Criminal Law – FIR against petitioners challenged- A long history of civil disputes between the parties- However, it does not mean that police investigation against the criminal allegations during the pendency of civil suit cannot be carried out- It is the duty of constitutional court to secure personal liberty of individuals- Protection from arrest until the submission of chargesheet can be given- FIRs being written by the experts- Relegating the petitioners to the remedy under Section 438 CrPC- Not justifiable in light of huge pendency of cases in St. of UP- Right to liberty protected without obstructing investigation and without quashing FIR- petition disposed of. (Paras 31, 33, 34, 35, 37, 38, 39, 40, 41, 43, 46 and 47)

HELD:

Keeping in view, the allegations made in the FIR, there can be civil dispute between the parties, but if some crime is committed by one party against the other during the pendency of civil suit, it would require investigation. (Para 31)

It is convenient for the court to assume that the allegations in the FIR are gospel truth and thereafter close the chapter. However, the fact remains that the truth is yet to emerge from the statutory investigation to be conducted by the investigating officer. There is also possibility that the allegations made in the FIR are found by the investigating officer to be false. In that case denial of any relief to the petitioners would not be in the interest of justice. As per Article 21 of the constitution of India right to life and liberty of "we the people" cannot be curtailed only because the courts have set up a standard which provides that if by merely going through the FIR commission of cognizable offence / offences is found, no interference would be required in under the Article 226 of constitution of India and right to liberty of the petitioner cannot be protected and he should take recourse to Section 438 Cr.P.C for seeking anticipatory bail. (Para 33)

Now a days FIR is lodged mostly by getting it drafted by a legal expert or the head constable (diwan) of the police station. In the first information report, the ingredients for constituting the alleged offence / offences are incorporated so meticulously that the court may lay its hand off by a bare reading of FIR itself. The first information report is written with precision and perfection so that it fits into the convenient parameters of the court settled by the court itself. (Para 34)

Although it is convenient for the court to deny relief by the accused to the accused by just going through the contents of FIR but where it appears to the courts that there is possibility of false implication and allegations in the FIR do not appear to be absolutely correct and may have been concocted to falsely implicate the accused / petitioner then, irrespective of the severity of allegations, interference is called by court to protect the right to liberty of the accused / petitioner. (Para 35)

After considering the totality of facts and circumstances, like previous litigation between the parties, earlier enmity between them counter blast implication, etc., court should interfere to protect right to liberty of accused even if allegations in the FIR show commission

of cognizable offence by accused/petitioner. (Para 36)

In such a situation relegating an accused from the court hearing matters under Article 226 of the Constitution of India to avail remedy u/s 438 Cr.P.C before Sessions Court and then before the High Court only for protection from arrest during investigation amounts to harassment of a litigant. On an average 200-300 Criminal Misc. Writ Petitions are filed under Article 226 of the Constitution of India per day before this court challenging the first information reports. Not all get heard promptly. During this period of pendency of writ petition before this court accused is under threat of arrest. If he fails get any relief his arrest is made by police granting him little time to approach the Sessions Court for seeking anticipatory bail and on being unsuccessful seeking anticipatory bail from the High Court. (Para 41)

It is clear from the above paragraph that in the case where facts are hazy and the investigation has just begun, High Court should permit the investigation to proceed. In case the High Court stays further investigation, it should assign reasons. We are not staying the investigation but it appears from the material on record that in present case implication of petitioners may be found to be false, therefore, their right to liberty is required to be protected during the period of statutory investigation in the allegations made against them in the FIR. Investigation can be stayed in this case but that would come in the way of speedy investigation which in requirement of criminal administration of justice as held by Apex Court in the above paragraph. We do not intend to delay the investigation proceedings at all but for the reasons given above intend to protect the petitioners from arrest till investigation against them is completed by police. (Para 43)

In view of the above consideration, this court is of the view that without obstructing the investigation and without quashing the FIR, the right to liberty of petitioners deserves to be protected for the detailed reasons assigned herein above. (Para 46)

Petition disposed of. (E-14)

List of Cases cited:

1. St. of Harayan Vs Bhajan Lal, AIR 1992 (SC) 604
2. Indian Oil Corporation Vs NTPC India Limited & ors., 2006(6) SCC 736
3. Neeharika Infrastructure Pvt. Ltd., Vs St. of Mah. & ors., (2021) 19 SCC 401
4. Hema Mishra Vs St. of U.P., 2014 (4) SCC 453

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri V. P. Srivastava, learned Senior Counsel assisted by Sri Rahul Chaudhary and Sri Salil Singh, learned counsel for the petitioners; learned A.G.A. for the State-respondent no.1 & 2 and Sri Vinay Sharan, learned Senior Counsel assisted by Sri Atul Kumar Shahi, learned counsel for respondent no.3.

2. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 23.04.2024, registered as Case Crime No. 0274 of 2024, under Sections- 436, 450, 392 and 120-B IPC, Police Station- Modi Nagar, District- Commissionerate Ghaziabad (Rural), and for a direction to the respondents not to arrest the petitioners in pursuance of impugned First Information Report.

3. There is allegation in the FIR that Modi Charitable Fund Society is a registered society and Sandeep Kumar Yadav is Secretary of the same. Modi Industries Ltd., is a registered company and Umesh Kumar Modi is its Managing Director and petitioner no. 1 is Company Secretary of the same. Various education institutions are being run by the aforesaid society and their records are kept in the office of society situated at Modi Bhawan,

Modi Nagar. The petitioners and other employees of Modi Industries Ltd., demolished the entire office of society and destroyed the records kept therein and also committed the robbery of valuable goods kept in the office and hence the FIR was lodged.

4. The brief facts pleaded in the present case are as follows:-

5. The dispute essentially arises because of a long-standing family dispute between the Modi Family. There was a MoU dated 24.01.1989 which was entered in between the various members of the Modi Family. In the said MoU there was an attempt made by various members of the Modi Group to settle their inter-se disputes which includes various properties belonging to various family trusts and societies.

6. Subsequently, disputes arose between members of the Modi family for the enforcement of MoU 1989 which traveled up to the Hon'ble Supreme Court of India in the case of (K.K. Modi vs. K.N. Modi and Others, AIR 1998 SC 1297) wherein the Hon'ble Supreme Court categorically observed that there are various suits which are pending adjudication for the enforcement of the MoU 1989 before the Delhi High Court and those issues should be raised and decided before the Hon'ble High Court of Delhi. Copy of the judgment passed by Hon'ble Supreme Court of India and in the case of (K.K. Modi vs. K.N. Modi & others) has been annexed as Annexure No.2 to this writ petition.

7. Learned Single Judge of the Delhi High Court vide its judgment dated 05.10.2007 (in the matter of K.K. Modi vs.

K.N. Modi & others i.e. CS (OS) No, 1394 /1996 and MK Modi vs. KK Modi & Ors. i.e. CS (OS) No. 434/1998) gave a categorical finding that the Hon'ble Supreme Court (in the matter of KK Modi vs. KN Modi & Ors. - AIR 1998 SC1297) had not decided the validity of the MoU of 1989 and in fact had only recorded the submissions made by some members of the Modi Family belonging to Group A. It is pertinent to mention that Dr. DK Modi who is running the Multanial Degree College Society is part of Group A of the Modi family. The relevant paragraphs of the aforesaid judgment are reproduced herein below for the sake of convenience:

"38. The argument that the Apex Court had held the MOU had been substantially acted upon by the parties, and they must be held to the settlement and for that reason the suit to enforce the said settlement could not be withdrawn is also fallacious. The above statement has been read out of context and relied upon as a finding/determination of fact by the Apex Court, though it was only recorded as a submission made on behalf of the Group A parties. The Court instead of commenting on the said submission, directed the parties to raise the same before the High Court. The said paragraph from the copy of the judgment placed amongst the order sheets in the Part 1 file of suit no. 1394/96 is reproduced herein for the sake of ready reference.

"Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the

Memorandum of Understanding. The entire Memorandum of Understanding-including Clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held

to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing.

39. The Hon'ble Supreme Court after recording the submissions of the Group 'A' parties, left it to the High Court to decide these issues "as and when....required".

8. A copy of the relevant pages of the judgment dated 05.10.2007 passed by Hon'ble Delhi High Court have been annexed as Annexure No.3 to the writ petition.

9. Subsequently, Dr. D.K. Modi, who is running the Multanival Modi Degree College Society (pertinently respondent no. 3 has filed the present FIR who is the secretary of the said society) initiated a Civil Suit before the Hon'ble Delhi High Court bearing Case No. 991 of 2009, wherein, he sought enforcement of he said MoU of 1989.

10. The Hon'ble Delhi High Court on 05.12.2014 framed various issues for adjudication of the Civil Suit No. 991 of 2009, wherein, one of the issue framed by the Hon'ble Delhi High Court is reproduce herein below:-

“Issue No. 14: Whether the terms of the Memorandum of understanding dated 24.01.1989 are final and binding between the parties and the plaintiff is entitled to the properties and assets earmarked for Group A under the same ?

11. Number of interim reliefs were sought by Dr. D.K. Modi in the said suit, however, till date no interim relief has been granted. The next date fixed before the Hon’ble Delhi High Court is 13th of August, 2024.

12. By the passage of time, the disputes between the family members i.e., Mr. U.K. Modi (who is part of Group B of the Modi family) and Dr. D.K. Modi (who is part of Group A of the Modi family and is also running the Multanimal Degree College Society) worsened, resulting in various attempts by Dr. D.K. Modi and (first informant i.e., respondent no. 3 who is secretary of the said society) to usurp the properties of the Modi Industries Limited. In furtherance to the said unsuccessful attempts, an Original Suit No. 961 of 2020 was filed before the Court of Civil Judge (Senior Division), Ghaziabad with same allegations seeking permanent injunction against the Modi Industries Ltd., and Others (including the petitioners) from interfering with the possession and working of the society at its registered Office in Modi Bhawan, Modi Nagar, Ghaziabad. The said suit was accompanied with an application under Order-39, Rule 1 and 2 read with Section 151 Cr.P.C seeking temporary injunction.

13. Learned Civil Judge (Senior Division), Ghaziabad upon the above application under Order 39, Rule 1 & 2 was pleased to grant an ex-parte injunction to

maintain status quo over the disputed property and notices were issued to the defendant therein.

14. Upon the service of the notice of the suit No. 961 of 2020, the Modi Industries Ltd., along-with the petitioners herein filed their objection to the application under Order 39, Rule-1 & 2 on 11.12.2020.

15. The said objections were duly considered by the learned Civil Judge (Senior Division) Ghaziabad and upon perusing the objection and considering the material available on record, the learned Court was pleased to reject the application of the plaintiff under Order 39 Rule I & 2 CPC, vide its order dated 20.02.2021 and vacated the ex-parte interim order. The said order is a detailed order elaborating the issue in dispute which is also the subject matter of the present First Information Report, moreover, the said order has been concealed by the first informant in the present first Information Report.

16. Being aggrieved by the order dated 20.02.2021 passed by the learned Civil Judge (Senior Division) Ghaziabad, the society preferred a Misc. Appeal under order 43, Rule-1 CPC, bearing Misc. Appeal No. 3 of 2021 (Multanimal Modi Degree College Society vs. Modi Industries Ltd. & others) before the court of Additional District Judge, Court no.5, Ghaziabad which is pending till date and no relief has been granted.

17. During the pendency of the above appeal, the plaintiff / appellant therein preferred an application before the Court of Additional District Judge, Court no. 5, Ghaziabad on 25.08.2023, inter-alia, alleging therein that the defendants in the

suit in order to cause irreparable loss to the a plaintiff / appellant have deliberately demolished the property in dispute. It is relevant to mention here that, no allegation with regard to Robbery, Fire, Explosive has been made in the said application filed on 25.08.2023, in Misc. Appeal No. 3 of 2021.

18. The said application was vehemently objected by the petitioners along with Modi Industries Ltd., stating on oath the correct factual situation and categorically bringing on record that the actual possession of the property in the dispute is with Modi Industries Limited only. The said appeal is pending till date for consideration and no order has been passed failing which the respondent no. 3 has illegally triggered criminal law in motion by lodging the impugned FIR.

19. For the same incident, the present FIR has been lodged, where in, informant has deliberately concealed filing of Misc. Appeal No. 13 on 25.08.2023 which shows that the first informant with all malicious intention is trying to give criminal colour to civil dispute, which is pending between the parties before appropriate forum.

20. If the above was not enough, Dr. D.K. Modi, who always had his eyes over Modi Bhawan, Modi Nagar, in pursuance to his illegal intent, made another attempt of illegally and unlawfully, usurping said assets of Modi Industries Ltd., that is Modi Bhawan, Modi Nagar. He fraudulently and behind the back of Modi Industries Ltd., got a scheme sanctioned from the Board for Industrial and Financial Reconstruction (BIFR) where he illegally and unlawfully claimed Modi Bhawan as an asset of Modi Spinning and Weaving Mills Company Ltd. (which is managed

and controlled by Dr. D.K. Modi). In addition to the above, he even entered into an agreement dated 24.04.2019 with another member of the Modi family, wherein, he again tried to distribute the said asset i.e., Modi Bhawan, between himself and another member of the family by claiming his company (Modi Spinning and Weaving Mills Company Ltd.) to be owner of the said asset.

21. Modi Spinning and Weaving Mills Company Ltd., then filed a petition before the Hon'ble Delhi High Court (W.P. No. 6238 of 2019), for implementation of the scheme sanctioned by the BIFR or in the alternative, the said agreement dated 24.04.2019. Dr D. K. Modi was also party to said frivolous petition. As soon as Modi Industries Ltd. (who was represented through Petitioner No. 1) learnt about the said illegal and unlawful act of Dr. D.K. Modi, it filed appropriate applications before the Hon'ble Delhi High Court and opposed the unlawful actions of the Dr. D.K. Modi. During course of hearing before the Hon'ble Delhi High Court on 26.04.2023, while dealing with the objection filed on behalf of Modi Industries Ltd., the counsel appearing on behalf of Modi Spinning and Weaving Mills Company Ltd., (which is managed and controlled by Dr. D.K. Modi) conceded that the asset of Modi Industries Ltd., i.e., Modi Bhawan, will not be treated as property forming part of the scheme sanctioned by the BIFR.

22. The learned Senior Counsel for the petitioners has submitted that impugned first informant has been lodged concealing all the above facts and to exert pressure on Modi Industries Ltd., to hand over the possession of the property in dispute in favour of Dr. D.K. Modi and his Society by

way of conspiracy on the basis of false and fabricated First Information Report with ulterior motives.

23. Present FIR is based on the Application U/S. 156(3) Cr.P.C. filed by the First Informant before the Chief Judicial Magistrate, Ghaziabad who sought report from the Police Station, Modi Nagar, District Ghaziabad. In compliance of which the report was submitted by the Police Station, Modi Nagar, Ghaziabad, wherein it has been categorically stated that upon inspection of the premises in dispute no construction or demolition activity was found. Moreover, dispute with regard to the same is already pending before the Hon'ble Delhi High Court as well as Civil Suit is pending before Civil Judge, Ghaziabad and Misc. Appeal is pending before the Additional District Judge Court no.5, Ghaziabad.

24. In addition to the above nowhere in the first information report it has been disclosed that what loss has been caused to the society, it is simply to take defence in the pending WRIT C No.29271 of 2022 before this Honble Court, which has been filed by another society managed by Dr. DK Modi along with the present Society.

25. Learned Senior Counsel for the petitioners further submits that bare perusal of the FIR reveals that the date of incident as mentioned the First Information Report is 10.12.2022, whereon, it is alleged that petitioners were demolishing the property in dispute and further they committed robbery of articles namely table, chair, fan, etc., however, the said allegations were missing in the interim application moved before the Additional District judge, Court no.5 Ghaziabad and have appeared for the

first time in the present First Information Report. The prosecution story even if otherwise taken to be true does not constitutes any offence under alleged sections as the dispute is purely civil in nature and pending before the competent court of civil jurisdiction in which both the parties, i.e., petitioners as well as respondent no.3, are contesting parties and respondent no.3 after failing to obtain any favorable order of injunction or order in Misc. Appeal has resorted to invoke the criminal law for quick relief and exerting pressure on the petitioners to succumb to the dictates of Dr. K.N. Modi.

26. Learned Senior Counsel for the petitioners finally submits that the ingredients for constituting the offences under Sections 436, 450, 392 and 126-B IPC are not made out against the petitioners. Dispute between the parties is purely of civil nature and has been given colour of criminal case only to exert pressure on the Modi Industries Limited. As per the judgments of Apex Court in the case of *State of Harayan vs. Bhajan Lal*, AIR 1992 (SC) 604 and in the case of *Indian Oil Corporation vs. NTPC India Limited and Others*, 2006(6) SCC 736, the impugned FIR deserves to be quashed.

27. Counter affidavit has been filed on behalf of respondent no. 3 wherein it has been stated that the petitioners have opened the lock of office of the society and its institutions and robbed the important goods and files kept therein. This was done only to prevent the society to run smoothly. The petitioners and their chairman want to grab the society and several civil litigations are already pending between the parties. The offences alleged are fully made out against the petitioners.

28. Learned A.G.A appearing on behalf of state-respondent nos. 1 and 2 has also supported the case set up by the respondent no. 3 against the petitioners.

29. After considering the rival submissions, this court finds that there is civil dispute between the parties pending before the Civil Court, Ghaziabad in the form of injunction suit. Regarding commission of certain offences during the pendency of suit, FIR has been lodged by respondent no. 3.

30. After going through the material on record, this court does not find the present case to be purely of civil nature.

31. Keeping in view, the allegations made in the FIR, there can be civil dispute between the parties, but if some crime is committed by one party against the other during the pendency of civil suit, it would require investigation.

32. In the present case, the allegations of commission of alleged crime have been made against the petitioners who are the employees of the Modi Industries Limited by their rival party, respondent no. 3. Except the allegations made in the FIR, there is no other documentary evidence brought on record in support of the allegations in the counter affidavit. Some photographs have been filed along with counter affidavit filed by respondent no. 3 which also do not clearly show any demolition, fire, etc., as alleged in the FIR. Even otherwise the above photographs are to be looked into by the investigating officer and without being part of case diary they cannot be relied upon by the court. There is civil dispute pending between the family members of Modi family which can be a ground for falsely implicating the

employees of Modi Industries Limited, the petitioners.

33. It is convenient for the court to assume that the allegations in the FIR are gospel truth and thereafter close the chapter. However, the fact remains that the truth is yet to emerge from the statutory investigation to be conducted by the investigating officer. There is also possibility that the allegations made in the FIR are found by the investigating officer to be false. In that case denial of any relief to the petitioners would not be in the interest of justice. As per Article 21 of the constitution of India right to life and liberty of “we the people” cannot be curtailed only because the courts have set up a standard which provides that if by merely going through the FIR commission of cognizable offence / offences is found, no interference would be required in under the Article 226 of constitution of India and right to liberty of the petitioner cannot be protected and he should take recourse to Section 438 Cr.P.C for seeking anticipatory bail.

34. Now a days FIR is lodged mostly by getting it drafted by a legal expert or the head constable (diwan) of the police station. In the first information report, the ingredients for constituting the alleged offence / offences are incorporated so meticulously that the court may lay its hand off by a bare reading of FIR itself. The first information report is written with precision and perfection so that it fits into the convenient parameters of the court settled by the court itself.

35. Although it is convenient for the court to deny relief by the accused to the accused by just going through the contents of FIR but where it appears to the courts that there is possibility of false

implication and allegations in the FIR do not appear to be absolutely correct and may have been concocted to falsely implicate the accused / petitioner then, irrespective of the severity of allegations, interference is called by court to protect the right to liberty of the accused / petitioner.

36. After considering the totality of facts and circumstances, like previous litigation between the parties, earlier enmity between them counter blast implication, etc., court should interfere to protect right to liberty of accused even if allegations in the FIR show commission of cognizable offence by accused/petitioner.

37. Very long FIR containing the precise allegations making out the ingredients for constituting the alleged offences are mostly drafted by experts and the courts are required to be cautious of such FIRs which appear to be almost perfect with regard to allegations made therein. The human acts are imperfect and the genuine FIR does not contain the perfect recital supported by all the ingredients for constituting all the offences alleged. Therefore, protecting the liberty of the petitioner / accused during the pendency of investigation is in accordance of requirement of Article 21 of constitution of India. No rule of convenience, niceties of law of procedure can override the constitutional mandate. Such a right is vested in the citizen by the basic law of land. In case relief is denied to the petitioner / accused under Article 226 of constitution of India and he is compelled to obtain bail/ anticipatory bail during the period of investigation and then if the investigating officer finds, after concluding investigation, that implication of petitioner / accused was not correct then the state has not made any provision to indemnify such

an accused / petitioner for under going the troubles in obtaining bail / anticipatory bail which is not easy where the false allegations made in the FIR are so convincing and perfectly made out that even the bail court refuses to grant bail.

38. In the state of Uttar Pradesh Anticipatory bail application is not entertained by the High Court directly. First approach to the Sessions Court is necessary in view of Full Bench decision of the High Court in the case of Ankit Bharti vs. State of U.P. and Another, passed in Crl. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 1094 of 2020. Before the Sessions Court time is lost in hearing of anticipatory bail application. Mostly such applications are rejected by the Sessions Court. Then before the High Court second inning starts. During this period police gets sufficient opportunity to arrest an accused or exempt him from arrest in lieu of money or other considerations. Another practical problem is large number of filing of anticipatory bail applications in this court per day.

39. On an average about 70-80 anticipatory bail applications are filed before this court per day. There is also pendency of about 2500 anticipatory bail applications in this court, not to say of the same before the sessions courts all over the state in 75 districts. During pendency of such applications many accused get arrested by police and many anticipatory applications are dismissed as infructuous. Most of those who escape arrest have to manage the police. As soon as the notice of filing of anticipatory bail applications by an accused reaches the police station concerned the effort of his arrest gets intensified by the informant in the police both. The denial of prompt protection from

arrest in a big source of corruption. The same himself from arrest the accused has no option but to please the police on day to day basis in the hope getting protection from arrest first in proceedings u/A 226 of Constitution of India then in proceedings under Section 438 Cr.P.C from the sessions Court and then from High Court. Some accused manage the police even till they approach the Apex Court. These are stark realities which a litigant facts on being implicated in an FIR containing allegations which made out cause of commission of cognizable offence.

40. With heavy filing of anticipatory bail applications before the 75 Sessions Courts of the state and also before this court, if in the cases where from the FIR and other material brought on record it appears to the High Court that the allegations in the FIR are though prima facie credible but investigation should not be hampered and correct facts should be ascertained thereby, directing the accused to avail remedy of anticipatory bail / bail would further increase the number of cases in courts. Besides causing harassment to litigants it would increase the work of Sessions court as well as this court. If limited protection from arrest till conclusion of investigation is granted to the accused approaching this court under Article 226 of the Constitution of India all the above proceedings can be avoided and work load of Sessions Court and High Court can be reduced and unnecessary harassment of litigant by police can also be avoided. There are the peculiar practical difficulties in this State in denying protection to an accused for limited period under Article 226 of the Constitution of India, while refusing the quashing of FIR.

41. In such a situation relegating an accused from the court hearing matters under Article 226 of the Constitution of India to avail remedy u/s 438 Cr.P.C before Sessions Court and then before the High Court only for protection from arrest during investigation amounts to harassment of a litigant. On an average 200-300 Criminal Misc. Writ Petitions are filed under Article 226 of the Constitution of India per day before this court challenging the first information reports. Not all get heard promptly. During this period of pendency of writ petition before this court accused is under threat of arrest. If he fails get any relief his arrest is made by police granting him little time to approach the Sessions Court for seeking anticipatory bail and on being unsuccessful seeking anticipatory bail from the High Court.

42. We are not oblivious of the mandate of the Apex Court in the case of ***Neeharika Infrastructure Pvt. Ltd., vs. State of Maharashtra and Others., (2021) 19 SCC 401***. In paragraph 16 of the aforesaid judgment the Apex Court has held as follows :-

“ In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there

may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.”

43. It is clear from the above paragraph that in the case where facts are hazy and the investigation has just begun, High Court should permit the investigation to proceed. In case the High Court stays further investigation it should assign reasons. We are not staying the investigation but it appears from the material on record that in present case implication of petitioners may be found

to be false, therefore, their right to liberty is required to be protected during the period of statutory investigation in the allegations made against them in the FIR. Investigation can be stayed in this case but that would come in the way of speedy investigation which in requirement of criminal administration of justice as held by Apex Court in the above paragraph. We do not intend to delay the investigation proceedings at all but for the reasons given above intend to protect the petitioners from arrest till investigation against them is completed by police.

44. Had it been a case with clear allegations in the FIR and not hazy allegations with mitigating circumstances like pendency of civil dispute between the parties, this court would never have interfered.

45. Even the Apex Court in the case of **Hema Mishra vs. State of U.P., 2014 (4) SCC 453**, has held that though High Court has very wide powers under Article 226 of Constitution of India but they are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. However, the High Court should ensure that such powers is not exercised so liberally as to convert it into section 438 Cr.P.C. If the High Court finds that in a given case if the protection against pre-arrest is not given, it could amount some miscarriage of justice, it would be free to grant relief in the nature of anticipatory bail in exercise of its power under Article 226 of Constitution of India. However, such a blank interim order of not to arrest or “no coercive steps” cannot be passed mechanically in a routine manner. Reasons are to be assigned.

46. In view of the above consideration, this court is of the view that without obstructing the investigation and

without quashing the FIR, the right to liberty of petitioners deserves to be protected for the detailed reasons assigned herein above.

47. Accordingly, petition is disposed of directing that till cognizance is taken on police report under Section 173(2) Cr.P.C., by the court, the respondents shall not arrest the petitioners pursuant to the First Information Report dated 23.04.2024, registered as Case Crime No. 0274 of 2024, under Sections- 436, 450, 392 and 120-B IPC, Police Station- Modi Nagar, District- Commissionerate Ghaziabad (Rural), subject to cooperation in ongoing investigation, which shall be concluded within two months.

48. In case, the accused persons do not cooperate with the investigation, the investigating officer shall be at liberty to file a recall application for recalling this order before this court.

(2024) 7 ILRA 1197
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.07.2024

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

CrI. Misc. W.P. No. 9135 of 2024

Smt. Geeta & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioners:
 Raj Kamal

Counsel for the Opp. Parties:
 G.A., Prem Chandra Dwivedi

Juvenile Justice (Care and Protection of Children) Act, 2015, Section 94 – Presumption and determination of age - Age of the victim is to be determined on the basis of an ossification test where there is no reliable document regarding the age - If neither the birth certificate from the school nor the high school certificate nor the birth certificate issued by a competent authority as required by Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short, 'Juvenile Justice Act') is available, then the only option as per Section 94 of the Juvenile Justice Act is to rely upon the ossification test report. (Para 9)

Allowed. (E-5)

List of Cases cited:

1. Smt. Juli Kumari and Another vs. State of UP and 2 Others, Criminal Misc. Writ Petition No. 17046 of 2022
2. State of M.P. vs. Anoop Singh, reported in 2015 (7) SCC 773
3. Suhani vs. State of U.P., 2018 0 Supreme (SC) 1430
4. P. Yuvaprakash vs. State Rep. By Inspector of Police, 2023 SCC OnLine SC 846

(Delivered by Hon'ble Vivek Kumr Birla, J. & Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Raj Kamal, learned counsel for the petitioners, Sri Prem Chandra Dwivedi, learned counsel for the respondents and Sri Ratan Singh, learned AGA for the State-respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned first information report dated 14.05.2024 registered as Case Crime No.118 of 2024, under Section-363, 366 I.P.C., Police Station-Araon, District-Firozabad, and for a direction to the