

विजय कुमार,

आई०पी०एस०



डीजी परिपत्र सं० - 04 /2024

पुलिस महानिदेशक,

उत्तर प्रदेश।

पुलिस मुख्यालय, गोमती नगर विस्तार,

लखनऊ-226002

दिनांक: जनवरी 19, 2024

विषय: उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) नियमावली-2021 के प्राविधानों के अनुपालन के सम्बन्ध में दिशा निर्देश।

प्रिय महोदय/महोदया,

उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986 के

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| 1. पत्र संख्या: डीजी-सात-एस-14(15)/2023 दि० 02.01.2024 |
| 2. पत्र संख्या: डीजी-सात-एस-14(09)/2021 दि० 01.06.22 |
| 3. पत्र संख्या: डीजी सात-एस-14(09)/2021 दि० 25.04.22 |
| 4. डीजी परिपत्र सं०-40/22 दि० 09.12.2022 |

अन्तर्गत अभियुक्तों के विरुद्ध कार्यवाही के दौरान अभियुक्तों का सम्पूर्ण एवं त्रुटिहीन आपराधिक इतिहास अंकित किये जाने तथा इस सम्बन्ध में उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी

क्रियाकलाप (निवारण) नियमावली 2021 के प्राविधानों के अनुपालन के सम्बन्ध में इस मुख्यालय स्तर से पार्श्वीकित बॉक्स में अंकित पत्र तथा डीजी परिपत्र पूर्व में निर्गत किये गये हैं किन्तु इन निर्देशों का कमिश्नर/जनपद स्तर पर कड़ाई से अनुपालन नहीं किया जा रहा है।

श्री आशुतोष कुमार सण्ड, शासकीय अधिवक्ता, मा० उच्च न्यायालय इलाहाबाद ने अपने पत्र दिनांकित 18.12.2023 (छायाप्रति संलग्न) द्वारा अवगत कराया है कि मा० उच्च न्यायालय में गिरोहबन्द अधिनियम के अभियुक्तों द्वारा प्रथम रूचना रिपोर्ट को चुनौती देते हुये रिट याचिकायें योजित की जा रही हैं, जिसमें गिरोहबन्द नियमावली में दी गयी विभिन्न व्यवस्थाओं का पालन न किये जाने को आधार बनाया जा रहा है। विद्वान शासकीय अधिवक्ता ने उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986 के अन्तर्गत की जा रही कार्यवाहियों में विवेचनाधिकारियों, प्रभारी निरीक्षकों, नोडल अधिकारियों, पुलिस अधीक्षकों तथा जिला मजिस्ट्रेटों द्वारा सामान्य रूप से की जा रही त्रुटियों का निम्नवत उल्लेख अपने पत्र में किया है-

- Under Rule 5(3)a there must be a joint meeting of the District Magistrate/ Commissioner of Police with the District Police Chief.
- Under Rule 8(3) the Status of each case on the date of the approval of the Gang chart should be strictly mentioned.
- According to Rules the Addl. Superintendent of Police (Nodal Officer) must record his satisfaction in clear words as required under Rule 16(1) of the Rules.
- Under Rule 16(2) Senior Superintendent of Police/Superintendent of Police after going through the recommendation of the Addl. Superintendent of Police under Rule 16(1) shall record his satisfaction for approving the same and will forward the same to the District Magistrate or the Commissioner of Police.

- e- Under Rule 17(2) clearly prohibits the use of the pre-printed rubber stamp for all gang chart for its approval as such, the satisfaction etc. should be seen after recorded due application of mind; and as such, the signature of the concerned authority on the printed form clearly shows of non application of mind.
- f- According to Rule 20(3) before submitting the charge sheet before the concerned special court the Addl. Superintendent of Police shall obtained the opinion from the concerned prosecuting officer in order to ascertain that there is no illegality/irregularity either in conducting of the investigation or with regard to outcome of the document collected during course of investigation and after that approval the Addl. Superintendent of Police shall forward the same to Senior Superintendent of Police or Superintendent of Police for its approval as required under Rule20(4).
- g- Under Rule 26(1) the Commissioner of Police/Senior Superintendent of Police/Superintendent of Police as the case may be, will peruse the entire record whenever the aforesaid Charge sheet is forwarded before him for the grant of the approval as required under Rule20.
- h- Rule 5, the gang-chart which is prepared prosecuting the gang member shall only contained the number of the cases which are considered for invoking the provision but excluding the cases on the basis of which earlier any proceeding under the Gangster Act was initiated. However, the list of the aforesaid cases shall be annexed along with the gang chart as provided under Rule 5D in form prescribed under the Rule.

विद्वान शासकीय अधिवक्ता ने अपने पत्र में क्रिमिनल मिस. रिट पिटीशन संख्या-18729/2023 आसिम उर्फ हासिम बनाम उ0प्र0 राज्य व अन्य सम्बन्धित मु.अ.सं. 307/2023 अन्तर्गत धारा-3(1) उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986, थाना-मुंडापांडे, जनपद-मुरादाबाद तथा क्रिमिनल मिस. रिट पिटीशन संख्या-16258/2023 सत्री मिश्रा उर्फ संजयन कुमार मिश्रा बनाम उ0प्र0 राज्य व अन्य सम्बन्धित मु.अ.सं. 366/2023 अन्तर्गत धारा-3(1) उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986, थाना-राजघाट, जनपद-गोरखपुर का उल्लेख किया है, इन रिट याचिकाओं में मा0 उच्च न्यायालय इलाहाबाद द्वारा जनपद मुरादाबाद तथा गोरखपुर में पंजीकृत प्रथम सूचना रिपोर्टों को रद्द कर दिया गया है।

क्रिमिनल मिस. रिट पिटीशन संख्या-16258/2023 उपरोक्त में मा0 उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांकित 13.12.2023 में गिरोहबन्द अधिनियम के अन्तर्गत की जा रही कार्यवाहियों में सामान्य रूप से इस प्रकार की तकनीकी त्रुटियों पर अप्रसन्नता व्यक्त करते हुये निम्नवत टिप्पणी की गयी है-

25. At last, this court feels it appropriate to express its displeasure about the manner of preparing the gang-charts in Gangster Act, 1986. This court finds in number of cases that the police authorities as well as District Magistrate forwarded/approved the gang-chart without application of mind and contrary to Rules, 2021. This negligence on the part of police officials as well as of District Magistrate on the one hand fails to protect the innocent person and on the other hand, hardcore criminals and gangsters get benefit of such technical lacuna in Court.

26. Therefore, the Chief Secretary of U.P. is directed to issue necessary guidelines to all the District Magistrate/Commissioner of Police/SSP/SP /Additional SP regarding the preparation, forwarding and approval of the gangchart in accordance with the Gangster Rules, 2021 in light of observations made above.

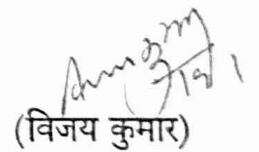
मा0 उच्च न्यायालय द्वारा की गयी उपरोक्त टिप्पणी से उ0प्र0 पुलिस की व्यवसायिक दक्षता पर प्रश्नचिन्ह लगता है, यह स्थिति कदापि स्वीकार्य नहीं है। दुर्दांत अपराधियों के विरुद्ध की जा रही कार्यवाहियों में प्रारम्भिक स्तर पर लगातार की जा रही त्रुटियों के कारण मा0 उच्च न्यायालय में राज्य का पक्ष प्रस्तुत करने वाले शासकीय अधिवक्ता/अपर शासकीय अधिवक्ता की स्थिति मा0 न्यायालय में असहज होती है तथा उनके द्वारा राज्य का पक्ष सशक्त रूप से रखना सम्भव नहीं हो पाता, जिसका लाभ अंततः अभियुक्तों को ही मिलता है।

अतः आप सभी को निर्देशित किया जाता है कि शासकीय अधिवक्ता द्वारा उनके पत्र में इंगित की गयी त्रुटियों के सम्बन्ध में अपने अधीनस्थ अधिकारियों / विवेचकों को विस्तृत रूप से अवगत करायें तथा भविष्य में गिरोहबन्द अधिनियम के अन्तर्गत की जा रही कार्यवाहियों में उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) नियमावली-2021 में दी गयी व्यवस्था का अक्षरशः अनुपालन सुनिश्चित किया जाए तथा इस मुख्यालय स्तर से पूर्व में निर्गत परिपत्रों एवं निर्देशों का कड़ाई से अनुपालन सुनिश्चित कराया जाये। यदि किसी अधिकारी या कर्मचारी द्वारा इन निर्देशों के अनुपालन में शिथिलता बरती जाती है तो उसके विरुद्ध नियमानुसार कठोर कार्यवाही की जायेगी तथा पर्यवेक्षण अधिकारियों का भी दायित्व निर्धारण किया जायेगा।

संलग्नक: यथोपरि।



भवदीय,


(विजय कुमार)

1. समस्त पुलिस आयुक्त,
उत्तर प्रदेश।
2. समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
प्रभारी जनपद/रेलवेज, उत्तर प्रदेश।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :—

1. पुलिस महानिदेशक (कानून एवं व्यवस्था), उ0प्र0 लखनऊ।
2. अपर पुलिस महानिदेशक, अभियोजन, उ0प्र0 लखनऊ।
3. अपर पुलिस महानिदेशक, रेलवेज, उ0प्र0 लखनऊ।
4. अपर पुलिस महानिदेशक, अपराध, उ0प्र0 लखनऊ।
5. समस्त जोनल अपर पुलिस महानिदेशक, उ0प्र0।
6. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक / पुलिस उपमहानिरीक्षक, उ0प्र0।

Ashutosh Kumar Sand
GOVERNMENT ADVOCATE
High Court, Allahabad



Date... 19/12/2023
Legal Cell DCPHQ, Lko.
Resi : 1137/1116, Katyani Devi
District Prayagraj
Phone : (0532) - 2421294 (Office)
- 2421295 (Fax)
Mobile : 9415216639 / 9559444776

TO,

1. The Principal Secretary (Home)
Government of U.P.,
Lucknow.
2. The Director General of Police,
Government of U.P.,
Lucknow.

SDG(L/O)

Letter No.Criminal/ 19316 /Allahabad/ Dated: 18.12.2023

Sub: Criminal Writ Petition for quashing the first information report/proceeding arising out of U.P. Gangster and Anti Social Activities (Prevention) Act, 1886.

R

Sir,

A large number of the petitions are being filed before this Hon'ble Court challenging the first information report lodged under the provisions of U.P. Gangster and Anti Social Activities (Prevention) Act, 1886 under Section 3(1) of the Gangster Act and the said section only provides the punishment for the gangsters without invoking the provisions of Section 2 of the Act. Unless and until a person is anti social/gangster he cannot be punished under Section 3(1) of the said Act and as such, kindly issue the necessary direction throughout the State for lodging the first information report under the relevant provision of the

Act and chart annexed thereto must be in conformity of the provisions of the U.P. Gangster and Anti Social Activities (Prevention) Rules, 2021 which has a basic requirements:-

- a. Under Rule 5(3)a there must be a joint meeting of the District Magistrate/Commissioner of Police with the District Police Chief.
- b. Under Rule 8(3) the status of each case on the date of the approval of the Gang chart should be strictly mentioned.
- c. According to Rules the Addl. Superintendent of Police (Nodal Officer) must record his satisfaction in clear words as required under Rule 16(1) of the Rules.
- d. Under Rule 16(2) Senior Superintendent of Police/Superintendent of Police after going through the recommendation of the Addl. Superintendent of Police

ADG/G.S.O.,
DCP HQ
10/12/2023

SDG(PG)

विशेष पुलिस महानिदेशक

कानून एवं व्यवस्था

कम प्रो. नखनर

19.12.23

SP(L)

19.12.23
SO

पुलिस अधीक्षक (वि०प्र०)
महानिदेशक

h

Ashutosh Kumar Sand
GOVERNMENT ADVOCATE
High Court, Allahabad



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District Prayagraj
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under Rule 16(1) shall record his satisfaction for approving the same and will forward the same to the District Magistrate or the Commissioner of Police.

- e. Under Rule 17(2) clearly prohibits the use of the pre printed rubber all gang chart for its approval as such, the satisfaction etc. should be seen after recorded due application of mind;

And as such, the signature of the concerned authority on the printed form clearly shows of non application of mind.

- f. According to Rule 20(3) before submitting the Charge sheet before the concerned special Court the Addl. Superintendent of Police shall obtained the opinion from the concerned prosecuting officer in order to ascertain that there is no illegality / irregularity either in conducting of the investigation or with regard to outcome of the document collected during course of investigation and after that approval the Addl. Superintendent of Police shall forward the same to Senior Superintendent of Police or Superintendent of Police for its approval as required under Rule 20(4).
- g. Under Rule 26(1) the Commissioner of Police / Senior Superintendent of Police / Superintendent of Police as the case may be, will peruse the entire record whenever the aforesaid Charge sheet is forwarded before him for the grant of the approval as required under Rule 20.
- h. Rule 5, the gang-chart which is prepared prosecuting the gang member shall only contained the number of the cases which are considered for invoking the provision but excluding the cases on the basis of which earlier any proceeding under the Gangster Act was initiated. However, the list of the aforesaid cases shall be annexed along with the gang chart as provided under Rule 5D in form prescribed under the Rule.

The aforesaid directions are required to be issued at your level as this Hon'ble Court as well as the undersigned and the other State Law Officer has cut a sorry figure with regard to aforesaid illegality while preparing the gang chart / prosecuting the gangster.

The aforesaid facts can be verified by the orders passed in;

1. Criminal Writ Petition No. 14042 of 2023 (Deepu Yadav @ Deepu Singh Vs. State of U.P.). A copy of order dated 21.09.2023 is enclosed as Enclosure 1.

Ashutosh Kumar Sand
GOVERNMENT ADVOCATE
High Court, Allahabad



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2. Criminal Writ Petition No. 18729 of 2023 (Aseem @ Hassim Vs. State of U.P.). A copy of order dated 02.12.2023 is enclosed as Enclosure-2.
3. Criminal Writ Petition No. 16528 of 2023 (Sunny Mishra @ Sanjayan Kumar Mishra Vs. State of U.P.). A copy of order dated 13.12.2023 is enclosed as Enclosure-3.

Apart from that the undersigned has earlier sent a letter to you along with Principal Secretary, Law/ Legal Remembrancer, Lucknow being CrI. No. 12733B/Government Advocate /HC/ALLD with regard to certain defect / latches in the Rules framed under U.P. Gangster and Anti Social Activities (Prevention) Rule 2021. Copy of the said letter along with its enclosure are being enclosed herewith as Enclosure-4.

Enclosure:- (as above)

Yours truly,

(Ashutosh Kumar Sand)
Government Advocate,
High Court, Allahabad.

Copy to Principal Secretary (Law)/ Legal Remembrancer
Government of U.P., Lucknow, for information and necessary action.

(Ashutosh Kumar Sand)
Government Advocate,
High Court, Allahabad.

(AFR)

Neutral Citation No. - 2023:AHC:183030-DB

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 14042 of 2023

Petitioner :- Deepu Yadav @ Deep Singh
Respondent :- State Of U.P. And And 2 Others
Counsel for Petitioner :- Dileep Singh Yadav
Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Vivek Kumar Singh, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

2. The writ petition has been filed seeking following relief:

"Issue a writ, order or direction in the nature of writ of certiorari quashing the impugned notice issued by District Magistrate, Auraiya/respondent no. 2 in Case No. D-202303050000546, under Section 3(1) of U.P. Control of Goondas Act, Police Station- Arvakatra, District- Auraiya."

3. Challenge in the writ petition is to a notice issued to the petitioner under Section 3(1) of U.P. Control of Goondas Act. In our considered opinion, challenge to a notice is not tenable. The petitioner still have every opportunity of replying to the impugned show-cause notice issued to him and to contest the proceedings, if any, that may be drawn on its basis.

4. Counsel for the petitioner has relied upon the judgment and order dated 10.08.2023 passed by a Co-ordinate Bench of this Court in Criminal Misc. Writ Petition No. 12619 of 2023 (Govardhan vs. State of U.P.). Therein the notice was on the basis of a solitary case.

5. However, in **Kareem vs. State of U.P. through Principal Secretary**, Misc. Bench No. 24256 of 2020, vide order dated 04.01.2021, a co-ordinate Bench has refused to interfere in similar circumstances on the ground of existence of an alternative remedy of showing cause before the District Magistrate. This judgment is earlier in time and is based also on pronouncements of the Apex Court, but has not been considered in the judgment cited. In Kareem (supra) also, challenge to the notice was on the ground that it had been issued on the basis of

extraordinary jurisdiction in a manner which will enable a party to bypass the machinery provided by the law."

The Court after considering the submissions of the parties held as follows in para 30 :

"..... The power under Article 226 and 32 are wide, and are untrammelled by any external restrictions and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraint for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to evoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available"

This decision has been subsequently followed in *N. K. Bapan v. Union of India*, JT 1992 (4) 49; *State of Tamil Nadu v. P. K. Shamsuddin*, JT 1992 (4) 179 and *Subhash Mujimal Gandhi v. L. Miningliana*, 1994 (6) SCC 14. The provisions of detention laws are far more stringent than the Control of Goondas Act as here order is passed after notice and trial and the person against whom order is passed does not lose his liberty. He is merely deprived of his right to live in a particular area from where he is externed but is free to reside any where else in the country. There is no reason why the same principle should not apply in the present case as well. The law being well-settled that where a Statute provides a machinery of its own, the aggrieved person should first exhaust the remedies provided under the Statutes before approaching the High Court under Article 226 of the Constitution and the High Court would not normally entertain a petition straightway, the present petition challenging the notice is liable to be rejected on the ground of alternative remedy.

9. In *Raja Sukhmandan v. State*, AIR 1972 All 498, the writ petition was filed at the stage of notice. The Division Bench examined the contention based upon the constitutional validity of U. P. Control of Goondas Act but refused to consider the submission regarding illegality of the notice on the ground that the same could be agitated before the District Magistrate and if the decision went against the petitioner, in appeal before the Commissioner. In *Kabir Chawla v. State of U.P.*, 1994 SCC (Cri) 577, the validity of the notice under Section 3 of the Act was assailed but the Supreme Court declined to go into this question on the ground that the petitioner could satisfy the District Magistrate who was seized of the matter. It may be mentioned here that in all the cases where validity of notice issued under similar Statute relating to externment of Goondas was assailed before the Supreme Court, the matter had been taken in appeal against final orders of externment see *Gurucharan Singh v. State of Bombay*, AIR 1952 SC 221; *Hari Khemu Gawli v. Dy. Commissioner of Police*, AIR 1956 SC 559; *Bhagubhaji v. District Magistrate*, AIR 1956

SC 585 and State of Gujarat v. Mehboob Khan, AIR 1968 SC 1468.

10. There is another reason for not entertaining the writ petition at the stage of notice. As the preamble of the Act shows, it has been enacted to make special provisions for the Control and Suppression of Goondas with a view to the maintenance of Public Order. The provisions of the Act are intended to prevent further mischief by a Goonda and not to secure his conviction in a pending case. If a person is permitted to challenge the notice at the initial stage and seek stay of the proceedings, the very purpose for which notice is issued and the law under which it is issued will be frustrated as the externment order remains in operation only for a limited period.

11. Learned counsel has next submitted that in *Ramji Pandey v. State of U.P.*, 1981 Cri LJ 1083, writ petition had been filed challenging the notice under Section 3 of the Act and the writ petition was allowed by a Full Bench of this Court and, therefore, the present petition also deserves to be entertained. The judgment of the Full Bench shows that the question whether a writ petition should be entertained against a notice was not at all considered. The only question which was canvassed and was considered by the Bench was whether the notice was in accordance with the requirement of Section 3 of the Act. No such argument that a writ petition under Article 226 of the Constitution should not be entertained at the stage of notice seems to have been canvassed and therefore no decision has been given on this point. It is well-settled that a decision is an authority for when it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in it. See *M/s. Orient Paper and Industries Ltd. v. State of Orissa*, AIR 1991 SC 672 para 19. Doctrine of precedent is limited to the decision itself and as to what is necessarily involved in it. Judicial authority belongs not to the exact words used in this or that judgment, nor even to all reasons given, but only to the principle accepted and applied as necessary grounds of decision see *Krishna Kumar v. Union of India*, AIR 1990 SC 1782 pages 18 and 19. The Full Bench having not considered the question of maintainability of the writ petition at the stage of notice, the decision rendered by it cannot be held to be an authority or binding precedent for holding the writ petition to be maintainable.

12. In view of the reasons discussed above the writ petitions are dismissed on the ground of alternative remedy."

6. Under the circumstances, no interference is called for at this stage.

7. Accordingly, this petition fails and is dismissed.

Order Date :- 21.9.2023

Aditya Tripathi

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 18729 of 2023

Petitioner :- Asim @ Hassim

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Irshad Ahmad

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the State.
2. The instant writ petition seeks quashing of the FIR dated 31.10.2023 giving rise to Case Crime No. 307 of 2023, under Section 3(1) U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act"), P.S. Moonda Pnaday, District Moradabad.
3. Contention of learned counsel for the petitioner is that in the impugned F.I.R., only Section 3(1) of Gangsters Act was mentioned which is the provision for imposing penalty upon gangsters. However, no other provision is mentioned showing the anti social activities in which the petitioner is alleged to have indulged on account of which the petitioner is being prosecuted as gangster.
4. After hearing learned counsel for the parties and on perusal of the record, this Court finds that the impugned F.I.R. has been registered u/s 3(1) Gangsters Act. This Section provides punishment for gangsters. However, Section 2 of Gangsters Act provides anti social activities which form the basis for classifying a person as a gangster. Section 2(b) defines "gang" and Section 2(c) defines "gangster". The definition of "gangster", mentioned in Section 2(c) clearly mentions that the person to be named as gangster must be involved in activities enumerated in Clause (b) of Section 2 of Gangsters Act. Section 2(b), 2(c) and 3 of Gangsters Act are being reproduced as under:-

"2(b). "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

(i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting

or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-F of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

[(xvi) offences punishable under the Regulation of Money Lending Act, 1976;

(xvii) illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the

Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xxv) indulging in crimes that impact security of State, public order and even tempo of life.]

2(c). "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;

3. Penalty. - (1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:

Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.

(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine."

5. From the provisions, quoted as above as well as from the perusal of other provisions of Gangsters Act, it is clear that a person can be prosecuted under Section 3 of Gangsters Act only after he falls under the definition of "gangster" being part of the gang which is involved in anti social activities as mentioned in Section 2(b)(i) to (xxv) of the Act. The purpose of making special provisions of Gangsters Act for dealing with gangsters and for preventing their anti social

activities. The provision of this Act are stringent and are therefore required to be interpreted strictly so as to prevent their misuse on the part of State authorities.

6. Hon'ble Supreme Court, in the case of *Gulam Mustafa vs. State of Karnataka*; 2023 SCC OnLine SC 603, observed in paragraph-38 as under:-

"38. This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position."

7. With regard to enactments which have a stringent provisions of law, which effecting personal liberty under Article-21 of the Constitution of India, Hon'ble Apex Court in the case of *Ichhu Devi Choraria vs. Union of India and others*; (1980) 4 SCC 531 has observed about personal liberty as under:-

"Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law."

8. The aforesaid observation in *Ichhu Devi (supra)* was again considered by Hon'ble Apex Court in the case of *Ameena Begum vs. State of Telangana & others*; (2023) 9 SCC 587.

9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.

10. Considering the aforesaid facts and circumstances, this Court is of the view that the impugned F.I.R. is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act. Therefore, the impugned F.I.R. is hereby quashed.

11. However, the respondent authorities are free to register a F.I.R. against accused, in accordance with law.

12. Accordingly, the petition is allowed.

Order Date :- 2.12.2023

Digitally signed by Vandana
VANDANA GAUTAM
High Court of Judicature at Allahabad

Neutral Citation No. - 2023:AHC:235826-DB

A.F.R.

Reserved On : 24.11.2023

Delivered On : 13.12.2023

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 16258 of 2023

Petitioner :- Sanni Mishra @ Sanjayan Kumar Mishra

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

Counsel for Petitioner :- Manoj Kumar

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Arun Kumar Singh Deshwal, J.

Delivered by Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Manoj Kumar, learned counsel for the petitioner and learned AGA for the State.

2. The instant writ petition seeks quashing of the FIR dated 03.10.2023 giving rise to Case Crime No.366 of 2023, under Section-3(1) of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the 'Gangster Act 1986'), Police Station-Rajghat, District-Gorakhpur.

3. The contention of learned counsel for the petitioner is that the impugned FIR is itself illegal because while preparing the gang-chart, the date of filing the charge-sheet in the base case was not mentioned which is in violation of Rule 8(3) of the U.P. Gangster and Anti Social Activities (Prevention) Rules, 2021 (hereinafter referred to as the 'Gangster Rules, 2021') and second submission of learned counsel for the petitioner is that while recommending and approving the gang-chart, competent authorities have failed to apply independent mind because from perusal of gang-chart, it is clear that

it was forwarded and approved on printed proforma which is against the Rules 16 and 17 of the Gangster Rules, 2021.

4. *Per contra*, learned AGA has submitted that there is no illegality in the impugned FIR and in the gang-chart because the gang-chart was prepared as per the Gangster Rules, 2021.

5. After hearing the parties and on perusal of record, this court finds that in the gang-chart, date of filing of charge-sheet in base case has not been mentioned in Column 6 of the gang-chart and also while forwarding and approving the gang-chart, Nodal Officer, Senior Superintendent of Police, Gorakhpur as well as District Magistrate, Gorakhpur has signed just below the printed proforma regarding their satisfaction as required in Rule 16 of the Gangster Rules, 2021.

6. Before dealing the argument of learned counsel for the petitioner, it would be appropriate to mention that the purpose of making special provisions of Gangster Act, 1986 is the prevention and dealing with gangsters and their anti social activities, therefore, the provision of this Act are stringent and are required to be interpreted strictly so as to prevent misuse on the part of State authorities.

7. Hon'ble Supreme Court, in the case of *Gulam Mustafa vs. State of Karnataka; 2023 SCC OnLine SC 603*, observed in paragraph-38 as under:-

"38. This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position "

8. If any case is registered against a person under stringent provision of law, it affects his personal liberty under Article-21 of

the Constitution of India. Hon'ble Apex Court in the case of *Icchu Devi Choraria vs. Union of India and others; (1980) 4 SCC 531* observed about personal liberty as under:-

"Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law."

9. State Government has issued Gangster Rules, 2021 in exercise of its power u/s-23 of the Gangster Act, 1986 to provide the transparent procedure to prevent the misuse of the Gangster Act, 1986. Detail procedure has been provided in Rule-5 of the Gangster Rules, 2021 for initiating the proceeding under the Gangster Act, 1986, to check arbitrariness on the part of police authorities, Rule-5(3)(a) prohibits explicitly the District Magistrate/Commissioner of Police from approving a gang-chart without due discussion in a joint meeting with District Police Chief. Rule-5(3)(a) of the Gangster Rules, 2021 is being quoted as under:

"5(3)(a). The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police."

10. So far as the first contention of the petitioner is concerned regarding the non-mentioning of the date of the charge-sheet in the base case, the same will be tested in the light of Rule 8 of the Gangster Rules, 2021. Rule 8 of the Gangster Rules, 2021 mandates upon the concerned police officer to prepare gang-chart by mentioning the up-to-date status of the case and also the latest status of the case against the gang member in the gang-chart. Rule 8 of the Gangster Rules, 2021 is being quoted below:

"8. Stating unconfirmed or false information is prohibited.- (1) The Incharge of Police Station/Station House Officer/Inspector shall not

mention the cases as Part Trial or Partial Trial (PT) without ascertaining the up-to-date status of the cases in the gang-chart.

(2) No unconfirmed or false information shall be entered in the gang-chart.

(3) The latest status of the cases against the gang, which are being shown in the gang-chart, regarding their pendency in the Special Court, the convictions or the stage at which they are in the Court, must be clearly mentioned.

(4) The responsibility of recording the correct and true information shall lie on the concerned Incharge of Police Station/Station House Officer/Inspector.

(5) On discovering an adverse situation, the Incharge of Police Station/Station House Officer/Inspector shall be held liable for negligence under departmental and criminal proceedings."

11. Rule 18 of the Gangster Rules, 2021 prescribes that gang-chart should be prepared in the manner given in Form No.-1 of the Gangster Rules, 2021. Column-6 of this form mentions the details and current status of the base case. Form No.-1 of the Gangster Rules, 2021 is being reproduced below:-

Form No.(1)

Format of Gang-Chart

Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021

(See Rule 18)

Name of Gang Leader _____ S/D of _____ Address-Vill.
 _____ Mohalla _____ Police Station _____ District _____

Sl No.	Name and complete address of Accused present and permanent both	Age	Sex	Number of registered cases	Details and status of cases	Crime Number-Section-Stage	Crime Number-Section-Stage	Crime Number-Section-Stage	Whether accused is in jail or on Bail	Gangs Activities (district/inter-district/inter-state level)	Whether accused has misused the Bail and did any crime subsequently

cases mentioned in this Rule, Gangster Act, 1986 can be imposed even during the pendency of investigation. The above mentioned legal position is also observed by a Division Bench of this Court in Criminal Misc. Writ Petition Nos. 10708 of 2023 and 10793 of 2023 decided on 04.08.2023 (MANU/UP/3698/2023). Therefore, it is necessary that while preparing the gang-chart, date of filing of charge-sheet must be clearly mentioned in the gang-chart which is the latest status of cases against the gang must be mentioned regarding their pendency, conviction or the stage at which they are in court, except the cases which fall under Rule 22(3) of the Gangster Rules, 2021 which provides that in certain category of cases mentioned in this Rule, Gangster Act, 1986 can be imposed even during the pendency of investigation. The above mentioned legal position is also observed by a Division Bench of this Court in Criminal Misc. Writ Petition Nos. 10708 of 2023 and 10793 of 2023 decided on 04.08.2023 (MANU/UP/3698/2023). Therefore, it is necessary that while preparing the gang-chart, date of filing of charge-sheet must be clearly mentioned in the gang-chart which is missing in the present case.

13. So far as the second contention of the petitioner is concerned regarding non-application of mind by the competent authorities while forwarding and approving the gang-chart, the same is liable to be considered in the light of the mandate of Rules 16 and 17 of the Gangster Rules, 2021. Rule 16(1) of the Gangster Rules, 2021 mentions that while forwarding the gang-chart by the Additional Superintendent of Police (Nodal Officer), he must record his satisfaction in clear words after perusal of gang-chart as well as attached forms, in the words mentioned in Rule 16(1) itself before forwarding the same to District Police Chief. Rule 16(1) of the Gangster Rules, 2021 is being quoted as under:

16.(1) Forwarding of the gang-chart by the Additional Superintendent of Police - The Additional Superintendent of Police will not only take a quick forwarding action in the case but he will duly peruse the gang-chart and all the attached forms; and when it is satisfied that there is a just and satisfactory basis to pursue the case, only then will he forward the letter along with the recommendation given below on the gang-chart to the Superintendent of Police/Senior Superintendent of Police. "Thoroughly studied the gang-chart and attached evidence.

The basis of action under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 exists. Accordingly forwarded with recommendation. *When the gang-chart and there is a legal basis for taking action in the case then he should forward the gang-chart to the*

14. Similarly, Rule 16(2) of the Gangster Rules, 2021 further mandates the District Police Chief to record his satisfaction that all the formalities of the Gangster Act, 1986 have been fulfilled as well as all the particulars mentioned in gang-chart are correct and there is a satisfactory basis for taking action, only then he will forward the gang-chart. Rule 16(2) of the Gangster Rules, 2021 is being quoted as below:

16(2) Forwarding of the gang-chart by the district police in-charge.
When the gang-chart along with all the forms is received by the Senior Superintendent of Police/Superintendent of Police with the clear recommendation of the Additional Superintendent of Police, he will also thoroughly analyze all the facts and when it is confirmed that all the formalities of the Act have been fulfilled and there is a legal basis for taking action in the case, then he should forward the gang-chart to the Commissioner of Police/District Magistrate stating that: "I have duly perused the gang-chart and attached forms and I am fully satisfied that all the particulars mentioned in the case are correct and there is a satisfactory basis for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act 1986. Accordingly, approved."

15. Similarly, Rule 16(3) of the Gangster Rules, 2021 further provides that the District Magistrate or Commissioner of Police, after receiving the gang-chart from the District Police Chief, will again peruse the record and he will record his satisfaction that satisfactory ground exists for taking action under the Gangster Act, 1986 before approving the same. Rule 16(3) of the Gangster Rules, 2021 is being quoted as under:

"16(3). Resolution of the Commissioner of Police/District Magistrate.
When the gang-chart is sent to the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of Police/District Magistrate and when he is satisfied that the basis of action exists in the case, then he will approve the gang-chart stating therein that: "I duly peruse the gang-chart and attached forms in the light of the evidence attached with the gang-chart. Satisfactory grounds exist for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The gang-chart is approved accordingly."

... as well as evidence annexed therewith, Rule 17(2) of the Gangster Rules, 2021 further provides that pre-printed rubber seal gang-chart should not be signed by the competent authorities as such and signs shall amount to not exercising independent mind. Rule 17 of the Gangster Rules, 2021 is being quoted as under:

It is noteworthy that the words written above are only illustrative. There is no compulsion to write the same verbatim but it is necessary that the meaning of approval should be the same as the recommendations written above, and it should also be clear from the note of approval marked."

16. Rule 17 of the Gangster Rules, 2021 further provides that competent authorities, before forwarding the gang-chart must apply an independent mind to the information mentioned in the gang-chart as well as evidence annexed therewith. Rule 17(2) of the Gangster Rules, 2021 further provides that pre-printed rubber seal gang-chart should not be signed by the competent authorities because the same shall amount to not exercising independent mind. Rule 17 of the Gangster Rules, 2021 is being quoted as under:

"17. Use of independent mind.-(1) The competent authority shall be bound to exercise its own independent mind while forwarding the gang-chart.

(2) A pre-printed rubber seal gang-chart should not be signed by the competent authority; otherwise the same shall tantamount to the fact that the competent authority has not exercised its free mind."

17. The purpose of prohibiting the signing of pre-printed rubber seal under Rule 17(2) of the Gangster Rules, 2021 is to bind the competent authorities to apply independent mind by mentioning their satisfaction in clear words. Therefore, signing the pre-typed satisfaction will also be prohibited under Rule 17(2) of the Gangster Rules, 2021.

18. In the present case, all the competent authorities simply signed just below the printed proforma regarding their satisfaction. Therefore, it clearly violates Rule 17 of the Gangster Rules, 2021.

19. This court is also of the view that while forwarding and approving the gang-chart, it is the duty of the competent authorities to see whether gang-chart has been prepared as per the Gangster Rules, 2021 and all the formalities as required by the Gangster Rules, 2021 have been fulfilled. If from the record,

20. In the present case, the date of filing the charge-sheet in the base case was not mentioned in the gang-chart though same is required as per Rule 8(3) of the Gangster Rules, 2021.

it appears that competent authorities forwarded or approved the gang-chart without looking into the facts that the gang-chart was itself not prepared as per the Gangster Rules, 2021, then this fact will itself amount to non-application of independent mind on the part of competent authority.

20. In the present case, the date of filing the charge-sheet in the base case was not mentioned in the gang-chart though same is required as per Rule 8(3) of the Gangster Rules, 2021, even then Nodal Officer and Senior Superintendent of Police, Gorakhpur forwarded the gang-chart and District Magistrate, Gorakhpur also approved the gang-chart. This fact clearly establishes that while forwarding as well as approving the gang-chart, competent authorities have not applied independent mind. Therefore, there is a clear violation of Rules 16 and 17 of the Gangster Rules, 2021.

21. Above facts also show that District Magistrate Gorakhpur while approving the gang-chart did not hold any discussion in a joint meeting with SSP Gorakhpur as required by Rule 5(3)(a) of the Gangster Rules, 2021, though the same is mandatory before approving the gang-chart. Therefore there is a clear violation of Rule 5(3) of the Gangster Rules, 2021.

22. In view of the above, this court lays down following directions for preparation of gang-chart before lodging FIR under the Gangster Act, 1986 :

(i) Date of filing of chargesheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021.

(ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.

(iii) There must be material available for the perusal of the court which shows that the District Magistrate before approving the gang-chart had conducted a joint meeting with the District Police Chief and held a due discussion for invocation of the Gangster Act, 1986.

23. In view of the above observation, impugned FIR dated 03.10.2023 in Case Crime No.366 of 2023, under Section-3(1) of the Gangster Act, 1986, Police Station-Rajghat, District-Gorakhpur, along with its gang-chart is hereby quashed.

24. The writ petition is accordingly allowed. However, authorities are permitted to lodge fresh FIR on the basis of fresh gang-chart prepared, in accordance with law, as mentioned above.

25. At last, this court feels it appropriate to express its displeasure about the manner of preparing the gang-charts in Gangster Act, 1986. This court finds in number of cases that the police authorities was the welling as District Magistrate forwarded/approved the gang-chart without application of mind and contrary to Rules, 2021. This negligence on the part of police officials as well as of District Magistrate on the one hand fails to protect the innocent person and on the other hand, hardcore criminals and gangsters get benefit of such technical lacuna in Court.

26. Therefore, the Chief Secretary of U.P. is directed to issue necessary guidelines to all the District Magistrate/Commissioner of Police/SSP/SP/Additional SP regarding the preparation, forwarding and approval of the gang-chart in accordance with the Gangster Rules, 2021 in light of observations made above.

27. Registrar (Compliance) is directed to send a copy of this order to the Chief Secretary, Government of U.P., Lucknow for compliance.

Order Date :- 13.12.2023

S.Chaurasia

Ashutosh Kumar Sand

Government Advocate
High Court Allahabad



Resi : 1337 / 1116, Kalyani Devi
District Prayagraj
Phone : (0532) - 2421294 (Office)
- 2622063 (Fax)

COURT CASE / MOST IMPORTANT

To,

1. **The Principal Secretary (Law) / Legal Remembrancer,**
Government of U.P., Lucknow
2. **The Principal Secretary (Home),**
Government of U.P., Lucknow
3. **The Director General of Police,**
U.P., Lucknow

Letter No. Al 12733-B /GA/HC/ALLD

Dated: 26.07.2023

Sub: Non-disclosure of entire criminal antecedents of the accused either in the gang-chart or under the Form-4, as provided under rule 5 of the Rules framed under section 23 of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 readwith section 21 of the U.P. General Clauses Act, 1904.

Dear Sir,

Large number of cases i.e. criminal writ petitions / bail applications / criminal appeals, which are being filed before the Hon'ble High Court either by the gang leader or by the gang members, in order to get relief in their favour, the gang-chart on the basis of FIR under section 2/3 of U.P. Gangster Act has been lodged, does not disclose entire criminal antecedents of the concerned accused.

During the course of hearing of concerned cases relating to the Gangster Act, the Hon'ble Court has shown its dismay with regard to the functioning of concerned authorities, who have either prepared or approved the gang-chart without complying the requisite mandatory provisions enshrined either under the Rules as framed under section 23 of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 readwith section 21 of the U.P. General Clauses Act, 1904 on 27.12.2021 *Anti-Social Activities (Prevention) (Amendment) Act, 2015 (U.P. Act no. 14*

The rules 5(2)(e), framed under The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, reads as under:-

e. *A separate list of criminal history, as given in Form No. 4 shall be attached with the gang-chart detailing all the criminal activities of that gang and mentioning all the criminal cases, even if acquittal has been granted in those cases or even where final report has been submitted in the absence of evidence."*

The rule 14, framed under The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, provides that in the gang-chart shall contains the offence which has been committed after 23.01.2015, however the prior criminal antecedents shall be mentioned in the criminal history as provided under Form No. 3 (Dossier). The relevant portion reads as under:-

"14. *The gang-chart on the offences added vide the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) (Amendment) Act, 2015 (U.P. Act no. 14*

Social Activities (Prevention) Act, 1986, state with regard to criminal history of the concerned shall be disclosed, but the Form No. 4 as mentioned in under The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, relates to the representation to be moved by the applicant with

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of 2016) can be prepared only if they are committed after 20th January, 2015; otherwise they cannot be included in the gang-chart though they may be shown and accompanied with gang chart in the list of criminal history in the manner given under Form No. 3 of these rules."

From the perusal of the rule 5 of the Rules, as framed under The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, state with regard to criminal history of the concerned shall be disclosed, but the Form No. 4 as mentioned in under The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, relates to the representation to be moved by the applicant with regard to the release of the property attached under the Act, and as such, the aforesaid discrepancies of the Form No. 4 in rule 5 of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, is not at all in conformity of the provisions of the Rules, as mentioned therein. However, the Form No. 3 (Dossier), which relates to the disclosure of the criminal history of gang-leader or gang-members, as required in rule 12(2) of the Rules under the Act, but the word of Form No. 3 (Dossier) as mentioned in rule 14, which relates to the offences which has been committed by the concerned persons after 20.01.2015, is not in conformity with the provisions of the rule 12(2), and as such, the same requires to be looked into and necessary amendment / correction be incorporated in rule as well as the form.

The cases which are coming forward before the Hon'ble Court does not disclosed that the Station Incharge / Station House Officer / Inspector with his signature and seal in manner given in Form No. 3 have submitted a separate list of all the criminal acts of the gang-leader and its member is attached separately cases with regard to the forwarding of the Form No. 3 alongwith the report submitted by him for taking action under section 2/3 of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986.

I am hereby enclosing the order of three cases in the exemplary form in order to bring the notice with regard to the non-disclosure of the entire criminal antecedents of the gang-leader or gang-members in the gang-chart or at the of forwarding the criminal antecedents to the concerned higher authorities for their approval of the gang-chart, due to which some time, the SPs / SSPs are directed to be appeared in person before the Hon'ble Court in order to explain the aforesaid lapses / latches / irregularities with regard to the criminal antecedents of the accused. The details of the orders are as follows: -

- i. *order dated 08.06.2023 passed by this Hon'ble Court in criminal misc. bail application no. 25812 of 2023 (Virendra Yadav vs. State of U.P.), arising out of case crime no. 227 of 2021 under section 3(1) of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Bhudkuda, District Ghazipur, in which in the gang-chart, only 03 cases have been mentioned, though the applicant has got criminal antecedents of 17 cases. (Copy of the order dated 08.06.2023 is enclosed - 1)*
- ii. *order dated 09.06.2023 passed by this Hon'ble Court in criminal misc. bail application no. 26022 of 2023 (Aneesh vs. State of U.P.), arising out of case crime no. 568 of 2022 under section 3(1) of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Kotwali, District Muzaffarnagar, in which in the gang-chart, only 31 cases have been mentioned, though the applicant has got criminal antecedents of 40 cases. (Copy of the order dated 08.06.2023 is enclosed - 2)*

To.

29 cases. (Copy of the order dated 08.06.2023 is enclosed - 3)

Apart from the aforesaid cases, the State Law Officers are regularly facing the aforesaid problem in the Hon'ble Court and as such, it would be appropriate to issue a necessary order / direction / circular, pan state, that before getting the gang-chart approved by the concerned authority, they should submit the Form No. 3 (Dossier) alongwith the gang-chart before the concerned authority and the same shall also be annexed alongwith the instruction / parawise comments submitted by the concerned investigating officer in the office of undersigned, so that all the State Law Officer may be able to apprise the correct facts before the Hon'ble Court.

Ashutosh Kumar Sand

Government Advocate

High Court Allahabad

investigating officer in the office of undersigned

may be able to apprise the correct facts before the Hon'ble Court



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- iii. order dated 11.07.2023 passed by this Hon'ble Court in criminal misc. bail application no. 19021 of 2023 (Bhupendra Bafar vs. State of U.P.), arising out of case crime no. 64 of 2023 under section 3(1) of The U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Kankarkhera, District Meerut, in which in the gang-chart, only 01 cases have been mentioned, though the applicant has got criminal antecedents of 29 cases. (Copy of the order dated 08.06.2023 is enclosed - 3)

Apart from the aforesaid cases, the State Law Officers are regularly facing the aforesaid problem in the Hon'ble Court and as such, it would be appropriate to issue a necessary order / direction / circular, pan state, that before getting the gang-chart approved by the concerned authority, they should submit the Form No. 3 (Dossier) alongwith the gang-chart before the concerned authority and the same shall also be annexed alongwith the instruction / parawise comments submitted by the concerned investigating officer in the office of undersigned, so that all the State Law Officer may be able to apprise the correct facts before the Hon'ble Court.

Kindly do the needful by removing the aforesaid latches and inform the undersigned, so that the undersigned may be able to apprise the Hon'ble Court.

Enclosures - 03: (As above)

Yours truly


(Ashutosh Kumar Sand)

Government Advocate
High Court, Allahabad

Hon'ble Vikram D. Chauhan, J.

1. In pursuance to the order dated 8.6.2023, the Superintendent of Police, Ghazipur is present before the Court and has filed his personal affidavit explaining that inquiry against the erring officer has been initiated for the mistake of not disclosing all the cases in the gang chart or in Form No.4 as prescribed in Rule 5 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021.

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25812 of 2023

Applicant :- Virendra Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudarshan Singh, Anurag Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. In pursuance to the order dated 8.6.2023, the Superintendent of Police, Ghazipur is present before the Court and has filed his personal affidavit explaining that inquiry against the erring officer has been initiated for the mistake of not disclosing all the cases in the gang chart or in Form No.4 as prescribed in Rule 5 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021.

2. Sri A.K. Sand, learned Government Advocate appearing on behalf of the State assured the Court that Rule 5 of the Rules of 2021 would be followed in future and suitable corrective measures shall be taken so that all cases either shown in the gang chart or in Form No.4.

3. He further assured this Court that corrective measures in this respect would be taken all over the State by State Government by issuing necessary instructions in this respect.

4. In view of the statement made by learned Government Advocate, this Court feels that once the State themselves have understood the magnitude of the problem and have assured that corrective measures would be implemented, further inquiry into the aforesaid aspect is being withheld.

5. The personal appearance of Superintendent of Police, Ghazipur is hereby exempted.

6. Learned A.G.A. submits that instructions have been received and he has no objection in case the bail application is heard on merits.

7. Heard learned counsel for the applicant and learned A.G.A. for

the State and perused the record.

8. It is submitted by learned counsel for the applicant that there are three cases shown in the gang chart against applicant, in which cases he is already on bail, the bail orders are annexed as Annexure no.3 to the affidavit and S.A.-2 of the supplementary affidavit. It is also submitted that other criminal history of the applicant has been explained in paragraph 6 of the affidavit. It is the submission of learned counsel for the applicant that applicant neither the gang leader or organizer or member of the gang and the provision of Gangster Act may not be applicable in the facts and circumstances of the case. Applicant is languishing in jail since 27.5.2021 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial. In the first information report, the allegations are vague in nature and no specific instance to the effect that the applicant is member or leader or organizer of a Gang has been disclosed and as such the factual foundation under the Gangster Act is not available.

9. Learned A.G.A. for the State has opposed the prayer for bail but does not dispute the factual matrix of the case.

10. Having heard learned counsel for the parties, it is evident that the provision of Gangster Act has been invoked against the applicant on the basis of three criminal cases. However, applicant has been released on bail in the aforesaid cases. Learned A.G.A. has not produced any material to demonstrate that the applicant comes within the definition of "Gangster" and "Gang" under U.P. Gangsters and Antisocial Activities (Prevention) Act, 1986. Mere pendency of criminal case may not ipso facto invoke provisions of U.P. Act No.7 of 1986. Criminal history of the applicant has been adequately explained.

11. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned A.G.A. and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant, **Virendra Yadav**, involved in Case Crime No.227 of 2021, under Section 3(I) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Bhudkuda, District Ghazipur be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

CRIMINAL MISC/BAIL APPLICATION No. 26312 of 2023

Applicant - Virendra Yadav

Signature, Date & State of U.P.

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/ or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- vi. The applicant shall not leave India without the previous permission of the Court.
- vii. In the event, the applicant changes his residential address, the applicant shall inform the court concerned about new residential address in writing.

13. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 7.7.2023
Bhaskar

B. It is submitted by learned counsel for the applicant that there are

the State and perused the record.

B. It is submitted by learned counsel for the applicant that there are

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19021 of 2023

Applicant :- Bhupendra Bafar

Opposite Party :- State Of U.P. Through It Principal Secretary (Home)

Counsel for Applicant :- Atul Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Learned counsel for the applicant is present.

Compliance affidavit of Inspector of Police Station Kankar Khera, District Meerut has been placed before the Court in compliance of the court order dated 26.05.2023, let it be kept on record.

Vide Court order dated 26.05.2023, a query was made that in the gang-chart, one case has been shown against the applicant while criminal history of 29 cases is separately shown against the applicant. As per query, it has not been explained as to why criminal history of the rest cases was not shown in the gang-chart while as per gang-chart, it was known to the Investigating Officer that the applicant is having wide criminal history against him. The Investigating Officer of the case under Gangster Act has not appeared in the Court due to 'Conver Yatra' and the Inspector of Police Station Kankar Khera, District Meerut is unable to answer the query of the Court as to why the other 28 cases pending against the applicant have not been shown in the gang-chart against the applicant.

Let, Deo Singh Rawat, Investigating Officer of Police Station Pallavpuram, District Meerut be summoned for 26.07.2023.

List this case in the additional cause list on 26.07.2023.

Order Date: 17/7/2023

T shall make himself available for interrogation by a police officer as

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TRISHWAN SINGH
High Court of Judicature at Allahabad

ii. The applicant will not pressurize/intimidate the prosecution

fixed, unless personal presence is exempted and/ or the applicant shall make himself available for interrogation by a police officer as and when required.

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26022 of 2023

Applicant :- Anees

Opposite Party :- State of U.P.

Counsel for Applicant :- Asheesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Learned AGA has pointed out that the applicant is having previous criminal history of 40 cases but in paragraph 8 of the affidavit filed in support of bail application, it is mentioned that the applicant is having criminal history of 31 cases.

2. As per gang chart, only one case has been shown against the applicant.

3. It is a big fault of prosecution side. It is very unfortunate that applicant against whom 40 criminal cases pending but in the gang chart only one case is mentioned.

4. Under the circumstances, let personal affidavit of District Magistrate and Senior Superintendent of Police, Muzaffar Nagar be filed by the next date fixed in the matter explaining the above aspect.

5. Let this matter be listed again as fresh on 11th July, 2023.

Order Date: 29.6.2023

Ajeet

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19021 of 2023

Applicant :- Ramendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- G.A.

Counsel for Opposite Party :- G.A.

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Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19021 of 2023

Applicant :- Ramendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- G.A.

Counsel for Opposite Party :- G.A.