

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15515 of 2023

Petitioner :- Anil Mishra

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

Counsel for Petitioner :- Kartikeya Saran

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Kartikeya Saran, learned counsel for the petitioner, Shri Ratan Singh, learned A.G.A. for the State-respondents, and perused the record.

2. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 14.09.2023 registered as FIR No. 0171 of 2023, under Section 3 (1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Gyanpur, District- Bhadohi and for a direction to the police not to arrest the petitioner in pursuance of the impugned FIR.

3. The brief facts of the case are that impugned FIR has been lodged against Anil Mishra, Ashish Mishra, Shivam Mishra, Govind Mishra, Pramod Yadav, Shubham Pandey, Santosh Gupta, Kanhiya Jaiswal and Akash ji Baranwal. As per the allegations in the FIR, informant received information that Anil Mishra is a gang leader and Ashish Mishra, Shivam Mishra, Govind Mishra, Pramod Yadav, Shubham Pandey, Santosh Gupta, Kanhiya Jaiswal and Akash Ji Baranwal are the active members of a Gang. The gang of Anil Mishra gets financial and material benefit by fraudulently verifying the registration of farmers by resetting the password of Departmental Login Id (District Food and Civil Supplies department) of District Food and Marketing Officer, Bhadohi and by re-setting the password of departmental Login ID (District Food and Civil Supplies department) of Additional

District Magistrate (Judicial), Additional District Magistrate of Bhadohi Gyanpur Aurai and has used the digital signatures.

4. Submission of learned counsel for the petitioner is that he has been exonerated in Case Crime No. 68 of 2023, under Sections 419, 420, 467, 468, 471 I.P.C. P.S. Aurai, District Bhadohi, wherein the charge-sheet dated 25.06.2023 has also been submitted against other co-accused persons, and as such the said case cannot be considered for the purpose of invoking the provisions of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the 'Act'). He next submitted that the Act has been invoked only on the basis of sole case. It is submitted that no charge sheet has been filed in Case Crime No. 240 of 2022 and the gang chart has been approved without filing of the charge sheet in the said case and without application of mind. He submitted that the question answer dated 18.09.2023, clearly reflects that till that date no charge sheet has been filed in the court. It is submitted that therefore, there is violation of Rule 5(3) (c) of the U.P. Gangster and Anti Social Activities (Prevention) Rules, 2021 (hereinafter refer to as 'Rules') and that of Rule 10 of the Gangster Rules, which provides that certified copy of the charge-sheet must be annexed with the gang chart, which has not been annexed in the present case.

5. Learned A.G.A., on instructions, submitted that after completion of the investigation against the petitioner, a supplementary charge-sheet no. 98A was submitted on 08.08.2023 in the main charge-sheet dated 25.06.2023 against the petitioner, a duly attested copy whereof has been supplied by the learned A.G.A., which is taken on record. He further submits that the proceedings of approval of the gang chart was initiated on 19.08.2023, much after filing of supplementary charge-sheet no. 98A dated 08.08.2023, after completion of the investigation as required under Rule 5(3) (c) of the Gangster Rules, 2021. He highlighted that certified copy of the gang chart has also not been annexed to suppress this fact.

6. A bare glance over the Rule 5(3)(c) of the Rules, 2021 would clearly disclose that it provides that "the gang chart shall not be approved without completion of the investigation of the base case".

7. Rule 5 (3)(c), Rules 10 and Rule 22 of the Rules, 2021 are

quoted as under:

"5. General Rules- (1)

(3).....

(c) The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

(Emphasis supplied)

10. Records of Base Cases- (1) Along with gang chart, the certified copy of the charge-sheet and recovery memo shall be attached compulsorily."

22. Criminal history not mandatory and sections of the Act can be imposed in the course of investigation- (1) A single act/omission will also constitute an offence under the Act, and First Information Report may be registered on the basis of a single case i.e., it is not mandatory that any criminal history must be recorded and alleged before registering an offence under the Act.

(2) The Act may also come into force on a single prosecution in certain class of cases, such as -

if it appears that the gang has committed a single offence mentioned in Sections 302, 376D, 395, 396 or 397 of the Penal Code out of the offences mentioned in sub-clause (i) of clause (b) of Section 2 of the Act or sub-clauses (ii), (iii), (v), (vii), (x), (xii), (xiv), (xv), (xvii), (xviii), (xix), (xx) or (xxi) of clause (b) of Section 2 of the Act, which is presently under investigation, and the offence under this Act is being proved by collected evidence, then along with the criminal act under consideration, the gang-chart should also be approved by the concerned Commissioner of Police/District Magistrate involved in the investigation of the said offence and the provisions of the Act can be imposed while investigating both the offences together in accordance with the provisions of the Act. Further, the charge-sheet can be sent to the Special Court constituted under the Act."

(Emphasis supplied)

8. The present petitioner is a gang leader as well and there are serious allegations about fraudulent distribution of the essential/fair price commodities by adopting mal-practices. There is allegation that the petitioner was clandestinely using the log-in ID of the District Food Distribution Officer without his knowledge and consent, and was also using fake digital signature of ADM (Judicial), Bhadohi to derive undue benefits. As admitted in para 27 of the petition, he has criminal history of seven cases as well.

9. In our recent judgment dated 04.10.2023 passed in Criminal

Misc. Writ Petition No. 15487 of 2023 (Narender Kumar Vs. State of U.P.) we have dealt with the relevant law extensively, para 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30 whereof are reproduced as under:-

"10. In Criminal Misc. Application U/S 372 Cr.P.C. (Leave to Appeal) No.329 of 2012 (Prithvi Singh v. State of U.P.), decided on 21.4.2022, this Court has considered the principles of statutory interpretation extensively, para 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 40 whereof are reproduced as under:

"10. Before proceeding further it would be appropriate to take note of the principles of statutory interpretation as the decision of the question involved in the present case is directly dependant on the interpretation of the statutory provisions. For this purpose we have taken help of the book 'Principles of Statutory Interpretation' '13th Edition, 2012' written by Justice G. P. Singh (Former Justice of M. P. High Court).

11. One of the main basic principles of interpretation is that if meaning of words of statute are plain, effect must be given to it irrespective of consequences.

12. In Nelson Motis vs. Union of India, AIR 1992 SC 1981 it has been observed that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences.

14. In State of Uttar Pradesh vs. Vijay Anand Maharaj, AIR 1963 SC 946 it was held that when a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself.

15. It is also a guiding rule of interpretation that language of the statute should be read as it is.

16. In Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd vs. Custodian of Vested Forests, AIR 1990 SC 1747 it was observed that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

17. In Raghunath Rai Bareja vs. Punjab National Bank, (2007) 2 SCC 230 Supreme Court held that departure from the literal rule should be done only in very rare cases and ordinarily there should be judicial restraint in this connection.

18. Insofar as rule of 'regard to consequences' is concerned, the aforesaid book clearly provides that this rule has no application when the words are acceptable to only one meaning and no alternate construction is reasonably open. A reference may be made in this regard with citations noted above

which provides that if meaning is plain, effect must be given to it irrespective of consequences.

19. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory vs. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596 it was observed that as a general rule, a "proviso" is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a "proviso" is not interpreted as stating a general rule.

20. However, in Chapter 3 of the aforesaid book at page 206 it has been observed that the insertion of a "proviso" by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a "proviso" may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. A large number of rulings, including the English Law, have been noted in support of the aforesaid observation. A reference in this regard may be made to one of such rulings, namely, *Motiram Ghelabhai (deceased L.R.) vs. Jagan Nagar (deceased L.Rs.) and others*, AIR 1985 SC 709.

21. Purposes of a "proviso" were aptly summarised in *Sundaram Pillai vs. Pattabiraman*, (1985) 1 SCC 591, wherein it was observed that by and large a proviso may serve the following four different purposes:-

"(1) qualifying or excepting certain provisions from the main enactment;
(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(emphasis supplied)

22. However, it was observed in the aforesaid book that the above summary cannot, however, be taken as exhaustive and ultimately a "proviso" like any other enactment ought to be construed upon its terms.

40. As already noticed, the golden rule of interpretation is that if the meaning of words of a statute are plain, effect must be given irrespective of the consequences. We may refer to the judgments of the Supreme Court in cases of *Nelson Motis (supra)*, *Kanailal Sur (supra)*, *Vijay Anand Maharaj (supra)*, *Gwalior Rayan Silk (supra)*, *Raghunath Rai Bareja (supra)*.

11. Applying the aforesaid principles there can be no two opinions that the words "the gang chart shall not be approved within the completion of investigation of the base case" are hardly open for any other interpretation as the words are plain and unambiguous and admits only one meaning and

should be read as it is. Once this statutory mandate is taken as such the requirement of 'certified copy' of gang chart (or recovery memo) can safely be held or interpreted to be only 'procedural' in nature and only mandate of Rule 10 of the Rules would be that a copy certified by any competent person (which is being discussed in subsequent paragraphs) shall be attached with the gang chart. Any other interpretation of Rule 5(3)(c) read with Rule 10 of the Rules would frustrate the purpose and object of enactment of the Act and the Rules framed thereunder.

12. We, therefore, find that as the only requirement of law as per the above quoted Rule 5(3)(c) is that there should be a completion of the investigation of the base case before approval of the gang-chart, and the same had clearly been done in the present case. Therefore, filing or non-filing of the charge-sheet in the court concerned before preparation of the gang chart is immaterial and that the only requirement is that the charge-sheet should be available with the concerned authority before approval of the gang-chart.

13. In the present case of the petitioner herein Narender Kumar, at the cost of repetition, it is highlighted that date of completion of investigation is 6.2.2023; the process of approval of the gang chart started on 17.3.2023 and the approval of the gang-chart was given by the Commissioner of Police, Gautam Budh Nagar on 20.3.2023, hence there is no violation of Rule 5(3)(c) of the Rules.

14. Insofar as violation of Rule 10 of the Gangster Rules is concerned, submission is that there should exist a certified copy of the charge-sheet at the time of making draft gang chart. We find that the charge-sheet has been prepared by the Investigating Officer under his signatures and the investigation had already been concluded before preparation of the gang chart. We are of the opinion that there should be a copy duly certified by the Officer only, who is having control over the document and it is nowhere required that it has to be a certified copy having been issued by the court of law. Rule 10 of the Rules, 2021 nowhere says that copy of the charge-sheet has to be a copy certified by the Court or a certified copy of the charge-sheet issued by the Court. Submission of charge-sheet in the Court is not a prerequisite of Rule 10 of the Rules.

15. As the intention of the legislature is that the provision of Gangster Act can be imposed after completion of the investigation, therefore, it can be safely concluded that the copy of the charge-sheet or the recovery memo duly certified by the competent authority or the authority having control over such document i.e. Investigating Officer are sufficient for the said purpose. In this regard, a reference may be made to Rule 22 of the Rules, 2021, also heading whereof itself provides that criminal history is not mandatory and sections of the Gangster Act can be imposed in the course of investigation of any base case, falls under category of certain offence mentioned in Rule 22 (2) of the Rules, 2021.

16. The controversy has already been decided by Hon'ble Apex Court in the

case of **Shraddha Gupta vs The State Of Uttar Pradesh** decided on 26 April, 2022 in Criminal Appeal No. 569-570 of 2022 that the provisions of Gangster Act can be imposed on the basis of a solitary case.

17. In addition, the object of enacting the Gangster Act and the Rules framed thereunder may also be taken note of, which are noted as under:

Of the Act:

"An act to make special provision for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto."

Of the Rules:

In exercise of the powers conferred by Section 23 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904) and in suppression of all Government Orders and Notifications made under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986), except as respect things done or omitted to be done before such suppression, the Governor is pleased to make the following rules with a view to provide for a speedy and transparent procedure to punish gangsters, to establish an efficient recovery system in respect of property of gangsters and incidental benefits acquired by them through crimes and acts related therewith."

(Emphasis Supplied)

18. Clearly, object of framing Rules, 2021 is to provide for a speedy procedure as well. It is needless to point out that in the Criminal Procedure Code, there is no specific time frame provided for conducting the investigation and submission of charge-sheet in the Court. The only provision seems to be that under Section 167 CrPC, which provides that in certain cases, the charge-sheet is not filed within 60 days and in other cases the charge-sheet is not filed within 90 days, the arrested accused person shall be entitled for default bail.

19. Sub-section (ii) of Section 167 Cr.P.C. proviso (a) provides as under:

"167. Procedure when investigation cannot be completed in twenty-four hours.- (1) ...

(2)....

Provided that

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

20. The aforesaid provision clearly reflects that only a guiding factor regarding completion of investigation within a time bound period has been provided in Cr.P.C., however, there is no mandatory provision in this regard in the Code.

21. That apart, it is the settled law that further investigation can be directed under Section 173(8) CrPC by the higher police authorise after receipt of the police report forwarded by the Investigating Officer.

22. The purpose of enacting the aforesaid Act is control special provision for the prevention of, and for coping with gangsters and anti-social activities in the State and speedy provision under the Rules, so that speedy investigation and trial can be conducted in the criminal prosecution lodged under the provisions of the Act.

23. Chapter 4 of the Rules, 2021 is dedicated to the sanction of the investigation and prosecution sanction. Rules 22 and 24 fall within this Chapter. Rule 24 of the Rules provides for expeditious investigation, which is quoted as under:

"24. Expeditious Investigation- (1) The investigation of any offence under the Act shall, as far as possible, be completed within six months.

(2) In unavoidable circumstances, after the approval of the district police in-charge, a maximum extension of three months can be provided.

(3) In no case, can the investigation be extended for more than one year."

24. By the aforesaid provision, specific time frame for completion of the investigation has been provided. Thus, the object of enacting the Gangster Act, 1986 and the Rules, 2021 framed thereunder is clearly to provide speedy procedure for conducting the investigation for effective speedy punishment under the provisions of the Act.

25. Under these circumstances, in case it is accepted that a certified copy issued by the competent Court of law only would be required before preparation of the gang chart, it would frustrate the very purpose of the Act and the Rules as this has already been noted above that no specific time frame has been fixed to complete investigation under the provisions of the CrPC and even further investigation can be directed by the police authority

under the provisions of Section 173 (8) CrPC after receipt of police report forwarded by the Investigating Officer.

26. At the cost of repetition, it may again be highlighted that Rule 5 (3) (c) of the Rules, 2021 clearly provides that "However, the gang-chart shall not be approved without the completion of investigation of the base case." Therefore, interpreting Rule 10 of the Rules, 2021 in any manner would clearly frustrate the aims and object of the Gangster Act and the Rules framed thereunder.

*27. In such view of the matter, we find that the arguments as raised by learned counsel for the petitioner are not sustainable in the eye of law. We further note that all such rules violation whereof is being claimed by the learned counsel for the petitioner have also been considered by this Court extensively in the case of **Ambuj Parag Dubey and two others v. State of U.P. and two others**, delivered on 6.12.2022. Para 13, 14, 15, 17, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36 are quoted as under:*

"13. Gangster Act was enacted to make special provision for the prevention of, and for coping with gangsters and anti-social activities and for matters connected therewith and incidental thereto. The Gangster Act is a special statute, as well as, a penal statute.

14. The Gangster Act seeks to punish declared criminals who have deliberately chosen the life of crime. The activities of these professional perpetrators of organized crimes, violence and orgy has a far more baneful effect on the health and morals of the society and its people. If the activities of such recidivists are subjected to same punishment as that other ordinary criminals, the confidence of public in the efficacy and efficiency of State Administration is bound to shake (vide; Ashok Kumar Dixit vs. State of U.P., AIR 1987 (All) 235 (All HC,FB).

15. As per Section 20 of Gangster Act, provisions of the Act or any Rule made thereunder shall have overriding effect notwithstanding anything inconsistent therewith contained in any other enactment. The State Government in exercise of powers under Section 23 of the Gangster Act and in supersession of all Government Orders and notifications, duly notified on 27 December 2021, the Gangster Rules to provide for speedy and transparent procedure to punish gangster and to establish efficient recovery system in respect of property of gangsters and incidental benefits acquired by them through crimes and acts related therewith.

17. Chapter-II of Gangster Rules lays down "Conditions of Criminal Liability of Gangs'. Rule 3(1) provides that the offences mentioned in Sub-sections (i) to (xxv) of clause (b) of section 2 of the Gangster Act shall be punishable under the Gangster Act only if they are: (a) committed for disturbing public order; or (b) committed by causing violence or threat or display of violence, or by intimidation, or coercion or otherwise, either singly or collectively, for the purposes of obtaining any unfair worldly, economic, material, pecuniary or other advantage to himself or to any other person.

26. All the anti-social activities mentioned in the definition of gang are not covered as offences but are certainly unlawful activities having serious reflection on the society, though not termed as offences. Thus, the law never required that offences must have been committed in past or involve use of violence for prosecution under the Gangster Act. Further, as per definition of gang, the Gangster Act seeks to prevent and punish activities which may result in undue temporal, pecuniary, material or other advantage to the gangsters or any other person and which may or may not necessarily, involve the use of violence. (*Verneet Kumar vs. State of U.P.* 2009 (1) ALL CrJ 377).

27. Chapter-III of Gangster Rules lays down the principles related to Gang Chart. Rule-5 mandates that Incharge of a Police Station/Station House Officer/ Inspector shall prepare a Gang Chart (Form No. 1) mentioning the details of criminal activities of the gang. The Gang Chart will be presented to the district head of the Police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation of all the persons of the said gang. Sub-rule (2) of Rule 5 provides that the provisions contained therein shall be complied in respect of gang charts. The provision reads thus:

5. (1) To initiate proceedings under this Act, the concerned Incharge of Police General Rules Station/Station House Officer/Inspector shall prepare a gang-chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(2) The following provisions shall be complied with in respect of gang-charts:-

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.

b. There may be no gang of one person but there may be a gang of known and other unknown persons and in that form the gang-chart may be approved as per these rules.

c. The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

d. Those cases shall not be mentioned in the gang-chart, on the basis of which action has already been taken once under this Act.

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 case or even where final report has been submitted in the absence of

evidence.

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang members mentioned in the gang-chart will also be updated on Interoperable Criminal Justice (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

28. Rule 6 provides that while preparing the Gang Chart it shall be clearly mentioned, if the alleged act of the gang falls within the purview of clause (b) of Section 2 of the Act along with relevant provisions, further, sub-rule (2) mandates that the Investigating Officer makes an endorsement to the effect that the accused is causing panic, alarm or terror in public, then evidence shall be collected in this regard. In addition to the above, a list of criminal history may be attached separately in the prescribed format. (Form No. 4)

29. Rule 10 mandates that records of base cases, would accompany the gang chart and Rule 11 mandates that the present status of all the accused, whether they are in jail or on bail or absconding, shall be clearly mentioned. Rule 13 mandates that while writing abstract below the gang chart and particulars of those officials shall be specifically mentioned. Rule 13 is extracted:

13. While writing the abstract below the gang-chart and particulars separately with the gang-chart, the particulars of those offences shall be specifically mentioned:-

i. which have been committed for pecuniary, materialistic and temporal or similar benefits; or

ii. which disturb the public order; or

iii. Which are a ground for detention under the National Security Act, 1980 (Act no. 65 of 1980)

31. Rule 16 provides the manner and the recommendations to be made while forwarding the gang chart Rule 16 reads thus:

16. The following manner shall be followed in the forwarding of Gang-Chart:

(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 studies the gang-chart and attached evidence. The basis of action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 exists. Accordingly, forwarded with recommendation."

(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"

(3) Resolution of the Commissioner of Police/District Magistrate: When the gang-chart is sent to be the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of Police/Districts 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 perused 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."

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.

32. Satisfaction of the competent authority only means that the competent authority must be in fact satisfy and not a dishonest satisfaction, which will be no satisfaction at all. The satisfaction contemplated by the Gangster Rule is satisfaction in point of fact on the materials placed before the competent authority. The satisfaction of the competent authority referred to under the Rule is not with respect to the allegations levelled against the gangster but the satisfaction is confined to those allegations that the accused can be prosecuted under the Gangster Act. Whatever may be the nature of charge against the accused, the satisfaction of the competent authority should be with regard to that the materials placed before him and the nature of the accused indulging in community antisocial activities. It is expedient to sanction prosecution under the Gangster Act.

33. The expression satisfied is much narrower than "application of mind". The competent authority is not to apply his mind and satisfy himself as to whether the material placed before him would be sufficient for convicting the accused under the Gangster Act. The satisfaction is confined within a narrow domain based on the materials placed before the competent authority, the authorities forwarding the gang chart is satisfied that the accused should be prosecuted under the Gangster Act. The expression satisfaction is not satisfaction on evidence but a prima facie satisfaction based on the representations of the nodal authority and the district police that the accused should be prosecuted

under the Gangster Act.

34. Rule 17 mandates that the competent authority is bound to exercise its own independent mind while forwarding the gang chart and should not be on a pre-printed rubber seal gang chart. Rule 17 reads thus:

17 (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.**

35. Rule 18 provides that gang chart shall be sent only in the manner as given in Form No.1 of these rules.

36. Rule 17 and 18 would have to be read together. Gang chart has to be sent in the prescribed Form No. 1. The endorsement to be made by each of the authorities have also been specified in Rule 16. The rule itself prescribes and mandates a printed Form. Rule 17 merely mandates that the competent authority while approving the gang chart should not be swayed by the recommendation of the police authorities mechanically but should satisfy himself independently that the grounds for prosecution is made out. The satisfaction at that stage is subjective and does not rest upon any evidence. The competent authority has to satisfy that the materials placed with the gang chart calls for prosecution. The stage of collecting evidence follows thereafter. The scope of judicial review is miniscule, the accused cannot challenge the FIR without challenging the gang chart. The question as to whether the antisocial activities of the proposed accused is that of a gang or gangster is a matter of investigation."

(Emphasis supplied)

28. In the said judgment, the entire scheme of the Act was discussed and approved.

30. The provisions were again considered by this Court in the case of *Virendra Kasaudhan vs. State of U.P.*, (2023) SCC OnLine All 1431."

10. At the cost of repetition, it may again be highlighted that Rule 5 (3) (c) of the Rules, 2021 clearly provides that "However, the gang-chart shall not be approved without the completion of investigation of the base case." Therefore, interpreting Rule 10 of the Rules, 2021 in any other manner would clearly frustrate the aims and object of the Gangster Act and the Rules framed thereunder.

11. The facts of the case as noted in para 4 and 5 of this judgment regrading relevant dates of filing of charge-sheet; supplementary charge-sheet and initiation of proceedings for approval of the gang

chart, clearly establishes that this is no violation of any provision of the Act and the Rules.

12. From the discussion made herein above, we, therefore, find that the present petition is devoid of merits, and is, accordingly, **dismissed.**

Order Date :- 18.10.2023

Shafique

(Vinod Diwakar, J.) (Vivek Kumar Birla, J.)