

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, de hors 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 ***Ichu 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 .N o.	Name and complete address of Accused present and permanen t both	Age	Sex	Number of cases registere d	Details and current status of criminal cases			Wheth er accuse d is in jail or on Bail	Gangs Activiti es (district /inter- district/ inter- state level)	Whethe r accused has misused the Bail and did any crime subsequ ently
					Crime Numb er- Sectio n- Police Station -Stage	Crime Numb er- Sectio n- Police Statio n- Stage	Crime Numb er- Sectio n- Police Statio n- Stage			

12. It is clear from Rule 8(3) of the Gangster Rules, 2021 that 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."

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."

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,

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 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 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