

**Court No. - 46**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 16351 of 2023

**Petitioner :-** Akhilesh Kumar Tripathi

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rajesh Kumar Dubey, Saurabh Kumar Dubey

**Counsel for Respondent :-** G.A.

**Hon'ble Ashwani Kumar Mishra, J.**

**Hon'ble Syed Aftab Husain Rizvi, J.**

1. This writ petition has been filed challenging the F.I.R. dated 26.08.2023, lodged against the petitioner in Case Crime No.0116 of 2023, under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station Babhani, District Sonbhadra.

2. As per the F.I.R., the petitioner is wanted in Case Crime No.01 of 2023, under Section 8/20 N.D.P.S. Act, Police Station Babhani, District Sonbhadra. A total quantity of about 49 kg. *Ganja* has been recovered from the vehicle, in which three persons including petitioner were travelling.

3. Learned counsel for the petitioner submits that the petitioner has been enlarged on bail in the offence attributed to him under the N.D.P.S. Act and since there is no satisfaction recorded by the District Magistrate, as is warranted under Rule 16(3) of the U.P. Gangsters and Anti Social Activities (Prevention) Rules, 2021 (hereinafter referred to as 'Rules of 2021'), as such, the impugned F.I.R. is liable to be quashed. It is further argued that the implication of the petitioner in a single case otherwise would not justify invocation of provisions under the Gangster Act.

4. Learned A.G.A., on the other hand, points out that the specific terms specified in Rule 16(3) of the Rules of 2021, need not necessarily be recorded, as it is only illustrative in nature. Learned A.G.A. further submits that transportation of commercial quantity

of cannabis is a serious offence and indicates prima-facie commissioning of offence under the Gangster Act. In such circumstance, the writ petition merits no interference.

5. We have heard learned counsel for the parties and have perused the materials available on record.

6. Rule 16(3) of the Rules of 2021, which is relied upon by learned counsel for the petitioner, reads as under:-

*"Rule 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 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."*

7. In the facts of the present case, we find that the petitioner is accused of transporting 49 kg. *Ganja* in a vehicle, where he was travelling alongwith two other persons. The splitting of the recovered quantity of *Ganja* is not shown to have any basis, since the recovery was from a vehicle. Rule 16(3) of the Rules of 2021 requires that the authority before invoking the provisions of the Gangster Act, applies his mind to the materials on record. We have perused the report in terms of Rule 16 of the Rules of 2021, which contains the endorsement by the concerned Police Station In-

charge, the Circle Officer as well as the Additional Superintendent of Police as also the Superintendent of Police. The District Magistrate has concurred with the opinion of the above authorities. In the facts of the present case, the statement recorded by the police authorities with regard to implication of the petitioner in the offence under the Gangster Act is not disputed.

8. In such circumstance, in the facts of the present case, we decline to exercise our jurisdiction under Article 226 of the Constitution of India and as such, the writ petition is, accordingly, **dismissed**.

**Order Date :- 7.11.2023**

Zafar