

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 17522 of 2023

Petitioner :- Asif Gulzar

Respondent :- State Of Uttar Pradesh And 3 Others

Counsel for Petitioner :- Santosh Singh

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Manish Kumar Nigam,J.

1. Heard Sri Syed Farukh Ahmad along with Sri Santosh Kumar, learned counsel for the petitioner and Sri J.K. Upadhyay, learned A.G.A. for the State.

2. This writ petition has been filed for quashing the First Information Report dated 19.08.2023 registered as Crime No. 200/2023 under Section 2/3 (1) of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986.

3. Submission of learned counsel for the petitioner is that the petitioner was not named in any of the F.I.R., shown as base F.I.R. for the purpose of invoking the cognizance of the Uttar Pradesh *Gangster and Anti-Social Activities (Prevention) Rules, 2021* framed thereunder. It is submitted that there is violation of Rule 5, Rule 8, Rule 15 and Rule 17 of the Rules, 2021 and submits that it has not been explained that how the petitioner is member of the gang. A large number of persons have been implicated in the First Information Report in respect of one incident in different police stations and all the allegations are false.

4. *Per contra*, learned A.G.A. submits that the petitioner has criminal history of three cases and chargesheet has been submitted in the base F.I.R., he is member of the gang and public peace was disturbed on large scale. He further submitted that other co-accused have challenged the same F.I.R. registered as Case Crime No. 0200 of 2023 and all the petitions were dismissed.

5. From perusal of the record, we find that co-accused Atif Ahmad has approached this Court by way of filing Criminal Misc. Writ Petition No. 14947 of 2023, which was dismissed by co-ordinate Bench of this court, vide order dated 22.09.2023. The order is

quoted as under:-

"Heard learned counsel for the petitioner, Shri P.C. Srivastava, learned Additional Advocate General assisted by Shri J.K. Upadhyay and Shri Pankaj Saxena, learned A.G.A.-I for the State-respondents.

The instant writ petition seeks quashing of the FIR dated 19.08.2023 giving rise to Case Crime No.0200 of 2023, under Sections 2/3(1) U.P. Gangster Ante Social Activities (Prevention) Act, 1986, Police Station- Kareli, District- Prayagraj.

The only contention of the learned counsel for the petitioner is that although the provisions of the Gangsters Act has been invoked against the petitioner on the basis of three base cases, but, all these three cases were arisen out of single incident, therefore, the F.I.R. lodged against the petitioner is not good.

Insofar as the F.I.R. in three base cases are concerned, the same is not under challenge. Under challenge is only the impugned F.I.R. under Gangster Act lodged against the petitioner.

Since, the F.I.R. in three base cases are not subject matter of challenge, any illegality therein cannot be made the basis of this petition. Apart from this, no other illegality has been pointed out by the petitioner.

On the basis of three base cases, three separate charge-sheet have been filed against the petitioner and the impugned F.I.R. has been lodged on the basis of three charge-sheet in the base cases.

Accordingly and in view of above we do not find any fit ground for interference.

Moreover, the allegations made in the First Information Report clearly disclose commission of cognizable offences and the allegations are serious in nature. Therefore, prayer of the petitioner to quash the First Information Report is completely misconceived and is rejected.

The writ petition is therefore dismissed, without prejudice to the right of the petitioner to apply for bail/anticipatory bail. "

6. Another co-accused Arif Ali has also approached this Court by way of filing Criminal Misc. Writ Petition No. 14675 of 2023, which was disposed of by co-ordinate Bench of this court, vide

order dated 05.10.2023, order thereof is quoted as under:-

"Heard learned counsel for the petitioner, learned A.G.A. appearing for the State-respondents and perused the record.

The petitioner, by means of this writ petition under Article 226 of the Constitution of India, has invoked the inherent jurisdiction of this Court with prayer to quash the impugned First Information Report dated 19.08.2023 registered as Case Crime No. 200 of 2023, under Section 2/3(1) U.P. Gangsters and Anti Social Activities (Prevention) Act, Police Station Kareli, District Prayagraj.

Learned counsel for the petitioner has raised a number of legal and factual aspects of the matter.

Learned A.G.A. submitted that there are six criminal cases to the credit of the petitioner.

Upon hearing learned counsel for the parties and upon a perusal of the record, we are of the considered opinion that the cognizable offence is made out against the petitioner and there is no occasion or reason to quash the FIR in exercise of power conferred under Article 226 of the Constitution of India.

Accordingly, the prayer for quashing the FIR is declined and refused.

However, it is open for the petitioner, if so advised, he shall move proper regular bail application before the appropriate forum, within ten days from today which shall be decided in accordance with law.

It is also made clear that the Court is not expressing any opinion on the merits of the case. The court concerned is expected to apply its robust and judicial discretion in deciding the bail application as early as possible.

With the above observation, the writ petition is disposed of. "

7. Another co-accused Abdul Rehman has also approached this Court by way of filing Criminal Misc. Writ Petition No. 15213 of 2023, which was dismissed by this court for want of prosecution, vide order dated 31.10.2023, order thereof is quoted as under:-

"1. For last few days notice is being placed on noticeboard that all passed over matters shall be taken up in first call.

2. *The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 19.08.2023 registered as Case Crime No. 200 of 2023, under Sections 2, 3(1) of U.P. Gangsters & Anti Social Activities (Prevention) ACt, 1986, P.S. Kareli, District Prayagraj.*

3. *No one is present to press this petition.*

4. *Interim order, if any, stands vacated.*

5. *Present petition stands dismissed for want of prosecution."*

6. We find that co-ordinate Benches have already considered all the legal and factual aspects of the matter, therefore, we do not find any good ground to show interference in the present matter.

7. In view of the above, present writ petition stands **dismissed**.

Order Date :- 16.11.2023

Nitika Sri.