

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 17928 of 2023

Petitioner :- Aman

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

Counsel for Petitioner :- Ram Raksha Tiwari

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

Heard learned counsel for the petitioner as well as learned A.G.A.
Perused the record.

By means of the present petition, the petitioner is seeking a writ, order or direction in the nature of certiorari quashing the impugned show cause notice issued by the District Magistrate, Banda/respondent no.2 in Case No.761 of 2023 (Computer Case No.D202307110000761), under Section 3(1) of the U.P. Control of Goondas Act, 1970, Police Station Jaspura, District Banda.

Learned counsel for petitioner submits that there is only one case shown against the petitioner in which he has been bailed out by the court below on 4.11.2022 and another is Beet report dated 26.7.2023. Contention raised by learned counsel for petitioner is that on that basis of only one case and some Beet report the District Magistrate has issued impugned notice u/s 3(1) of Goonda Act against the petitioner. Learned counsel for the petitioner has relied upon the recent judgment of this Court in the case of ***Govardhan Vs. State of U.P. in Criminal Misc. Writ Petition No.12619 of 2023 decided on 10.08.2023*** in which while quashing the notice, this Court has given directions to the State Government as well as Registrar General, High Court Allahabad that only on the basis of single notice and some beat report, notice is not tenable in the eye of law. Paragraph no.12, 13, 14 and 15 of the aforesaid judgment is quoted hereinbelow :-

*"12. Reliance has been placed on the decision of this Court rendered in **Suresh Tewari Versus State of U.P. and others, 2018 (5) ALJ 1.***

14. Learned counsel for the petitioner submits that impugned notice is not in conformity with the Rule 4 of the U.P. Control of Goondas Rules, 1970. He further submits that Section 3 of the U.P. Control of Goondas Act, 1970 (hereinafter to be referred to as the "Act") confers powers on

the concerned District Magistrate to extern anyone, who is the Goonda outside the district or to place restriction on his movement. If the District Magistrate is satisfied that the matters set forth in clauses (a), (b) and (c) of sub-Section (1) of the Goondas Act are made out he may issue notice to the Goonda informing him of the general nature of material allegations against him in clause (d) of the Act. He further submits that in the instant case clause (d) mentions about the only case registered against the petitioner being Case Crime No. 212 of 2019, thus the second respondent has mechanically noted the case pending against the petitioner in the prescribed proforma without applying its mind, as well as, without recording satisfaction about the matter set out in clauses (a), (b) and (c) 6 of Act.

16. The Division Bench of this Court in Suresh Tewari (2018(5) ALJ1), held relying upon the Supreme Court judgment that on one stray incident only petitioner could not be deemed to be habitual offender on the basis of that single incident. Para no. 19 reads thus:-

19..... The requirement of applicability of the clause (i) is that Goonda means that a person who either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of offences punishable referred to in the said clause. In the impugned show cause notice there is a description of only one criminal case against the petitioner, while as per the definition and the law settled by this Court as well by the Hon'ble Apex Court, one cannot be treated to be a habitual offender unless and until there is recurrence of offences. Since there is a reference of one stray incident only in the notice, the petitioner could not be deemed to be a habitual offender on the basis of that single incident only and so the notice fails to satisfy the legal requirement."

13. In the impugned notice, there is a description of only one criminal case and one beat report against the petitioner while as per the definition and law settled by the Hon'ble Apex Court as well a by this Court "one" cannot be treated to be a 'habitual offender' unless and until there is a tendency of recurrence of the offence. In the instant case there is a solitary case to the credit of the petitioner, in which he has been granted anticipatory bail till the conclusion of trial, we find that this notice is nothing, but a sheer abuse of power vested in the executive authorities of the district.

14. In addition to above, there is mandatory requirement of the law, that if the executive authority is satisfied that the proceedings under Goonda Act spells out offences under clause (a), (b) and (c) of sub-Section 1 of the Act, he may issue notices to the particular "Goonda" informing him general nature of material allegations against him in clause (d) of the Act, his image among the masses, his nuisance value by which he is a potential threat to the peace and public order of the society at large.

15. But in the instant case, in the notice under challenge spells out the cases required against the petitioner which is allegedly issued on a "prescribed printed proforma" without application of mind by the 7 executive authorities. Not only this, except enumeration of pending

solitary case and a beat report, there is total lack of any judicial mind spelling out the general nature of material allegations against the petitioner, making entire impugned notice per se defective and cannot be acted upon any further."

Learned A.G.A. has also failed to justify the aforesaid notice.

Hence, keeping in view the facts and circumstances of the case as well as considering the guidelines mentioned in the case of ***Govardhan Vs. State of U.P.***, the present writ petition stands ALLOWED. Impugned show cause notice passed by the respondent no.2 under section 3(1) of the U.P. Control of Goonda Act, 1970 is hereby QUASHED.

Order Date :- 20.11.2023

M. Kumar