Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 19040 of 2023

Petitioner :- Himanshu
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Subodh Pandey
Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.
Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the State.

2. The instant writ petition seeks quashing of the FIR dated 31.10.2023 giving rise to Case Crime No. 544 of 2023, under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act"), P.S. Katghar, District Moradabad.

3. Contention of learned counsel for the petitioner is that in the impugned F.I.R., only Section 3(1) of Gangsters Act was mentioned which is the provision for imposing penalty upon gangsters. However, no other provision is mentioned showing the anti social activities in which the petitioner is alleged to have indulged on account of which the petitioner is being prosecuted as gangster.

4. An identical controversy arose and has been considered in ***Criminal Misc. Writ Petition No.18729 of 2023, Asim @ Hassim Vs. State of U.P. and Another***, wherein the Court has held as follows:-

"9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.

10. Considering the aforesaid facts and circumstances, this Court is of the view that the impugned F.I.R. is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act. Therefore, the impugned F.I.R. is hereby quashed."

5. Identical is the situation in the case at hand and in view of the judgment in Asim @ Hassim (supra), this writ petition is also

liable to be allowed.

6. The writ petition is accordingly allowed. The impugned FIR dated 31.10.2023 giving rise to Case Crime No. 544 of 2023, under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act"), P.S. Katghar, District Moradabad, is hereby quashed.

7. It is however clarified that dismissal of this petition will not preclude the respondents from initiative fresh proceedings against the petitioner strictly in accordance with law, in case, the situation so demands.

Order Date :- 7.12.2023
Mayank

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad