

Court No. - 21

Case :- APPLICATION U/S 482 No. - 8733 of 2023

Applicant :- Rizwan Khan

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt.Of Home And Another

Counsel for Applicant :- O.P. Tiwari,Jitendra Kumar Singh,Santosh Kr. Yadav Warsi

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicant and learned AGA.
2. The present 482 Cr.P.C. application has been filed to quash the entire criminal proceeding arising out of Charge sheet No.204, dated 18.06.2023 submitted in FIR No.0038 of 2023, under Sections 2/3 of The U.P. Gangsters and Anti-Social Activities (Prevention) Act as well as summoning order dated 13.07.2023 passed by Special Judge Gangster Act, Court No.16, Hardoi.
3. Learned counsel for the applicant has submitted that earlier the FIR has been lodged against the applicant and four other persons. In the FIR, it is alleged that a mob of 200 people assaulted the informant. He further submitted that it is a case of no injury. He further submitted that in the context of FIR, it is clearly mentioned that a mob of 200 people assaulted the informant but the FIR has been lodged only against five persons. He next submitted that based upon this, the present proceedings has been initiated by lodging FIR No.0038 of 2023, under Section 2/3 The U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as 'Act 1986'). He is further submitted that a person can be booked under the provisions of Gangsters Act by preparing the Gang Chart strictly in accordance with Rule 5 and Rule 16 of The U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021. As per Gang Chart annexed at Annexure-11, the recommendation by imposing a gang chart was made by Nodal Officer, Gangster Act vide order dated 19.01.2023, which was approved by Superintendent of Police, Hardoi vide order dated 25.01.2023 and final approval was granted by the District Magistrate vide order dated 27.01.2023. He next submitted that as per Section 5(3)(a) of the Act, 1986, before approval of gang chart, a joint meeting of Commissioner of Police, District

Magistrate and Superintendent of Police for due discussion is required and further as per Rule 16, satisfaction has to be recorded while granting approval of gang chart. He next submitted that so far in the present case, neither Rule 5(3)(a) nor Rule 16 of Rules, 2021 has been followed. The approval was granted by the District Magistrate without application of mind and without following Rule 5(3)(a) and Rule 16. He also submitted that he has taken necessary ground and has made specific averments in paragraphs 25 to 28 of the affidavit filed in support of the application and counter affidavit. There is no denial of the fact, therefore, the proceedings under Gangsters Act is bad in law and accordingly the same may be set aside.

4. In support of his arguments, he has placed reliance upon the judgements of Division Bench of this Court passed in **Criminal Misc. Writ Petition No.5166 of 2023, dated 24.07.2023 (Mohd. Sheebu alias Sheebu Chaudhar versus State of U.P. and other)**, he submits that the facts of the present case are identical to the judgement of this Court and the Gang chart was approved without following Rules 5(3)(a) and 16. Considering this fact, the Court was pleased to quash the legal proceeding with the liberty to initiate fresh proceedings. He lastly submitted that in the light of fact of the judgment relied, the present proceeding is bad in law and the same may be set aside.

5. Learned AGA has vehemently opposed the submissions made by learned counsel for the applicants, but from the record could not dispute the fact that as to when Rules 5(3)(a) and 16 of the Rules have been followed.

6. I have considered submissions made by learned counsels for the parties and perused the record.

7. Rule 5(3)(a) clearly provides for a joint meeting of Commissioner of Police/District Magistrate/Superintendent of Police for due discussion and the same is quoted below:

"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."

8. Likewise, Rule 16 also provides a procedure for approval of gang chart and the same is quoted below:-

"16. Forwarding of Gang-Chart.-The following manner shall be followed in the forwarding of Gang-Chart:

(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 Gangsters and Anti-Social Activities (Prevention) Act, 1986 exists. Accordingly, forwarded with recommendation."

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."

(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."

9. From perusal of Gang chart as well as counter affidavit filed by the State, it clearly reveals that rules 5(3)(a) and 16 have not been followed while approving the gang chart.

10. Judgement relied upon by the applicant in the **Mohd. Sheebu alias Sheebu Chaudhar versus State of U.P. and other (Criminal Misc. Writ Petition No.5166 of 2023)** having the same fact and considering the violation of Rules 5(3)(a) and 16 may be quashed the criminal proceedings with liberty to initiate fresh.

11. Now, coming to the present case, it is apparently clear while granting approval to gang chart prescribed procedure laid down in

Rules 5(3)(a) and 16 have not been followed, therefore, the criminal proceeding is bad in law, and the proceedings initiated against the applicant in FIR No.0038 of 2023 is hereby **quashed**.

12. The present 482 Cr.P.C. application is **allowed** on the technical ground, therefore, the liberty is given to State to initiate fresh proceedings strictly in accordance with provision of Act, 1986 and Rules 2021.

Order Date :- 28.10.2023

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