

**Court No. - 10**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 6839 of 2023

**Petitioner :-** Lalta Prasad Tripathi

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Lko. And Others

**Counsel for Petitioner :-** Sanjay Kumar Singh, Skand Bajpai

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

**Hon'ble Mrs. Sangeeta Chandra, J.**

**Hon'ble Narendra Kumar Johari, J.**

1. Heard Shri Skand Bajpai, learned counsel for the petitioner, Shri D.S. Rana, learned A.G.A. for the State/respondents and perused the record.

2. This writ petition has been filed with the following main prayers :-

"(A). a writ, order or direction in the nature of certiorari to quash the impugned First Information Report dated 01.05.2023, registered at F.I.R. No. 234/2023, U/s- 3(1) U.P. Gangster Act, Police Station Ramnagar, District - Barabanki, as contained in Annexure No.1, to this writ petition.

(B). a writ, order or direction in the nature of mandamus, commanding the opposite parties not to arrest the petitioners in garb of impugned First Information Report dated 01.05.2023, registered at FIR No.234/2023, U/s-3 (1) U.P. Gangster Act, Police Station Ramnagar, District - Barabanki."

3. It has been submitted by learned counsel for the petitioner that the gang chart has been prepared on the basis of solitary case registered under Case Crime No.442/2022, under Sections 419, 420, 467, 468, 471, 406 I.P.C. at Police Station - Ramnagar, District - Barabanki. It has been further submitted that the District Magistrate, Barabanki and the Superintendent of Police, Barabanki have only signed the proforma without application of independent mind, which is against the spirit of Rule 17 of the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 (herein after referred to as "the Rules, 2021"). It has been next submitted that no specific role has been assigned to the petitioner in the charge sheet filed by the police on 02.02.2023, a copy of which has been filed as Annexure No.3 to the writ petition. It has also been argued that under Rule

2 (b) of the Rules, 2021, a reference is made to the base cases. The fact that the word "cases" has been used under Rule 2 (b) implies that there should be more than one case against the accused for the gang chart to be prepared. Therefore, gang chart could not have been prepared only on a single case. It is next argued that the petitioner has been granted bail by the Additional District & Session Judge, Barabanki on 23.01.2023. It has been submitted that the petitioner has been a bank manager and has spotless service record of about 35 years and no allegations as made in the charge-sheet filed in the base case has ever been leveled against the petitioner. It has been submitted that being the bank manager, his role is limited to the extent that he sanctions loan on no encumbrance certificate (NEC) provided by the panel lawyer of the bank after verification of the land and documents related to it. As Bank Manager, petitioner has acted in good faith. He has not caused any loss to the bank. The Bank has also, therefore, not proceeded against the petitioner. There is no other evidence, except for the material as collected by the Investigating Officer referred to in the charge sheet in Case Crime No.442/2022. Moreover, till date the petitioner has not been held guilty by the trial court in Case Crime No.442/2022. The petitioner being a retired bank employee is not likely to run away but due to the oblique motive of curtailing the liberty of the petitioner, the impugned F.I.R. has been lodged under Section 3 (1) of the U.P. Gangsters and Anti-social Activities (Prevention) Act, 1986 (herein after referred to as "the Act, 1986"). Learned counsel for the petitioner has referred to Section 2 (b) of the Act, 1986 and also section 2 (c) of the Act, 1986, which define "gang" and "gangster" respectively. It has been submitted that the petitioner does not fall within the said definition.

4. It has been argued by learned counsel for the petitioner that under Rule 3 (b) of the Rules, 2021, it has been mentioned that offences as mentioned in Section 2 of the Act, 1986 shall be punishable only if they are committed by causing violence or threat or display of violence , or by intimidation, or coercion or otherwise, either singly or collectively, for the purposes of obtaining any unfair worldly, economic, material, pecuniary or other advantage to himself or to any other person. It has been submitted that word "otherwise" should be read as *ejusdem generis* and, therefore, can be read only in relation and in context of violence, intimidation and coercion. The petitioner has not committed any violence or intimidation or coercion. Therefore, it cannot be said that he has committed any offence punishable under the Act, 1986.

5. It has also been submitted by learned counsel for the petitioner that the judgment rendered by the Hon'ble Supreme

Court in the case of ***Shraddha Gupta Vs. State of U.P. and others, 2022 SCC Online SC 514***, which has been relied upon by learned A.G.A. does not apply in the case of the petitioner, as the said judgment is *subsilentio*, as it does not deal with the Rules, 2021 at all and referred to a case where the F.I.R. was lodged in 2016 and the writ petition was filed in 2019 and this court at Allahabad had passed an order in 2020. It has been submitted that the cause of action in the aforesaid case of **Shraddha Gupta** arose before the Rules, 2021 came into force, therefore, it cannot be said that the Rules, 2021 have been considered and, therefore, the judgment rendered in **Shraddha Gupta (supra)** is *subsilentio*.

6. This Court deems it appropriate to deal with the last argument raised by the learned counsel for the petitioner relating to the case of **Shaddha Gupta (supra)**.

7. The Supreme Court was considering the submission of the appellant that she cannot be considered to be a gangster or a member of the gang solely on the basis of single F.I.R./charge-sheet and that too with respect to a single member and relying upon a judgment rendered by the Supreme Court earlier in ***Piyushkantilal Mehta Vs. Commissioner of Police, Ahamdabad City, 1989 Supp (1 ) SCC 322***, the appellant had submitted that only such activity which adversely affects and/or likely to affect the maintenance of the public order can be said to be an anti social activity. It was contended by the appellant that she cannot be said to be a habitual offender, as she did not indulge in any anti social activity, although she may have been an accused in the conspiracy leading to the murder of the sister of the complainant.

8. The Supreme Court in paragraph 32 has dealt with the question, which it took for consideration. Paragraph 32 is being quoted herein below :-

*"The short question which is posed for the consideration of this Court is, whether, a person against whom a single FIR/charge sheet is filed for any of the anti-social activities mentioned in section 2(b) of the Gangsters Act, 1986 can be prosecuted under the Gangsters Act. In other words, whether a single crime committed by a 'Gangster' is sufficient to apply the Gangsters Act on such members of a 'Gang'."*

9. The Supreme Court, thereafter, considered section 2 (b) and 2 (c) of the Act, 1986 and the definition of the "gang" and "gangster" respectively and section 3 of the Act, 1986 as also other relevant sections and then dealt with submission made by the counsel for the appellant therein that only on the basis of

single offence/FIR/charge sheet not related to any anti-social activity, the accused could not be prosecuted under the Act, 1986. The Supreme Court, therefore, observed in paragraph 39 as follows :-

*"39. On a fair reading of the definitions of 'Gang' contained in Section 2(b) and 'Gangster' contained in Section 2(c) of the Gangsters Act, a 'Gangster' means a member or leader or organiser of a gang including any person who abets or assists in the activities of a gang enumerated in clause (b) of Section 2, who either acting singly or collectively commits and indulges in any of the anti-social activities mentioned in Section 2(b) can be said to have committed the offence under the Gangsters Act and can be prosecuted and punished for the offence under the Gangsters Act. There is no specific provision under the Gangsters Act, 1986 like the specific provisions under the Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015 that while prosecuting an accused under the Gangsters Act, there shall be more than one offence or the FIR/charge sheet. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge sheet, if it is found that the accused is a member of a 'Gang' and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person and he/she can be termed as 'Gangster' within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act. Therefore, so far as the Gangsters Act, 1986 is concerned, there can be prosecution against a person even in case of a single offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Act provided such an anti-social activity is by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person."*

10. It is evident that the Supreme Court was considering the Act, 1986 in its entirety and also the question whether the Gangster Act could be invoked for an accused only on the basis of single base case. It cannot be said that the Supreme Court was not considering the question and the ratio *subsilentio*. The rules made in 2021 by the U.P. Government have only

elaborated upon the provisions of the Act, 1986. They being in the nature of delegated legislation cannot be said to override the main provisions of the Act, 1986. When the main provisions of the Act, 1986 have been considered by the Supreme Court in the case of **Shraddha Gupta (Supra)**, it shall be presumed that the legislature/executive while framing the Rules, 2021 was aware of the view expressed by the Hon'ble Supreme Court in its various judgments including the judgment rendered in case of **Shraddha Gupta (supra)**.

11. This Court having gone through the Rules and Rule 22 (1) and (2) finds that the Rules, 2021 further makes it evident that even if an accused does not have a criminal history of several cases but is an accused only in one case where charge sheet has been filed, he can be made an accused under Section 3 of the Act, 1986. Rule 22 (1) and 22 (2) are quoted herein below :-

***"22.Criminal history not mandatory and sections of the Act can be imposed in the course of investigation.- (1) A single act/omission will also constitute an offence under the Act, and First Information Report may be registered on the basis of a single case i.e., it is not mandatory that any criminal history must be recorded and alleged before registering an offence under the Act.***

***(2) The Act may also come into force on a single prosecution in certain class of cases, such as if it appears that the gang has committed a single offence mentioned in Sections 302, 376D, 395, 396 or 397 of the Penal Code out of the offences mentioned in sub-clause (i) of clause (b) of Section 2 of the Act or sub-clauses (ii), (iii), (v), (vii), (x), (xii), (xiv), (xv), (xvii), (xviii), (xix), (xx) or (xxi) of clause (b) of Section 2 of the Act, which is presently under investigation, and the offence under this Act is being proved by collected evidence, then along with the criminal act under consideration, the gang-chart should also be approved by the concerned Commissioner of Police/District Magistrate involved in the investigation of the said offence and the provisions of the Act can be imposed while investigating both the offences together in accordance with the provisions of the Act. Further, the charge sheet can be sent to the Special Court constituted under the Act."***

12. With regard to the said submission made by learned counsel for the petitioner that the petitioner being a branch manager in a bank had no role to play in sanctioning loans to various persons/beneficiaries on the basis of forged papers produced by them, and that he only placed reliance on the No Encumbrance Certificate issued by the panel lawyer, this Court finds that any observation made by it, shall prejudice the

petitioner during the course of trial of the base case. This Court having gone through the charge-sheet, finds sufficient material has been collected by the Investigating Officer in case crime No.442/2022 while submitting charge sheet of which cognizance has been taken by the trial court on 6th March, 2023.

13. The learned counsel for the petitioner has argued that even in the case of **Shraddha Gupta (supra)**, the Supreme Court has imposed a rider for invoking of the Gangsters Act, 1986. He has referred to paragraph 39 which has been quoted hereinabove and he has emphasized that the supreme court had observed that the provisions of Gangster Act, 1986 can be invoked even in the case of single offence/FIR/charge-sheet if it is found that the accused is a member of a Gang and had indulge in an anti social activity mentioned in section 2 (b) of the Gangster Act, 1986, such as by violence or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person and he/she can be termed as 'Gangster' within the definition of Section 2 (c) of the Act, 1986.

14. This Court finds that the submission that has been made by learned counsel for the petitioner now is the same as has been made earlier that the word "otherwise" should be read *ejusdem genri*.

15. This Court has considered Section 2 (1)(b) of the Act, wherein while defining 'anti-social activities' the legislature has referred to 'pecuniary offences' also or offences where undue advantage has been derived by the accused or is likely to derive for himself or for any other person.

16. This Court finds that the argument raised by learned counsel for the petitioner, therefore, is misconceived and is hence rejected.

17. This Court finds no good ground to show interference in the impugned F.I.R. The writ petition is consequently, **dismissed**.

**Order Date :- 16.11.2023**

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