

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7331 of 2023

Petitioner :- Abhishek Upadhyay @ Abhishek Kumar Upadhyay

Respondent :- State Of U.P Thru. Prin. Secy. Home Deptt. Civil Sectr. Lko. And Others

Counsel for Petitioner :- Suresh Kumar Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

1. Heard learned counsel for the petitioner and Shri Shiv Nath Tilhari, learned Additional Government Advocate-I.

2. Shri Shiv Nath Tilhari, learned Additional Government Advocate-I has pointed out from the counter affidavit filed on behalf of the State-respondents and also from the language of the FIR impugned in the writ petition that there is a misreading of the language of the impugned FIR. In the impugned FIR, the Incharge Inspector, Rajesh Rai along with Constable Abhishek Singh and Head Constable Jitendra Kumar has mentioned that he was inspecting his beat and on duty. He had knowledge of the petitioner Abhishek Upadhyay being gang leader along with co-accused. He later derived knowledge that the gang chart had been approved by the competent authority on 31.08.2023, therefore, a direction was issued to the Head Muharir to register FIR under Section 2/3 of the U.P. Gangsters and Antisocial Activities (Prevention) Act, 1986. It has been stated clearly on affidavit filed by the Superintendent of Police, Ayodhya that it was not as if knowledge of the petitioner being a gang leader/member of the gang was derived for the first time by the Incharge Inspector while he was on duty and beat inspection. It is rather evident from the language of the FIR that he derived knowledge that gangchart had been approved by the competent authority on 30.08.2023, therefore, a direction was issued to the Head Muharir of the police station concerned to register the FIR under the appropriate sections of the Act of 1986.

3. This Court has perused carefully the FIR impugned in the writ petition and also gang chart prepared and approved on the basis of which the impugned FIR has been lodged. We find from the gang chart prepared by the police authority that only two cases have been mentioned therein against the petitioner Abhishek Upadhyay under Sections 8/21 of the N.D.P.S. Act, namely Case No.A-55 registered on 20.02.2023 as Case No.A-363/2021 of 30.07.2021 which are said to be pending trial before the Special Judge. In the remarks column Abhishek Upadhyay has been shown to be in jail and the last column where it has to be stated whether the accused has abused his liberty or violated the conditions for grant of bail, it has been mentioned that the accused has not yet abused the conditions of bail or misused the liberty.

4. The counsel for the petitioner has informed this Court that as is evident from a bare perusal of Annexure-2 to the writ petition, the petitioner has been granted bail in FIR No.330 of 2021 on 27.08.2021 and in FIR No.24 of 2023 on 24.05.2023 much before the preparation of the gang chart on 17.08.2023 by the Nodal Officer concerned and almost three months before the said gang chart was approved by the District Magistrate on 30.08.2023. It has been argued that the gang chart has been prepared without application of mind and it has also been approved by the Superintendent of Police and by the District Magistrate without application of mind.

5. The learned AGA has argued that the petitioner was initially arrested in Case Crime No.330 of 2021 and granted bail by this Court on 27.08.2021. He misused his liberty and committed another offence i.e. Case Crime No.24 of 2023 under similar sections of the N.D.P.S. Act for which he had to apply for bail to this Court and the same was granted only on 24.05.2023, it

cannot be said that the petitioner is completely innocent and has been targeted only because his father is a well known advocate of Faizabad Sessions Divisions Court.

6. It is noticed by the Court that the petitioner has misused his liberty and this fact has not been noticed in the gang chart in the remarks column. This Court has gone through the affidavit sworn by the Superintendent of Police, Ayodhya and also the contents/pleadings in the writ petition and the supplementary affidavit filed by the petitioner. This Court is of the opinion that the Gang chart being made the basis of the impugned FIR has been prepared and approved without application of mind. The gang chart is supposed to undergo three levels of scrutiny at the stage of the Nodal Officer, at the stage of the Superintendent of Police and at the stage of District Magistrate. None of them noticed the error apparent on the face of the record in the gang chart. The gang chart dated 30.08.2023 is quashed. Consequently, the FIR lodged on the basis thereof, impugned in this petition dated 31.08.2023, is also quashed.

7. However, looking into the facts as mentioned in the counter affidavit filed by the Superintendent of Police, liberty is given to the State-respondents to initiate fresh proceedings against the petitioner strictly in accordance with law.

8. The writ petition stands **allowed** to this extent.

Order Date :- 3.11.2023

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