

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8254 of 2023

Petitioner :- Sohan Pal And Others

Respondent :- State Of U.P. Thru. Addl. Secy. Home Deptt. Lko. And Others

Counsel for Petitioner :- Ajmal Khan, Prem Prakash Singh

Counsel for Respondent :- G.A.

With

Case :- CRIMINAL MISC. WRIT PETITION No. - 8289 of 2023

Petitioner :- Shyam Narayan Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Home U.P. Lko. And 3 Others

Counsel for Petitioner :- Ramesh Chandra Pandey

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

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

2. These petitions have been filed praying for a direction in the nature of Certiorari quashing the F.I.R. dated 23.08.2023 relating to Case Crime No.286 of 2023, under Section 3(1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1966, Police Station Rajesultanpur, District Ambedkar Nagar and the Gang Chart. A further prayer has been made to stay the arrest of the petitioners.

3. This Court had granted time to learned A.G.A. to seek instructions.

4. Learned A.G.A. has produced before this Court instructions sent by Sub Inspector, Police Station Aalapur, District Ambedkar Nagar.

5. From a perusal of the same, it appears that the petitioners have either been arrested or have surrendered in Court in pursuance of the impugned F.I.R.

6. It has been submitted by learned counsel for the petitioners that the prayer as made in the petitions for stay of arrest of the petitioners has become infructuous. However, the prayer for

quashing of the F.I.R. dated 23.08.2023 still survives.

7. It has further been submitted that there is a family dispute between the parties. The pedigree is relevant for the decision on the controversy, which has been given at page-39 of the paper book.

8. Learned A.G.A. has pointed out Section 3(2) of the Gangster Act, wherein while giving the definition of Gang, a mention has also been made of persons accused under Section 302 i.e. the offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the I.P.C.

9. Learned A.G.A. has also pointed out Rule 22, wherein a single act or motion would constitute an offence under the Act and sub-clause (2) thereof also mentions that a single offence under Section 302 of the I.P.C. would invite the provisions of the Act.

10. Learned counsel for the petitioners has pointed out annexure-2 to the writ petition, which is the F.I.R. lodged in the base case on 23.08.2023 referring to an incident dated 19.02.2023, which refers to a dispute regarding land between family members and which has resulted in a shootout.

11. This Court finds, *prima facie*, that the petitioners and the informant of the base case belong to one family and with regard to the property in question, a Suit under Section 144 of the U.P. Revenue Code, 2006 is also pending between the parties.

12. Nevertheless, this Court also finds that the gang chart has been prepared in accordance with the provisions of the Rules of 2021, where there is a specific mention that even when a single offence under Section 302 of the I.P.C. is involved, the Provisions of the Act can be invoked. Hon'ble Apex Court in ***Shraddha Gupta Versus State of Uttar Pradesh and others, 2022 SCC OnLine SC 514***, had an occasion to consider as to whether prosecution under the Gangster Act can be initiated against a person even in case of single

offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Gangster Act. The relevant portion of the order reads thus:

"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...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."

13. In view of the observations made hereinabove, this Court finds no good ground to show interference in the impugned F.I.R.

14. The writ petitions stand ***dismissed***.

Order Date :- 22.11.2023

Rahul