

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9512 of 2023

Petitioner :- Saurabh Pal

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

Counsel for Petitioner :- Arvind Kumar Yadav, Ashish Kumar Singh, Santosh Kr. Yadav Warsi

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

Heard learned counsel for the petitioner, learned A.G.A. for the State/respondents and perused the material placed on record.

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

"(i) Issue writ, order of direction in the nature of the certiorari whereby directing the opposite parties to produce the record in original and thereafter quash the proceedings of Case Crime No.0556/2023 U/S 2 (b)(i) & 3 (1) of U.P. Gangster Act, P.S. Lalganj, District Rae Bareli.

(ii) Issue writ, order of direction in the nature of mandamus whereby directing the opposite parties not to arrest the petitioner in the present case. (Contained as Annexure No.1)."

It has been submitted by learned counsel for the petitioner that there is only one case under Section 392/411 I.P.C. in Case Crime No.0206/2023 which is shown to be pending against the petitioner, in which the petitioner is bailed out by the competent court. It has been submitted that the gang chart that has been prepared and approved by the District Magistrate is not in accordance with Rule 16 (iii) of the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 (herein after referred to as "the Rules, 2021") as there is no application of mind evident from the approval granted by the District Magistrate. It has also been submitted that there is violation of Rule 5 (iii) of the Rules, 2021 as the Superintendent of Police has not put any date below his signature which shows that there is no joint meeting held of the District Magistrate and the Superintendent of Police.

This Court has perused the gang chart. The District Magistrate has in definite and clear terms stated that he has gone through the gang chart prepared and also its enclosures and is satisfied that sufficient ground has existed for invoking of the provisions of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 against the accused. It cannot be said that there is no application of mind on the part of the District Magistrate.

With regard to other argument raised for challenging the gang chart is that the Superintendent of Police, Raebareli has not put a date under his signature, learned A.G.A. has submitted that a joint meeting is always held and a register is maintained for such joint meeting wherein the District Magistrate and the Superintendent of Police, after going through the enclosures in the gang chart and applying their mind give their approval. However, the gang chart is typed later on and through office procedure there may be a delay in preparation and production of the same before the competent authority for getting formal signatures.

It has also been submitted by learned A.G.A. that even though the petitioner has been accorded bail in the case as shown in the gang chart but the law is already settled that even on the basis of solitary case proceeding under the Gangster Act may be drawn. In this regard, he has placed reliance upon the judgment passed by Hon'ble the Division Bench in ***Criminal Misc. Writ Petition No. 4622 of 2019 (Somvir Vs. State of U.P. and 2 others)*** as well as in many judgments by this Court, wherein it is propounded that even a single case, if fulfills the category of offences given under Section 2(b) (i) to (xv) of Act and is being committed by gang defined under Section 2 (b) or gangster defined under Section 2 (c) of the Act may be basis for registration of case crime number for offence punishable under Section 2/3 of Gangster Act. Therefore, the contention of petitioners that based on two cases, the imposition of Section 2/3 of Gangster Act is not leviable, would have no bearing. Reliance has also been placed on the judgment of Hon'ble the Apex Court in ***Shraddha Gupta Versus State of Uttar Pradesh and others, 2022 SCC OnLine SC 514***, wherein the Apex Court 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."

Considering the facts and circumstances as well as the judgments cited above, we are also of the opinion that even on the basis of solitary case the provisions of Gangster Act can be imposed and, as such , we are not inclined to interfere in the matter.

The writ petition is, accordingly, **dismissed**.

Order Date :- 15.12.2023

ML/-