

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9697 of 2023

Petitioner :- Dharam Raj Nishad

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

Counsel for Petitioner :- Rama Niwas Pathak

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Karunesh Singh Pawar,J.

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

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

"Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned First Information Report no.0667/2023 lodged on 22.11.2023 by the opposite party no.5 under Section 2 & 3 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at Police Station Gangaghat, District Unnao, as contained in Annexure No.1 to this writ petition, so far as it relates to the petitioner."

3. It has been submitted by the learned counsel for the petitioner that from a perusal of the gang chart that has been prepared by the respondents, which has been filed as annexure to the writ petition, it is evident that the name of the petitioner finds place at sl.no.8 and only one criminal case is shown to be pending against him in which charge sheet has been filed by the Police.

4. It has also been submitted by learned counsel for the petitioner that the base case has been falsely imposed upon him. In the base case, the petitioner had challenged the F.I.R. before this Court in Criminal Misc. Writ Petition No.122 of 2023: *Dharam Raj Nishad Vs. State of U.P. and others*, and this Court had granted interim protection to the petitioner by its order dated 09.01.2023 and the writ petition is still pending before this Court.

5. We have gone through the operative portion of

the order dated 09.01.2023, which says that till the next date of listing, the petitioner shall not be arrested in connection with the impugned F.I.R. subject to his cooperation in the investigation.

6. We have also perused the gang chart and we find that the charge sheet No.A-288/23 dated 15.07.2023 has been filed in Court. The preparation of charge sheet cannot be done unless sufficient evidence is collected by the Investigating Officer, therefore, it cannot be said that merely because an interim order was granted by this Court in the aforesaid pending writ petition filed by the petitioner challenging the F.I.R., Gangster Act cannot be invoked against him.

7. Learned A.G.A. has pointed out 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."

8. Considering the facts and circumstances as well as the judgment 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.

9. The writ petition stands ***dismissed***.

Order Date :- 21.12.2023
Rahul