

**Court No. - 10**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 9707 of 2023

**Petitioner :-** Kamal Kumar

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

**Counsel for Petitioner :-** Abhinav Srivastava, Rahul Srivastava, Subham Srivastava

**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:-

*"I. issue a writ, order or direction in the nature of Certiorari and Quash the impugned FIR No.0231 of 2023 U/s 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, P.S.- Jaitpur, District- Ambedkar Nagar, as contained in Annexure No.1 to this writ petition."*

**3.** It has been submitted by learned counsel for the petitioner that there is a clear violation of Rule 17 of the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 and the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986.

**4.** It has also been submitted that the gang-chart has been approved by the District Magistrate without application of mind.

**5.** However, this Court has perused the gang chart, wherein the District Magistrate has made the following observations:-

*"Gangchart ke saath saakshyon ka parisheelan kia gaya. Gangchart anumodan ke santoshjanak adhaar hain. Tadanusar Anumodit."*

**6.** We have perused the contents of Rule 16 and 17 of the Rules of 2021. Rule 16(3) and Rule 17 are being quoted hereinbelow:-

**"16(3). Resolution of the Commissioner of Police/District Magistrate.-** When the gang-chart is sent to the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of Police/District Magistrate and when he is satisfied that the basis of action exists in the case, then he will approve the gang-chart stating therein that: "I duly perused the gang-chart and attached forms in the light of the evidence attached with the gang-chart. Satisfactory grounds exist for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The gang-chart is approved accordingly."

**"17. Use of independent mind.-(1)** The competent authority shall be bound to exercise its own independent mind while forwarding the gang-chart.

(2) A pre-printed rubber seal gang-chart should not be signed by the competent authority; otherwise the same shall tantamount to the fact that the competent authority has not exercised its free mind."

**7.** We have also gone through the prescribed format Form No.1, which relates to Rule 18 and which provides how a gang chart has to be made and approved. It describes the language that has to be used by the District Magistrate while approving the gang chart, which refers to his having perused the gang chart and the attached annexure/ evidence that has been attached to it and it should show that there is satisfactory basis for taking action under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986.

**8.** The Rule further says that the exact language that has been mentioned in the Rules and Form may not be used but the substance /meaning of the approval so granted shall be in accordance with the Format as given under the Rules.

**9.** Learned counsel for the petitioner has tried to argue on merits of the base case and stated that charge sheet has been wrongly prepared in the two base cases.

**10.** This Court, in the challenge that has been raised to the invocation of Section 3(1) of the Act of 1986, cannot go into the merits of the base case, which are to be seen by the Trial Court.

**11.** Learned counsel for the petitioner has also placed reliance upon a judgement rendered by one of us in an Application U/s 482 Cr.P.C. No.3982 of 2021:*Kafeel Vs. State of U.P.*; decided on 20.03.2023, reported in 2023 (3) ALJ 367, and referred to paragraph-12 of the said judgement.

**12.** We have perused paragraph-12 of the said judgement carefully and we find that learned Single Judge has referred to Section 2(b)(1) of the Gangsters Act and the definition used for Gangsters. However, in paragraph-13 of the said judgement, the learned Single was of the view that in absence of allegation of violence, threat or show of violence or intimidation or coercion or otherwise, the F.I.R. registered against the applicant under Section 3(1) of the Act, could not be sustained as the words "or otherwise" used in the first part of Section 2(b) of the Act, shall derive its meaning from the preceding words and it shall not include all general acts/offences which are trivial in nature for the purpose of Section 2(b) of the Act.

**13.** This Court has also considered the facts of the case, which were before the learned Single Judge. The petitioner therein Kafeel had challenged the charge sheet prepared under the Gangsters Act. The relevant paragraph that can be referred to is paragraph-6, which refers to the ground taken for challenge to the charge sheet prepared under the Gangsters Act. It had been argued that there was only one case of cow slaughter shown in the gang chart, the applicant had no criminal history except that sole case i.e. Case Crime No.4922 of 2018 under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955, and there was no material at all to bring this offence under the definition of Gang as mentioned in the Police Report and the gang chart. No subjective satisfaction was recorded by the District Magistrate Amroha. The gang chart had been prepared and recommended by various authorities in a very short time without there being any subjective satisfaction.

**14.** This Court having gone through the provisions of Section 2 of the Act finds that under Section 2(b), at least 25 types of offence have been

mentioned from sub-clause (i) to sub-clause (xxv), which includes offences punishable under Chapter XVI and Chapter XVII or Chapter XXII of the I.P.C..

**15.** The allegation against the petitioner herein is of buying the stolen property which comes under Chapter XVII of the I.P.C.

**16.** This Court finds no good ground to show interference as prayed for in the petition.

**17.** The writ petition stands ***dismissed***.

**Order Date :- 21.12.2023**

Rahul