

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1494 of 2024

Applicant :- Ajay Pratap Singh @ Ajay Sipahi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Dharmendra Pratap Singh, Abhishek Singh

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The applicant seeks enlargement on bail in FIR No. 47 of 2023, under Section 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S.-Mahrua, District- Ambedkar Nagar.
3. The main submission of the counsel for the applicant is that in the gang chart, based upon which the FIR was lodged, three cases were shown against the applicant. In the first case, this Court in Application U/S 482 No. 2193 of 2021 had interfered and directions were passed for not taking any coercive action against the applicant pursuant to the charge-sheet no. 1 dated 7.1.2020. As regards the second case, it is argued that once again this Court in Application U/s 482 No. 377 of 2022 had interfered and had passed an order dated 02.02.2022 staying the further proceedings. As regards the third case under Section 506 read with Section 34 IPC, the applicant is on bail vide order dated 16.08.2023.
4. It is further argued that the reasoning recorded while preparing the gang chart in respect of the said three cases is that the applicant has misused bail granted in the said cases whereas, there is no material to come to that conclusion. He thus argues that the invocation of the U.P. Gangsters and Anti-Social Activities (Prevention) Act itself is improper exercise of power. He places reliance on the order of this Court in Criminal Misc. Bail Application No. 42050 of 2023 in **Angad Rai vs. State of U.P.** passed on 03.11.2023 as well as another decision dated 30.07.1986 in

Naulakh vs. State of U.P. and others, wherein the Division Bench also had the occasion to consider the mandate of Section 19(4)(b) of the said Act. It is further argued that the criminal antecedents of the applicant other than the one disclosed in the gang chart are duly elaborated in para no. 3 of the supplementary affidavit.

5. Learned AGA for the State opposes the bail application by arguing that the test of Section 19(4)(b) of the Act, 1986 has to be satisfied before the Court, the applicant can be enlarged on bail. She further argues that the cases against the applicant reflected in the gang chart would fall within the scope of 'public order' and would not be a case of mere 'law and order' problem as criminal acts per se affect the conscience of the society at large and thus, the bail application of the applicant should be rejected, more so in view of the criminal history of the applicant.

6. Learned AGA places reliance on the judgement of the Supreme Court in the cases of *Farhana vs. State of U.P. & others* and *Shraddha Gupta vs. State of U.P. and others*.

7. Considering the submissions made in the bar, this Court had occasion to consider the scope of bar contained under Section 19(4)(b) of the Act, 1986 while considering the bail application of *Angad Rai (supra)*. In the present case, the applicant is an accused in three cases as per the gang chart. The first case being Case Crime No. 208 of 2019, under Sections 387, 504, 506 IPC; the second case being Case Crime No. 126/2020, under Section 506 IPC and the third case being Case Crime No. 172 of 2023, under Sections 506 read with Section 34 IPC. In the first case being Case Crime No. 208 of 2019, the allegations against the applicant appear to be of causing an offence under Section 387 IPC which includes putting a person in fear of death or of grievous hurt in order to commit extortion, similarly the other two cases alleged the commission of an offence under Section 506 IPC which includes criminal intimidation and are punishable for a term of two years. All the three cases are cases where the allegations were levelled against the applicant of causing the offence against the person i.e., the informant, the same clearly would not fall within the definition of 'public order' as defined and

considered in terms of Section 2(b) read with Section 2(c) of the Act, 1986 and explained in the case of **Angad Rai (supra)**. Relevant paragraphs are as under:

"12. Thus, to include a person within the definition of 'gang', it is incumbent that there should be material to demonstrate that a group of persons are acting either singly or collectively; they are using violence or threat. The most essential aspect is that the object should be to disturb the public order or for gaining any undue temporal pecuniary material or advantage for himself.

13. In the scheme of the Act adequate safeguards are inbuilt and provide for certain tests to be cleared before launching prosecution under the Act. One of the safeguards provided is in the relevant rules providing for the manner of preparation of gang-chart, which, in the present case has been prepared and is on record as Annexure no.2.

14. To appreciate the scheme of Rules, it is essential to refer to the Rules 5, 6, 7, 8, 9, 10, 11 and 12 provide for the steps which are necessarily to be taken before initiating prosecution under the Act and have to include an abstract in terms of Rule 13 which prescribes as under:

"13. Specific statement of offences committed for economic, material and temporal or similar other benefits - While writing the abstract below the gang-chart and particulars separately with the gang-chart, the particulars of those offences shall be specifically mentioned:

(i) which have been committed for pecuniary, materialistic and temporal or similar benefits; or

(ii) which disturb the public order, or

(iii). Which are a ground for detention under the National Security Act, 1980

Rule 15 specifically prohibits the arbitrary selection against any gang member, the same is reproduced as under :

15. Arbitrary selection of gang/member of gang prohibited.-

(1) There should not be a situation of arbitrary selection against any gang under this Act.

(2) If action is not to be taken against any member of a gang who has committed a criminal act in association with the said gang, then in such a case clear and reasonable grounds for not mentioning his name in the gang and gang-chart shall be recorded with reasons and evidences.

(3). The final decision as to whether to include or not to include the name of member of a gang in the gang and gang-chart shall be at the discretion of the Commissioner of Police/District Magistrate."

15. It is essential to also note the mandate of Rule 17 which prescribes that the competent authority is bound to exercise its own independent mind while forwarding the gang chart. The format of gang chart is prescribed in Rule 18.

16. In the present case, as per the gang chart, which led to the lodging of the first information report, it has been mentioned that because of the alleged acts committed by the applicant, there was a disturbance of public order (traceable to requirement prescribed under Rule 13(ii)). The chart was prepared on 26.06.2023, however, in the entire chart, there is no mention of the bail order passed in favour of the applicant on 26.05.2023, thus, the gang chart prepared prima facie suffers from non-application of mind as the same is without considering the material documents which was the bail order dated 26.05.2023.

18. The phrase 'public order' came up for consideration before the Supreme Court in the case of **Banka Sneha Sheela vs. State of Telangana and others; (2021) 9 SCC 415** wherein the Supreme Court had the occasion to consider the distinction between 'law and order' and 'public order' and 'security of State'. Although the Supreme Court had rendered the judgment in the context of a law prescribed for preventive detention, the basis would equally apply to penal statutes like the cases under the Gangsters Act. The Supreme Court dealt with the difference in between the three, i.e. 'law and order', 'public order' and 'security of State'. The relevant paragraph of the judgment are quoted as under :

"13. As is well-known, the expressions "law and order", "public order", and "security of State" are different from one another. In *Ram Manohar Lohia v. State of Bihar* [*Ram Manohar Lohia v. State of Bihar*, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] the question before this Court arose under a preventive detention order made under Rule 30 of the Defence of India Rules, which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. This Court set out the distinction between a mere law and order disturbance and a public order disturbance as follows : (SCR pp. 738-39 & 745-46 : AIR pp. 755 & 758-59, paras 42 & 51-52)

"42. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of India and civil defence. The expression "public safety" and interest between them indicate the range of action for maintaining security, peace and tranquillity of India whereas the expressions "defence of India" and "civil defence" connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable—

(a) of being of hostile origin; or

(b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to

—

(i) the defence of India and civil defence;

(ii) the security of the State;

(iii) the public safety or interest;

(iv) the maintenance of public order;

(v) India's relations with foreign States;

(vi) the maintenance of peaceful conditions in any part or area of India; or

(vii) the efficient conduct of military operations.

It will thus appear that security of the State, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of Section 3(15). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of "law and order" as against "public order" the District Magistrate went outside his powers.

51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. **Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.** A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One

has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

14. There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.

19. To tear these observations out of context would be fraught with great danger when it comes to the liberty of a citizen under Article 21 of the Constitution of India. The reason for not adopting a narrow meaning of "public order" in that case was because of the expression "in the interests of" which occurs in Articles 19(2) to 19(4) and which is pressed into service only when a law is challenged as being unconstitutional for being violative of Article 19 of the Constitution. When a person is preventively detained, it is Articles 21 and 22 that are attracted and not Article 19. Further, preventive detention must fall within the four corners of Article 21 read with Article 22 and the statute in question. **To therefore argue that a liberal meaning must be given to the expression "public order" in the context of a preventive detention statute is wholly inapposite and incorrect. On the contrary, considering that preventive detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large."**

19. In the context of the said judgment, if the averments made in the gang chart as well as in the first information report are treated to be gospel truth for the sake of arguments, the same would at best fall within the definition of 'law and order problem' and not 'public disorder', thus, prima-facie, the allegations, the materials contained in the gang chart and the information recorded in the first information report, prima facie cannot include the offence to fall under section 2(b) of the Act."

8. The scope of Section 19(4)(b) of the said Act was also considered in the said case placing reliance on the judgement of the Supreme Court interpreting a similar provision in the case of **Mohd. Muslim @ Hussain vs. State (NCT of Delhi), 2023**

LiveLaw (SC) 260. Following the mandate of the said order and the reasoning contained therein, prima facie in respect of the first test prescribed under Section 19(4)(b) of the Act, 1986, a prima facie case is made in favour of the applicant.

9. Considering the fact that the allegations would not fall within the scope of 'public order' and are simple law and order problems further as, there is no material to suggest that the applicant would indulge in a similar offence on being enlarged on bail, the second of the said test is also satisfied in favour of the applicant. On the consideration recorded above, the applicant is entitled to be enlarged on bail. In view thereof, the application is **allowed**.

10. Let the applicant- **Ajay Pratap Singh @ Ajay Sipahi** be released on bail in aforesaid FIR number on his furnishing a personal bond with two sureties of Rs.20,000/- each to the satisfaction of court concerned with the following conditions:

- (a) The applicant shall execute a bond to undertake to attend the hearings;
- (b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 26.4.2024

Shravan