

Neutral Citation No. - 2024:AHC-LKO:86029

Court No. - 12

Case :- MATTERS UNDER ARTICLE 227 No. - 6314 of 2024

Petitioner :- Ram Naresh Yadav

Respondent :- Ld. Special Judge Court Gangster Act, Lucknow

Counsel for Petitioner :- Akshat Kumar

Hon'ble Saurabh Lavania,J.

1. At the very outset, learned Counsel for the petitioner stated that inadvertently the 'State' could not be impleaded as proper necessary opposite party and as such he may be permitted to implead the same.
2. Learned A.G.A. has no objection to the prayer made by the learned Counsel for the petitioner.
3. Accordingly, the petitioner is permitted to implead the 'State' as an opposite party during the course of the day.
4. Heard Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Shantanu Sharma, learned Advocate, holding brief of Sri Akshat Kumar, learned Counsel for the petitioner and learned AGA for the State of U.P. and gone through the record.
5. The present petition has been filed seeking following main relief:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to direct the Opposite Party to release the vehicles of the Petitioner or

conclude the proceedings enumerating out of Application filed by the Petitioner u/s 16(1) pending before the Special Judge Gangster Act, Lucknow/Opposite Party as expeditiously as possible in accordance with law, preferably within 2 weeks in the interest of justice."

6. It is stated that petitioner is an accused in Session Case No. 1169 of 2023 (State Versus Kailash Yadav and Others), in which charge-sheet no. 01/2022 dated 28.12.2022 under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (in short 'Act of 1986'), arising out of FIR dated 31.07.2017, Case Crime No. 429/2017, registered at Police Station Krishna Nagar, District-Lucknow, has been filed.
7. It is further stated that in exercise of power under the Act of 1986, the properties owned by the applicant were attached and therefore, in compelling circumstances the petitioner approached this Court by means of filing Application U/S 482 No. 4718 of 2024. This Court vide order dated 22.05.2024, protected the interest of the petitioner. The order dated 22.05.2024 reads as under:-

"Heard Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Shantanu Sharma, learned counsel for the applicant and Sri Rajiv Kumar Verma, learned A.G.A.-I alongwith Ms. Ankita Tripathi, learned A.G.A. for the State.

The instant application under Section 482 Cr.P.C. has been filed with a prayer to quash the preliminary order dated 06.03.2023 and final order dated 08.05.2023 passed by the Commissioner of Police, Lucknow in proceedings of Case Crime No.429 of 2017 registered at Police Station Krishna Nagar, District Lucknow and Sessions Case No.1169/2023 pending before the learned Special Judge, Gangster Act, Lucknow, whereby legally owned properties of the applicant have been attached under Section 14(1) and 16(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986.

Learned senior counsel for the applicant submits that the Commissioner of Police, Lucknow vide impugned orders dated 06.03.2023 as well as 08.05.2023 passed under Section 14(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 attached the properties of the applicant which are against the mandate of law.

Learned senior counsel for the applicant further submits that the impugned orders were passed by the Commissioner on the basis of police report without considering this fact that the properties which were under attachment under Section 14(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, were owned by the applicant before imposing Section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 against the applicant and that properties were acquired by the applicant from the income generated from other sources and the loans taken from the banks. In this regard sufficient papers have also been produced before the authorities concerned but that have been totally overlooked. It is not the case of the opposite party that the said properties which are under attached were acquired by the applicant during crime committed under the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986. Thus, he submits that the orders passed by the Commissioner of Police, Lucknow are totally illegal, arbitrary and against the provisions of law.

Learned senior counsel for the applicant further submits that the charge sheet and the cognizance order filed against the applicant under Section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 were challenged before this Court in Application under Section 482 Cr.P.C. No.9622 of 2023 and co-ordinate Bench of this Court vide order dated 10.01.2024 was pleased to grant interim protection in favour of the applicant. The order dated 10.01.2024 is being reproduced hereunder:-

"1. Heard Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Anjani Kumar Mishra, learned counsel for the petitioner and Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I for opposite parties nos. 1 and 2 both.

2. By means of this petition, the petitioner has prayed the following relief:

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the entire as well as consequential proceedings of Sessions Case No. 1169/2023 (State Vs. Kailash Yadav and Others), pending before the Learned Court of Special Judge Gangsters Act, Lucknow, impugned summoning order, dated 26.04.2023, passed by learned Court of Special Judge Gangsters Act, Lucknow whereby the Applicant has been summoned as an accused under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 in aforesaid Sessions Case No. 1169/2023 (State Vs. Kailash Yadav and Others),

and charge-sheet dated 28.12.2022, bearing Charge-sheet No. 01/2022 filed under Sections 2/3 of the Gangsters Act, arising out of the First Information Report, dated 31.07.2017, bearing Case Crime No. 429/2017 registered at Police Station Krishna Nagar, District-Lucknow."

3. Learned Senior Advocate has stated that the present petitioner has falsely been implicated in the present case, inasmuch he has not committed the offence under which the impugned chargesheet has been filed, cognizance has been taken and summon has been issued. He has further submitted that the alleged date of incident is relating to the year, 2017 wherein the FIR was lodged on 31.07.2017, chargesheet has been filed on 28.12.2022 and cognizance thereof has been taken on 26.04.2023.

4. Since there is a specific provision under the Gangsters Act that the Commissioner of Police/Senior Superintendent of Police/Superintendent of Police shall accord the sanction for the prosecution and so as to satisfy the aforesaid legal provision, the Deputy Commissioner of Police (South), Lucknow has given sanction for prosecution on 14.12.2022 (Annexure no. 11).

5. While invoking the powers conferred by Section 23 of the U.P. Gangster Act, 1986 (Act No. 7 of 1986), the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 have been promulgated vide Notification No. 5203/VI-p-9-2021-31 (43)-2013TC, Home (Police), Section 9, dated December 27, 2021, therefore, it is clear that sanction for prosecution has been granted by the Competent Authority after promulgation of the aforesaid Rules, 2021.

6. Rule 24 of the aforesaid Rules clearly provides that the investigation in the offence in question shall be completed within a period of six months and further extension for 3 months may be given but no investigation can be permitted to be extended for more than one year. However, in the present case, for the incident of the year, 2017, the sanction for prosecution has been given on 14.12.2022 i.e. after lapse of more than 5 years and chargesheet has been filed on 28th of December, 2022, therefore, there is apparent illegality in filing the chargesheet.

7. Learned Senior Advocate has further submitted that the Deputy Commissioner of Police (South), Lucknow should have not given the approval of the chargesheet which has been filed after a substantial delay of more than 5 years, in contravention of the provision of Rule 24.

8. Learned Senior Advocate has further drawn attention of this Court towards the order dated 14.12.2022 passed by Deputy Commissioner of Police (South), Lucknow, thereby prosecution sanction has been approved against the petitioner referring one Government Order No. 12/06 Pu-11-2004-58(Writ)/2003, dated 02.01.2004, whereas at the time

of promulgation of Rules 21, it has been clearly indicated that after issuing Notification of the aforesaid Rule, all the Government Orders and Notifications etc., made under the Act, 1986, shall be superseded except as respect of things are done or omitted to be done before such supersation.

9. Learned Senior Advocate has stated that he cannot lay his hand at any provision of law or any statutory order saying that the aforesaid Government Order dated 02.01.2004 would have some effect after notifying the Rules, 2021.

10. Therefore, learned Senior Advocate has stated that the impugned chargesheet, cognizance thereof and summoning order are nullity in the eyes of law, therefore, the aforesaid chargesheet etc. may be quashed.

11. On being asked on the aforesaid submission of learned Senior Advocate from the learned AGA, he has stated that so far as argument of learned Senior Advocate regarding the order dated 14.12.2022 (Annexure no. 11) is concerned, he does not having the copy of the Government Order dated 02.01.2004 as the same has not been provided by the prosecution, therefore, he cannot say that after Rules 2021 having been notified on 27th of December, 2021 as to whether the sanction of prosecution can be granted on the basis of Government Order on 02.01.2004.

12. On being further asked about the Rule 24 which provides the expeditious investigation and in the present case, prima facie, it appears that there is apparent violation of Rule 24, learned AGA has stated that he may be given some reasonable time to file counter affidavit wherein he shall explain not only the factual aspect of the present case but also indicate the legal position.

13. The matter requires consideration.

14. Let a detailed counter affidavit be filed within a period of four weeks. Rejoinder affidavit, if any, may also be filed within a period of two weeks thereafter.

15. List this case in the week commencing 11.03.2024, within top ten cases.

16. Till the next date of listing, the petitioner shall not be compelled to participate in the proceedings of Sessions Case No. 1169/2023 (supra).

17. However, it is made clear that this protection order has been passed only in favour of the petitioner, therefore, the proceedings of the aforesaid case may go on strictly in accordance with law. "

Learned senior counsel for the applicant further submits that once the proceedings of Section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 was stayed by this Hon'ble Court, therefore, any further consequential order or

proceeding is nothing but an abuse of process of law as the above case is still pending and interim order is operative.

Learned senior counsel for the applicant further submits that in the impugned order, a direction was issued to file a reference under Section 16(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 but the applicant is not availing that remedy as entire order is illegal on its face value as once the entire proceedings of the original case in which charge sheet and the cognizance was challenged and the same has already been stayed by this Court in Application under Section 482 Cr.P.C. No.9622 of 2023, which is still pending, then whatever the action and proceedings initiated against the applicant is only with the intention to any how harass the applicant and occupy his properties under attachment, which is totally against the provisions of law.

In support of his arguments, learned senior counsel for the applicant has placed reliance upon a judgment rendered by Hon'ble the Supreme Court in the case of State of Punjab Vs. Davinder Pal Singh Bhullar and Others; (2011) 14 SCC 770 and submits that ratio of law as applicable in the aforesaid case is also applicable in the case of present applicant. The applicant is a law abiding citizen and is not having any gang as per Section 2(b) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 and is also not a Gangster as per Section 2(c) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986. Thus, he prays for interim relief.

The matter requires consideration on the facts and law both. Sri Rajiv Kumar Verma, learned A.G.A.-I alongwith Ms. Ankita Tripathi, learned A.G.A. for the State have accepted notice on behalf of the State. They pray for and are granted four weeks' time to file counter affidavit.

Rejoinder affidavit may also be filed within two weeks thereafter by learned counsel for the applicant.

Put up this case on 30.09.2024 before appropriate Bench.

Till the next date of listing, the effect and operation of order dated 06.03.2023 and 08.05.2023 passed by the Commissioner of Police, Lucknow as well as further proceedings of Case Crime No.429 of 2017 registered at Police Station Krishna Nagar, District Lucknow and Sessions Case No.1169/2023 pending before the learned Special Judge, Gangster Act, Lucknow, shall remain stayed in respect of the applicant."

8. It is also stated that this Court in Application U/S 482 No. 9622 of 2023 (Ram Naresh Yadav Versus State of U.P. and another), filed by the petitioner also stayed the

proceedings of the Sessions Case No. 1169 of 2023, detailed above.

9. It is also stated that thereafter the application dated 04.06.2024 was preferred by the petitioner seeking release of 36 vehicles registered in the name of petitioner, which were attached in exercise of power provided under the Act of 1986, and the same has not been disposed of till date and as such being aggrieved, the petitioner approached this Court seeking the reliefs, quoted above.
10. It is further stated by learned Counsel for the petitioner that there are various pronouncements of the Hon'ble Apex Court as also of this Court on the issue related to release of property including perishable property.
11. Sri Ajai Kumar Srivastava, learned AGA opposed the present petition.
12. Considered the aforesaid and perused the record. It would be apt to refer the relevant provisions on the issue involved in this case.
13. Section 451 Cr.P.C. reads as under:-

"451. Order for custody and disposal of property pending trial in certain cases

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such

evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.---For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

14. Section 497 B.N.S.S. reads as under:-

Section 497 - Order for custody and disposal of property pending trial in certain cases

(1) When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for the proper custody of such property pending the conclusion of the investigation, inquiry or trial, and,

if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court or the Magistrate may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or

which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub-section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

(3) The Court or the Magistrate shall cause to be taken the photograph and if necessary,

15. From a conjoint reading of the aforesaid provisions indicates that in exercise of power under Section 497

B.N.S.S. the concerned court or the Magistrate is empowered to release the property even during pending the conclusion of the "investigation" which power was earlier not available when the Cr.P.C. was enforced.

16. In the case of ***Sunderbhai Ambalal Desai Versus State of Gujarat; (2002) 10 SCC 283***, on the subject, the Hon'ble Apex Court observed as under:-

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it

ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

(emphasis supplied)

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

Valuable articles and currency notes

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
 (3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

Vehicles

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

17. Upon due consideration of the aforesaid, this Court finds that justice would suffice if a direction is issued to the concerned court for expeditious disposal of the application dated 04.06.2024, which was preferred by the petitioner, in which date is fixed on 23.12.2024, as informed by Sri Vivek Raj Singh, learned Senior Advocate.
18. Accordingly, the present petition is *disposed of* with direction to the concerned court namely Special Judge Gangster Act, Lucknow, with direction to decide the application dated 04.06.2024, most expeditiously after taking entire facts of the case as also the various pronouncements on the issue including the above referred judgment.

Order Date :- 20.12.2024

Jyoti/-