

Neutral Citation No. - 2025:AHC:44031

Court No. - 83

Case :- CRIMINAL APPEAL No. - 9467 of 2024

Appellant :- Pardeshi

Respondent :- State of U.P.

Counsel for Appellant :- Chandra Kant Tripathi

Counsel for Respondent :- G.A.

Hon'ble Ms. Nand Prabha Shukla,J.

- 1.** Heard Shri Chandra Kant Tripathi, learned counsel for the appellant, Shri Ratan Singh learned A.G.A-I for the State and perused the record.
- 2.** The appellant has filed the present Criminal Appeal under Section 18 of U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 with a prayer to set aside the order dated 19.07.2024 passed by learned Additional Sessions Judge Sixth/Special Judge (Gangster Act), Basti in Criminal Misc. Case No. 429/2023 (Pardeshi Vs. State of U.P.), under Section 16 (1) of U.P. Gangster and Anti Social Activities (Prevention) Act, Police Station-Parasrampur, District-Basti and order dated 10.10.2023 passed by learned Court of District Magistrate, Basti in Case No. 640/2022 (State Vs. Pardeshi) U/s 14(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, Police Station-Parasrampur, District-Basti, whereby refused to release the vehicle of the appellant and further to release the house situated at Village Barahpur Pandey, P.S. Parasrampur, District Basti and vehicle of the appellant i.e. motorcycle bearing no. U.P.51 AW 7828 in favour of the appellant.
- 3.** Briefly stated, the appellant Pardeshi and one another were prosecuted for indulging in antisocial activities in F.I.R No. 0418 of 2020 dated 23.11.2020 under Section 3(1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, at P.S. Parasrampur, District Basti on the basis of a gang chart approved by the District Magistrate, Basti wherein the appellant and the co-accused, who are liquor mafia were involved in manufacturing, transporting, selling and distribution of illicit liquor with an object of gaining undue temporal, pecuniary, material or other advantage and were booked under Section 60 of the United Provinces Excise Act, 1910.
- 4.** Accordingly, a case was registered against the appellant under Section 14 of the U.P. Gangster Act to enquire whether the property

was acquired by a gangster by commission of an offence triable under the Gangster Act. A Report was forwarded by the Superintendent of Police, Basti dated 07.06.2022 wherein recommendation was made to the District Magistrate, Basti for the attachment of the appellant's property under Section 14(1) of the U.P. Gangster Act as the appellant had got a house constructed and purchased a motorcycle having value of about 20 lakhs through illegal means which was alleged to be an outcome of the proceeds of the crime. A notice was issued to the appellant to raise his objection wherein a representation dated 19.07.2023 was moved before the District Magistrate, Basti in Case No. 33 of 2022 (640/2022) (State Vs. Pardeshi) seeking release of his attached house and a motorcycle. In his reply the appellant stated that he had been falsely implicated. Further, it was stated that the appellant belonged to the Scheduled Caste (*Khatik*) Community. His age was about 55 years and was a poor and hard working labourer. It was further pleaded that he originally belongs to village Barahpur Pandey. The attached house having two rooms was constructed on the land obtained from his father as well as from his personal earnings and of his family members. It was also asserted that due to poverty in his village several villagers were engaged in preparation of illicit liquor for their livelihood and due to the police crime week the appellant was falsely booked under the Excise Act.

5. The District Magistrate, Basti after considering the entire material on record rejected the representation of the appellant and passed the order dated 10.10.2023 attaching a house having two rooms and a motorcycle Super Splendour black colour No. U.P. 51 AW 7828 and referred the matter along-with the records to the Court of Special Judge, U.P. Gangster and Anti Social Activities (Prevention) Act, Basti.

6. Being aggrieved by the aforesaid order, the appellant filed a Criminal Miscellaneous Case No. 429/2023 (Pardeshi Vs, State of U.P.) under Section 16 of the Gangsters Act before the learned Court of Special Judge, Basti on 02.11.2023 to make an inquiry through judicial scrutiny.

7. During the pendency of the above inquiry, the appellant in order to substantiate his version got examined himself as A.W.-1, Sudeep Kumar Singh as A.W.-2, Raj Devi as A.W.-3 and placed

several other documentary evidence. The prosecution produced Arvind Kumar Shahi S.I. as D.W.-1 to support the case. The appellant in his examination-in-chief stated that on the basis of his hard work he got constructed a pakka house in his village Barahpur Pandey having two rooms and is residing with his family of five members. Apart from this house at village Barahpur Pandey he had no other immovable property. He owns a old motorcycle as well. Due to poverty the villagers of Village Barahpur Pandey were involved in manufacturing illicit liquor, therefore, the appellant had also been falsely implicated under the Gangster Act. He also deposed that the said house has not been constructed from the proceeds of the crime and he is not a member of any gang. Supporting the appellant Pardeshi, A.W.-2 Sudeep Kumar Singh deposed in his examination-in-chief that he knew Pardeshi, who belongs to '*khatik*' Community and worked as a labourer in his house and he often helped him by giving food etc. His father is no more and has no agricultural land. He only owns a house having two rooms which has been seized by the police in a false case for manufacturing illicit liquor. Pardeshi was neither a member of any gang nor he had earnings from proceeds of the crime. A.W.-3, Raj Devi in her examination-in-chief deposed that Pardeshi belongs to her village and has no agricultural property. He is merely a labourer and has three children who are quite young. He does not have any job and his whole family works as a labourer. Pardeshi works as daily wager in the village and earns around Rs. 250 to Rs. 300 per day. She was aware that Pardeshi had been booked under the Excise Act. She further deposed that Pardeshi had a pakka house having two rooms, which have been built with the mud. She was not aware whether he owns a motorcycle. Pardeshi had worked in her house as a labourer.

8. The learned Special Judge Gangster Act, Basti vide order dated 19.07.2024 recorded his finding giving his reasons and rejected the case of the appellant and affirmed the order dated 10.10.2023 passed by District Magistrate, Basti under Section 14 (1) of the U.P. Gangster Act and decided the reference finally under Section 16 (1) of the U.P. Gangster Act.

9. The main submission of learned counsel for the appellant is that the appellant has been falsely implicated, the learned District

Magistrate without recording the satisfaction over the police report has passed the attachment order dated 10.10.2023 which is illegal and in violation of law. It was further submitted that the prosecution could not prove that the house and the vehicle attached were acquired by the appellant as a result of commission of offence under the Gangster Act. The appellant is neither the member of any gang nor involved in any anti social activity nor in any pecuniary material offences. He further pleaded that except the attached house he has no other house to live in and is ready to give an undertaking that he shall not destroy or sell the house or vehicle in question, if released by the Court. Explaining his four criminal history, the appellant has stated that:

- (1) Case Crime no. 230 of 2018, under Section 60 of the Excise Act, Police Station Parasrampur, District Basti
- (2) Case Crime No. 334 of 2020, under Section 60(2), 63 of Excise Act, Police Station Parasrampur, District Basti.
- (3) Case Crime No. 124 of 2022, under Section 272 I.P.C and Section 60/60(2), 63 of Excise Act, Police Station Parasrampur, District Basti.

In the aforesaid three cases the appellant due to helplessness and poverty had confessed his guilt and the matters were disposed of by imposing penalty in rupees.

In Case Crime No. 418 of 2020, Under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, P.S. Parasrampur, District Basti, the appellant has been released on bail.

10. It has been contended by the learned counsel for the appellant that the valid source of income has already been explained by the appellant as to from where the vehicle in question was purchased and the house was constructed to the authorities concerned but the learned Courts without recording any finding have passed the impugned orders which are illegal, improper and against the material available on record. The impugned orders have been passed without application of judicial mind. Further, it was contended that during the course of investigation, the Investigating Officer without collecting the cogent piece of evidence had directly linked the appellant to the alleged crime, therefore, the impugned orders are liable to be set aside. Further contention is that unless the seized vehicle and the house is released in favour of the appellant he shall be seriously prejudiced and no useful purpose would be served in

keeping the motorcycle attached at the Police Station during the pendency of the trial. The appellant is ready to furnish the sureties for release of the vehicle.

11. Opposing the submission advanced by the learned counsel for the appellant learned A.G.A has vehemently opposed the prayer for release of the house and the vehicle and has submitted that the District Magistrate as well as the trial Court have rightly passed the impugned order which is just and proper and does not suffer from any illegality or infirmity.

12. I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record. At this juncture it is relevant to discuss the provisions 14 to 18 of the U.P. Gangster and Anti Social Activities (Prevention) Act, which are reproduced as under:

***“Section 14: Attachment of property-** (1) If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.*

(2) The provisions of the Code shall, mutatis mutandis apply to every such attachment.

(3) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.

(4) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.

***Section 15: Release of property-** (1) Where any property is attached under Section 14, the claimant thereof may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.*

(2) If the District Magistrate is satisfied about the genuineness of the claim made under the sub-section (1) he shall forthwith release the property from the attachment and thereupon such property shall be made over to the claimant.

***Section 16: Inquiry into the character of acquisition of property by Court-** (1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate*

does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such Court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.

(3) (a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

(4) For the purpose of inquiry under sub-section (3) the Court, shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. 5 of 1908), in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commission for examination of witness or documents;

(f) dismissing a reference for default or deciding it ex-parte;

(g) setting aside an order of dismissal for default or ex-parte decision.

(5) In any proceedings under this Section, the burden of proving that the property in question or any part thereof was not acquired

by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 172 (Act No. 1 of 1872), notwithstanding.

Section 17: Order after inquiry- *If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.*

Section 18: Appeal- *The provisions of Chapter XXIX of the Code shall, mutatis mutandis, apply to an appeal against any judgment on order of a Court passed under the provisions of this Act.”*

13. After considering the entire material on record and the statement of the witnesses, it is not at all disputed that the appellant is a hard working labourer. The attached house and the vehicle were acquired by him through valid source of income. The house was constructed on the land given by his father having two rooms and was partially prepared with mud and the motorcycle purchased was an old one. Consequently, the valid source of income has already been disclosed by the appellant to the District Magistrate as well as the Special Judge, Gangster Act.

14. In the case of **Badan Singh @ Baddu Vs. State of U.P and others, 200 1 SCC Online All 973**, a learned Single Judge observed as follows:

“ there must be nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property. In other words, what is necessary is to find is whether his acquisition of the property was as a result of commission of any offence enumerated in the Act being a member, leader or organiser of a gang. One might have committed several offences, but if the property acquired by him was with the aid of his earning from legal source, no action under Section 14 of the Act can be taken against him.”

15. Hence, scrutinising the aforesaid facts and circumstances, the house and the vehicle attached needs to be released in the light of the law as aforesaid. No useful purpose would be served in keeping the vehicle and the house attached. In view of the aforesaid discussion, the instant criminal appeal is hereby **allowed**. The Trial Court as well as the District Magistrate, Basti are hereby directed to

release the attached house and the Vehicle No. U.P. 51 AW 7828 of the applicant in his favour forthwith subject to the following conditions:-

- (1) He shall produce the Original Registration Certificate and Insurance Paper before the concerned Police Station, who shall verify the documents properly along-with its two attested copies thereof.
- (2) The appellant shall execute a bond with two solvent sureties to the satisfaction of the Chief Judicial Magistrate concerned.
- (3) The appellant shall keep the vehicle insured at all times till the conclusion of the trial and produce the Insurance Certificate before the Trial Court as and when required. He must satisfy the Court that he is the registered owner of the vehicle.
- (4) He shall not change the colour or any part of the engine and chasis number of the vehicle. He shall produce the vehicle either before the Court or before any other authority as the Court may direct.
- (5) He will not transfer the vehicle to anybody else nor possession of the same be parted till the disposal of the case. He shall not allow the vehicle to be used in commission of any offence.
- (6) He shall give a written undertaking to the C.J.M. concerned that he shall not sell, alienate or destroy the attached house and the vehicle till disposal of the trial.

Order Date :- 7.1.2025

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