



SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<u>WPCRL/430/2021</u> Rakesh Kaintura --Petitioner Versus State Of Uttarakhand and Others --Respondents <u>Hon'ble Alok Mahra, J.</u> Mr. Devang Dobhal, learned counsel for the petitioner. Mr. Prabhat Kandpal, learned A.G.A. assisted by Mr. Pramod Tiwari, A.G.A. for the State of Uttarakhand. 2. Present Criminal Writ Petition has been filed seeking the following reliefs: “(a) Issue a writ, order or direction in the nature of certiorari quashing the notice dated 20.11.2019 and the proceedings of Criminal Case No. 33 of 2019, State vs. Rakesh Kaintura, arising out of Challani Report Case No. 8 of 2019, pursuant to notice dated 20.11.2019 under Sections 3/4 of the U.P. Control of Goondas Act, 1970, Police Station Chamba, District Tehri Garhwal, pending before the District Magistrate, New Tehri, District Tehri Garhwal. (b) Issue a writ, order or direction in the nature of mandamus commanding respondent no. 2 not to proceed with Criminal Case No. 33 of 2019, State vs. Rakesh Kaintura, arising out of Challani Report Case No. 8 of 2019 and notice dated 20.11.2019 under Sections 3/4 of the U.P. Control of Goondas Act, 1970, Police Station Chamba, District Tehri Garhwal, pending before the District Magistrate, New Tehri, District Tehri Garhwal, during



			<i>the pendency of the present writ petition.”</i> 3. Learned counsel for the petitioner submits that, as per the gang chart forming the basis of the impugned proceedings, three criminal cases were shown against the petitioner, namely, Case Crime No. 14 of 2016, under Section 60 of the U.P. Excise Act; Case Crime No. 04 of 2017, under Sections 323, 353, 504 and 506 IPC; and Case Crime No. 01 of 2018, under Section 60 of the U.P. Excise Act. 4. Learned counsel for the petitioner submits that both the cases under the U.P. Excise Act had already been compounded vide orders dated 18.07.2016 and 27.07.2018, respectively. So far as Case Crime No. 04 of 2017 is concerned, the petitioner was convicted only under Sections 353 and 504 IPC and was sentenced to undergo simple imprisonment for eleven days along with a fine of Rs.5,000/- under Section 353 IPC and was imposed a fine of Rs.5,000/- under Section 504 IPC. He was acquitted of the charge under Section 506 IPC. It is, therefore, submitted that the petitioner cannot be treated as a “Goonda” within the meaning of Section 2(b) of the U.P. Control of Goondas Act, 1970, merely on the basis of the aforesaid material. Learned counsel submits that the two cases under the U.P. Excise Act could not have been relied upon for the purpose of attracting Section 2(b)(iii) of the Act, as the said provision contemplates conviction not less than thrice for an offence punishable under the U.P. Excise Act. It is further submitted that, after excluding the said cases, only one criminal case remains against the petitioner and, therefore, the essential requirement of habituality
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			under Section 2(b)(i) of the Act is also not satisfied. 5. Learned State Counsel has opposed the prayer; however, no material has been placed before the Court to demonstrate that, apart from the aforesaid cases, there existed any other material or antecedent sufficient to establish that the petitioner was habitually committing, attempting to commit, or abetting the commission of the offences contemplated under Section 2(b)(i) of the Act. 6. Having heard learned counsel for the parties and having perused the material available on record, this Court finds substance in the submission advanced on behalf of the petitioner. 7. Section 2(b) of the U.P. Control of Goondas Act, 1970 defines the expression "Goonda". Under clause (i), a person is required to be one who, either by himself or as a member or leader of a gang, habitually commits, attempts to commit, or abets the commission of the offences specified therein. Clause (iii), on the other hand, specifically contemplates a person who has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910, the Public Gambling Act, 1867 or the specified provisions of the Arms Act. The expression "habitually" cannot be given a meaning whereby a person can be branded as a Goonda merely on the basis of a solitary incident. The requirement of habituality necessarily postulates repetition or continuity of similar acts. The Division Bench of the Allahabad High Court in Faheem vs. State of U.P. and others, 2021 SCC OnLine All 1543, has held that a person is termed a "Goonda" if he is a habitual criminal and that a single act constituting a criminal case cannot bring
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		a person within the definition of “Goonda”. The Court further observed that there must be frequent commission of acts of the nature contemplated by Section 2(b)(i) to justify an inference of habituality. The said principle has subsequently been reiterated in several decisions. 8. In the present case, the two cases under Section 60 of the U.P. Excise Act were admittedly compounded. More importantly, there is no material before this Court showing that the petitioner had been convicted not less than thrice for offences punishable under the U.P. Excise Act so as to attract Section 2(b)(iii) of the Act. The said two cases, therefore, cannot by themselves furnish the statutory foundation for treating the petitioner as a “Goonda” under the aforesaid clause. 9. As regards Case Crime No. 04 of 2017, the petitioner was convicted under Sections 353 and 504 IPC and acquitted under Section 506 IPC. Even if the said conviction is taken into consideration, the same, standing by itself, does not establish the requisite habituality contemplated by Section 2(b)(i) of the Act. 10. The material placed before this Court, therefore, falls short of establishing the statutory ingredients necessary for initiating proceedings against the petitioner under Section 3 of the U.P. Control of Goondas Act, 1970. The proceedings under the Act cannot be permitted to continue merely on the basis of a mechanically prepared gang chart without there being sufficient material to satisfy the statutory requirements. The power under the Act is preventive in nature and carries serious civil consequences; consequently, the conditions prescribed
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by the statute have to be strictly satisfied.

11. In view of the aforesaid discussion, this Court is of the considered opinion that the impugned notice dated 20.11.2019 and the consequential proceedings initiated against the petitioner in Criminal Case No. 33 of 2019, State vs. Rakesh Kaintura, arising out of Challani Report Case No. 8 of 2019, under Sections 3/4 of the U.P. Control of Goondas Act, 1970, registered at Police Station Chamba, District Tehri Garhwal, cannot be sustained.

12. Accordingly, the present Criminal Writ Petition is allowed. The impugned notice dated 20.11.2019 and the entire consequential proceedings of Criminal Case No. 33 of 2019, State vs. Rakesh Kaintura, arising out of Challani Report Case No. 8 of 2019, pending before the District Magistrate, New Tehri, District Tehri Garhwal, are hereby quashed.

(Alok Mahra, J.)

21-08-2026

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