



2026:AHC:185398

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5078 of 2026

Navi Mohmad

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	: Ajay Kumar Singh, Amber Khanna, Ram Kripal, Sr. Advocate
Counsel for Respondent(s)	: G.A.

Court No. - 90

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Raj Kumar Khanna, learned Senior Advocate assisted by Sri Ajay Kumar Singh, learned counsel appearing for the appellant and the learned AGA for the State.

2. The present Criminal Appeal has been filed against the judgment and Order dated 28.01.2026, passed by Special Judge (Gangsters Act)/Additional District & Sessions Judge, Court No.5, Moradabad in Criminal Misc. Case No.99/2024, Under Section 16(1) of The U.P. Gangsters And Anti Social Activities (Prevention) Act, 1986, Police Station Bhagatpur, District - Moradabad (State Vs. Navi Mohd.), which is a reference made to the Special Judge (Gangsters Act), Under Section 16(1) of The U.P. Gangsters And Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as 'Gangsters Act'), whereby the Orders of 29.09.2023, passed under Section 14(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act to attach the property of Appellant as well as the Order dated 10.01.2024, dismissing the representation(objection) moved by the appellant, have been affirmed.

3. Learned counsel for the appellant has submitted that after the enforcement of Gangsters Act in year 1986, in the history of 39 years, first time the Police, Local Administration as well as the lower judiciary, illegally, in arbitrary manner launched the prosecution against the appellant in violation of several judgment of this Hon'ble Court, guidelines, Government Orders as well as Rules, 2021. After approval of

Gang Chart without F.I.R. , the appellant was challaned, taken illegal remand and thereafter he got bail. The Charge Sheet was submitted under Section 3(1) of U.P. Gangsters Act without registration of F.I.R. of Gangsters Act and the learned trial court illegally without jurisdiction in cyclostyle manner took cognizance without application of judicial mind.

4. The police illegally, in arbitrary manner and without jurisdiction added Section 3(1) of the U.P. Gangsters Act in the F.I.R. of base case of Crime No.442 of 2022. However, admittedly by the prosecution till date, no F.I.R., under Section 3(1) of The U.P. Gangsters Act was registered against the appellant. The learned trial court (Special Judge (Gangsters Act)/Additional District & Sessions Judge, Court No.5, Moradabad) while dealing with reference made under Sub-Section (1) of Section 16 of The U.P. Gangsters and Anti Social Activities (prevention) Act, 1986, (later referred as Act, 1986 for the sake of brevity), the Court has to see whether the property was acquired by a Gang as a result of commission of an offence tribal under the Gangsters Act and has to enter into the question and record his own finding on the basis of an inquiry held by him under Section 16 of The Gangsters Act.

5. In the present case, the appellant has shown before the learned trial court the source of money, whereby he had purchased the aforesaid property by his own earning and finance by bank loan and he had repaid the money by his income through E.M.I. The initial burden is always upon State to satisfy the District Magistrate with necessary materials that the appellant being a gangsters acquired the properties as a result of commission of any offence mentioned in Section-2 of the Act. In the present case State has utterly failed to do so.

6. Learned counsel for the appellant has further submitted that the District Magistrate by an order dated 29.09.2023, without providing an opportunity of hearing to the appellant seized the property of the appellant. Prior to the aforesaid order dated 29.09.2023, no inquiry was made against the appellant and without opportunity of hearing to the appellant, the aforesaid order of attachment dated 29.09.2023 was passed by the District Magistrate, Moradabad. By the aforesaid Order dated

29.09.2023, the following moveable properties were attached by the District Magistrate, Moradabad which are as under:-

- (1) Motorcycle Splender Plus - UP21CV-1849.
- (2) Agricultural Tractor - UP21CC-2805.
- (3) Tata Motors Goods Carrier (Tipper)-UP21BN-6249

7. Learned counsel has further submitted that at the time of attachment of aforesaid moveable property, neither any notice nor any Order, under Section 14 of the Act, 1986 dated 29.09.2023 was served to the appellant. He has further submitted that the District Magistrate, Moradabad, passed the aforesaid Order dated 29.09.2023, under Section 14(1) of the Act, 1986 for the attachment of the property of appellant on the basis of the report of Police dated 20.09.2023. The Police have wrongly submitted the report that Dumper belonged to the appellant was the case property of Crime No. 442 of 2022, while in fact the Dumper never used by the appellant in the aforesaid mining. More so, the property was not recovered by the Police at the time of alleged incident. The property was not found on the place of alleged incident because there was C.C.T.V. Cameras and the CCTV footages were available with the Police, but the appellant and his Dumper was not traced out. It is alleged that the property was purchased by the appellant with legally earned money and bank loan.

8. He has further submitted that against the aforesaid attachment order, the appellant made representations, under Section 15(1) of the Act, 1986. The District Magistrate rejected the representation of the appellant and affirmed the Order of attachment dated 29.09.2023, vide order dated 10.01.2024. Simultaneously, by the aforesaid order dated 10.01.2024, the District Magistrate referred the matter to the Court of Special Judge (Gangsters Act), under Section 16(1) of the Act, 1986. The appellant approached to the learned trial court and again filed documents related to the properties belonged to him and purchased by him through bank loan. The Special Judge, Gangster Act, Moradabad in Criminal Misc. Case No.99/2004 (State of U.P. Vs. Navi Mohd.), in the reference made to the Court, under Section 16(1) of the Act, 1986, whereby the orders of

District Magistrate, Moradabad dated 29.09.2023 for the attachment of the property of the appellant under Section 14 of the Act and as well as order dated 10.01.2024 dismissing the objection (representation) made by the appellant, have been affirmed.

9. It is further submitted that the appellant have been falsely and malafidely implicated in the present Gangsters Case, therefore, the appellant challenged the proceeding of Gangsters Act before this Court in Application (U/S-482) No.42935 of 2023. This Court was pleased to grant protection to the appellant by Order dated 1.12.2023. The aforesaid Application (U/S-482) No.42935 of 2023 is still pending before this Court and the order is still operating. He has further submitted that the order dated 01.12.2023 and other orders, passed by this Court are very well in the knowledge of District Magistrate, Moradabad, but despite the aforesaid orders, the District Magistrate, Moradabad passed the order of attachment, under Section 15 of the Act, 1986. During the course of inquiry, the Special Judge (Gangster Act) was pleased to examine Inspector, Sanjay Pratap Singh. In his evidence, he has admitted that the seized article purchased by the appellant was much prior to the alleged incident. He has further submitted as per law laid down and after going through Section-2(b) and 2(c) of the Act, 1986, it appears that for taking action under Section 14(1) of the Act, 1986 against a person, there must be material for objective determination of the District Magistrate that he, either, as a member, leader or organizer of a gang acquired any property as a result of commission of any offences under the Act. There must be a nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property, as it is necessary to find out whether his acquisition of property was a result of commission of any offence enumerated in the act being a gang.

10. In the present case, the appellant has no criminal history and involvement in any criminal activities except the present incident. The decision of District Magistrate to attach the property must be based on reason and not arbitrarily. He has further submitted that initial burden is always upon the State to satisfy the District Magistrate with necessary materials that the appellant being a gangsters acquired the properties as a

result of commission of any offence mentioned in Section-2 of the Act, 1986. In the present case State has utterly failed to do so. He has further submitted that the learned trial court while dealing with reference made under Sub-Section (1) of Section 16 of The Act, 1986, the Court has to see whether the property was acquired by a Gang as a result of commission of an offence tribal under the Gangsters Act and has to enter into the question and record his own finding on the basis of an inquiry held by him under Section 16 of The Gangsters Act. In the present case, the appellant has shown before the learned trial court, the source of money, whereby he had purchased the aforesaid property by his own earning and finance by bank loan and he had repaid the money by his income through E.M.I. The appellant was running his own business and is regularly paying the GST and Income Tax to the Government. In support of his defence, the appellant filed Income Tax Report showing his income. The appellant was having enough source of income, by which he had purchased the aforesaid vehicles much prior to the registration of First Information Report of Case Crime No.442 of 2022. The inquiry, under Section 16 of the Act, 1986, was not performed in accordance with the proceeding and object of the Act and the provisions of Section-14, 15 and 17 of the Act, 1986, were also not followed in true spirit.

11. Learned counsel for the appellant has further submitted that a First Information Report was lodged on 14.09.2022 at 8:37 A.M. by one Ashok Kumar, as Case Crime No.442 of 2022. Initially the aforesaid F.I.R. was registered, under Sections 147, 341, 352, 332, 504, 353, I.P.C. and Section 21(4) of Khan Evam Khanij (Vikas Ka Viniyam) Adhiniyam, Police Station Thakurdwara, District Moradabad, in respect of an incident alleged to have taken place on 13.09.2022 at 8:05 P.M. The aforesaid F.I.R. was registered against the following persons:-

- (i) Raees Pradhan, Son of Unknown R/o Fauladpur, Thakurdwara, Moradabad.
- (ii) Waseem, Son of Unknown R/o Village Ratupura, Thakurdwara, Moradabad.
- (iii) Rizwan, Son of Unknown R/o Unknown, Thakurdwara, Moradabad.
- (iv) Irfan, Son of Unknown Resident of Sarwat Nagar, Thakurdwara, Moradabad.
- (v) Dilshad, Son of Jaheer Alam, R/o Village Kamalpuri, Thakurdwara, Moradabad.
- (vi) About 150 Unknown Persons.

12. The Appellant was not named in the aforesaid FIR. During the course of investigation the Investigating Officer has added Section-384 and 395 I.P.C. and Section-3 of Lok Sampatti Nivaran Adhiniyam. The appellant, after arrest, applied for his bail in Case Crime No.442 of 2022, under Sections - 147, 341, 332, 352, 353, 504, 384, 395 I.P.C. and Section-21(4) of Khan Evam Khanij (Vikas Ka Viniyam), Adhiniyam & Section-3 of Lok Sampatti Nivaran Adhiniyam, which was rejected by the learned Sessions Judge, Moradabad vide order dated 16.11.2022. The appellant applied for his bail before this Court and ultimately granted bail by this Court vide order dated 3.12.2022.

13. Learned counsel for the appellant has further submitted that during the period of incarceration, it came to the knowledge of the appellant that the police has taken his remand also in Crime No.442 of 2022, under Section 3(1) of the Act, 1986 on 18.10.2022. It is seriously objected by the learned counsel for the appellant that the learned Special Judge (Gangster Act)/Additional Sessions Judge Court No.5, Moradabad in cyclostyle manners granted remand of the accused persons including the appellant, under Section 3(1) of the Act, 1986 without any F.I.R. under the provisions of the Act, 1986. He has submitted that the said remand is purely illegal. He has further submitted that in the Order Sheet, neither they have disclosed the reason nor obtained the signature of the accused persons present in the court. Even in several dates, name of accused persons were not mentioned. The Police illegally, in arbitrary manner and without jurisdiction added Section 3(1) of the Act, 1986 in the F.I.R. of base case of Crime No.442 of 2022. After adding Section 3(1) of the Act, 1986 in the base case of Crime No.442 of 2022, the appellant applied for his bail before the learned Special Judge (Gangsters Act)/Additional District Judge-Vth, Moradabad, who allowed the Bail Application of the appellant on 15.12.2022. He further submitted that, however, admittedly by the prosecution till date, no F.I.R., under Section 3(1) of The Act, 1986 was registered against the appellant.

14. Learned counsel for the appellant has submitted that the Investigating Officer by concealing the material facts got approval of Gang Chart of the

appellant from the District Magistrate. The District Magistrate illegally, in arbitrary manner vide Order dated 3.10.2022 approved the gang chart on the basis of base case of Crime No.442 of 2022, under Sections- 147, 341, 332, 352, 353, 395, 384, 504 I.P.C., Section 21(4) of Khan Evam Khanij Adhiniyam, & Section 3 of Lok Sampatti Nivaran Adhiniyam.

15. The Charge Sheet in the base case of Case Crime No.442 of 2022 was submitted on 21.7.2023, while the District Magistrate in arbitrary manner and in violation of Rule-5, 8 & 10 of The U.P. Gangsters Rule, 2021, approved the Gang Chart on 3.10.022. Learned counsel for the appellant has submitted that the Gang Chart was approved on 3.10.2022 and at that time, there was no charge sheet was filed. The chart sheet was filed on 21.7.2023, hence approval of Gang Chart on 3.10.2022 is contrary to the Rules of 2021. Rules, 5,8 and 10 of the Rules, 2021 are quoted below:-

"5. General Rules.-(1) To initiate proceedings under this Act, the concerned Incharge of Police Station/Station House Officer/Inspector shall prepare a gang. chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(3) The following provisions shall be complied with in respect of gang-charts:

(a) The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.

(b) There may be no gang of one person but there may be a gang of known and other unknown persons and in that form the gang-chart may be approved as per these rules.

(c) The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

(d) Those cases shall not be mentioned in the gang-chart, on the basis of which action has already been taken once under this Act.

(e) A separate list of criminal history, as given in Form No.-4, shall be attached with the gang-chart detailing all the criminal activities of that gang and mentioning all the criminal cases, even if acquittal has been granted in those cases or even where final report has been submitted in the absence of evidence.

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang members mentioned in the gang-chart will also be updated on Interoperable Criminal Justice System (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

8. Stating unconfirmed or false information is prohibited.-(1) The Incharge of Police Station/Station House Officer/Inspector shall not mention the cases as Part Trial or Partial Trial (PT) without ascertaining the up-to-date status of the cases in the gang-chart.

(2) No unconfirmed or false information shall be entered in the gang-chart.

(3) The latest status of the cases against the gang, which are being shown in the gang-chart, regarding their pendency in the Special Court, the convictions or the stage at which they are in the Court, must be clearly mentioned.

(4) The responsibility of recording the correct and true information shall lie on the concerned Incharge of Police Station/Station House Officer/Inspector.

(5) On discovering an adverse situation, the Incharge of Police Station/Station House Officer/Inspector shall be held liable for negligence under departmental and criminal proceedings.

10. Records of Base Cases.-(1) Along with gang chart, the certified copy of the charge sheet and recovery memo shall be attached compulsorily.

(2) Where the accused is not named in the First Information Report and document discloses the way in which his name came to light and if something has been recovered, a certified copy of the recovery memo shall be attached."

16. Learned counsel for the appellant has further submitted that the learned trial court on the aforesaid Charge Sheet, dated 21.07.2023, without going through the material facts and evidence, available on record, illegally in cyclostyle manner, took cognizance against the appellant and other accused persons vide Order dated 30.08.2023.

17. In the present case, the base case is the F.I.R. of Case Crime No.442 of 2022, which was not registered under Section-3(1) of the Act, 1986. This case has been defined under Section 2(b) of the Act, 1986 which reads as under:

"2. Definitions.-

(b) "**Gang**" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely:

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code, 1860 (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims, for title or possession of immoveable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-E of the Indian Penal Code, (Act No. 45 of 1860) or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private

undertaking or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course:

xvi) offences punishable under the Regulation of Money Lending Act, 1976,

(xvii) illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities;

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs,

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic, gains, smuggling of products in contravention of the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972,

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xxv) indulging in crimes that impact security of State, public order and even tempo of life."

18. The base cases means the cases on the basis of which a gang-chart has been prepared with the intention of taking action against the gang under the Act.

19. As per Rule 5(3)(a), Gang Chart will not prove summarily, but after due discussion in joint meeting of Commissioner/Police Authorities/District Magistrate/Senior Superintendent of Police/Superintendent of Police. The documents clearly indicates that no discussion was made in the joint meeting of the Police Authorities/District Magistrate/Superintendent of Police as mandatory under Rule-5(3)(a) of the Rules, therefore, the approval of Gang Chart is absolutely illegal and

arbitrary in manner and not sustainable in the eyes of law.

20. As per Rule 5(3)(c) of the Rules, the Gang Chart shall not be approved without completion of investigation of base case. As per documents (questionair) clearly indicates that the investigation was not completed in the base case of Crime No.442 of 2022, under Sections 147, 341, 352, 332, 353, 384, 395 I.P.C., Section 21(4) of Khan Evam Khanij Adhiniyam, on the date of approving the Gang Chart i.e. on 3.10.2022, while according to the aforesaid Rule 5(3)(c) of the Rules, the Gang-Chart shall not be approved without the completion of the investigation of 'Base Case', therefore, the 'Gang-Chart' itself is illegal and arbitrary.

21. At the time of approving the Gang Chart by the District Magistrate on 3.10.2022, it is clear that at the time of approving the Gang-Chart, the investigation was pending in Base Case of Case Crime No.442 of 2022, while Charge Sheet was submitted on 21.07.2023 in the aforesaid base case (Crime No.442 of 2022).

22. As per Rule-8 of the Rules, stating unconfirmed or false information is prohibited and according to Rule 8, the Incharge of Police Station shall not mention the cases as part trial or partial trial without ascertaining the upto date status of the cases in the Gang Chart.

23. As per Rule 10(1) of the Rules, it is compulsory to the police to attach a certified copy of charge sheet and recovery memo alongwith Gang Chart. Admittedly, the certified copy of the charge sheet of base case of crime No. 442 of 2022 was not annexed alongwith gang chart prior to its approval. Therefore, the entire proceeding of approving the gang chart is absolutely illegal and arbitrary. There is no FIR was registered by the police after the aforesaid approval in Gangster Act.

24. The S.D.M. immediate reached at the place of alleged incident and thereafter the aforesaid 4 vehicles (dumpers) sent to Mandi and at the same time Raees Pradhan, along with 150 unknown persons came and with the police force being just at a hand distance and already police personnel being present at the place of incident like the police persons, who stopped the dumper, the traffic police, the police persons, arrived

with SDM. As per FIR, the alleged accused persons started fighting with and beating the police personnel present there. As per the prosecution case that so many police persons were present and so many civilians, who were fighting with them, resulting in no injury case. There is not a single injured persons out of the named 5 accused and 150 unknown persons as well as there is not a single police persons, who was injured in the quarrel and fight with the 5 named accused and 150 unnamed accused. The alleged incident took place on 13.9.2022 at 8.05 pm, while the FIR was lodged on 14.9.2022 at 8:37 pm. The distance of police station from the place of occurrence is 1 km. The prosecution did not explain the delay in lodging the FIR, while the entire administration agency were present at the place of alleged incident which clearly indicates that the entire prosecution has not happened in the manner as alleged.

25. The appellant is not named in the FIR. he is resident of village Kankarkheda, Police Station Dilari, district Moradabad. The village of the appellant is about 18 km away from the place of alleged incident. The appellant is a reputed businessman, he is running a Tyre Agency having the Tyres of truck, cars and two wheelers under the name and style of M/s Mehak Traders at Moradabad Highway. The said firm is having the agency of Tyres of Bridgestone, Continental and J.K. Tyres. The aforesaid firm of the appellant have the registration in GST. The appellant is also paying the Income Tax. Photo copy of the ITR of the appellant is filed. The appellant is respectable businessman and is law abiding citizen of District Moradabad. The appellant was not present at the place of alleged incident on the date and time of incident mentioned in the FIR. The appellant was present at his own shop situated at about 15 km. from the place of alleged incident. The appellant have three mobile number in his name. The appellant is not concern with the Dumpers seized by the inspecting team. The appellant is no concern with Raees Pradhan and other accused persons mentioned in the FIR. Even, they are not relative, friends of the appellant. The appellant has no connection with them.

26. The aforesaid vehicle Tata (Tipper) UP-21 BN 6249 (moveable property), attached by the District Magistrate, Moradabad was purchased by the appellant on finance by Indusind Bank for enhance his business income. The appellant is having valid heavy motor vehicle commercial

licence. The aforesaid vehicle attached by the District Magistrate was not involved in case crime No. 442 of 2022. The heavy vehicle so attached and impounded are laying in open field under open skies being subjected to heavy rain fall and damages, which if left unchecked would be rendered useless and would amount to the complete and utter loss of finances to the appellant. Therefore, the appellant made a reminder representation to the District Magistrate, Moradabad on 27.11.2023, requesting to the authorities to release the vehicles in favour of the appellant. The District Magistrate vide order dated 10.1.2024 has confirmed the order of attachment of the property of the appellant dated 29.9.2023. The police also did not prove to hold that the property was acquired by the appellant by way of crime. No detail of such information was provided to the District Magistrate, even the police did not prove that the appellant is a member of any gang. The appellant further stated in the representation that he also possessed agricultural land in his native village and the house was constructed on the basis of income acquired from the source of his business.

27. The counter affidavit has been filed by the learned AGA. He submitted that the appellant is a man of criminal mind and is involved in Anti-social activity and there is terror of the appellant in the area and due illegal money collected by the appellant from anti-social activity, he purchased several property and the District Magistrate attached the property of the appellant vide its order dated 29.9.2023.

28. The appellant has also filed a rejoinder affidavit and reiterated the avements raised by him in the appeal. It is true and correct that the appellant is not named in the FIR. There is no registration of case under the Act, 1986 against the appellant. There were 150 unknown persons mentioned in base FIR and during investigation and even prior to completion of investigation, prior to filing of the charge sheet, the Gang chart was approved.

29. Learned counsel for the appellant has submitted that the appellant is a reputed businessman and he has taken the vehicle on loan and he is having sufficient source of income by way of his legal means. Learned counsel for the appellant has also filed supplementary affidavit and stated

that in the category of unknown person of base FIR i.e. Saddik, his vehicle was released by the learned Special Judge (Gangster Act) vide order dated 15.2.2024. Said order was challenged before this Court in Criminal Appeal No. 11705 of 2024 by the State of U.P. and that was also dismissed by this Court vide order dated 21.11.2025.

30. Learned counsel for the appellant has also filed order passed by this Court in Criminal Appeal No. 12320 of 2024 (State of U.P. Vs. Abid son of Saddiq). This case was dismissed by this court on 21.11.2025. He has further relied on the Criminal Appeal No. 12321 of 2024 (State of U.P. Vs. Danish), that criminal appeal is also dismissed by this Court vide order dated 21.11.2025. He has further filed order passed in Criminal Appeal No. 12322 of 2024 (State of U.P. Vs. Mohd. Hamid @ Hamid Husain), which is dismissed by this Court on 21.11.2025.

31. Learned counsel for the appellant has submitted that the act committed by the State are absolutely illegal, arbitrary and capriciously. There is force in the submission made by the learned counsel for the appellant. In view of facts and circumstances of the case, neither any FIR has been registered under the Act, 1986 separately nor Gang chart has been approved after filing of the charge sheet. The Gang chart has been approved even before filing the charge sheet of base case in case crime No. 442 of 2022. Learned counsel for the appellant has reasonably submits that he is business man and having valid source of money and took the vehicle on loan and paying the EMI.

32. In view of all these consideration, the impugned order dated 28.1.2026, passed by the Special Judge (Gangsters Act)/Additional District & Sessions Judge, Court No.5, Moradabad in Criminal Misc. Case No.99/2024, Under Section 16(1) of The U.P. Gangsters And Anti Social Activities (Prevention) Act, 1986, Police Station Bhagatpur, District- Moradabad (State Vs. Navi Mohd.), is hereby set aside. Consequently, the orders passed by the District Magistrate, Moradabad for attachment and auction dated 29.9.2023 and 10.1.2024 are also hereby set aside. Hence, the property attached from appellant, be released in his favour forthwith without any delay in accordance with law.

33. The criminal appeal is **allowed**, accordingly.

(Abdul Shahid,J.)

September 3, 2026
sfa/