2026:AHC:210509

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35932 of 2025

Santosh Tiwari and 3 others

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Along with :

1. **Application U/s 528 Bnss No. 11987 of 2026:**
   Satyendra Rathaur @ Malkhan
   Versus
   State of U.P. and another

Counsel for Applicant(s) : Ajay Sengar, S Sengar
Counsel for Opposite Party(s) : G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1.The Application U/s 528 BNSS No. 35932 of 2025 has been filed by three accused-applicants namely, Santosh Tiwari, Sanket Mani Tiwari, Raja Ram Tiwari and Anuj Tiwari, whereas the Application U/s 528 BNSS No. 11987 has been filed by Satyendra Rathaur @ Malkhan Singh, which is connected with Application U/s 528 BNSS No. 35932 of 2025.

2. Heard learned counsel for the applicants, learned Additional Government Advocate (A.G.A.) for the State, and perused the record.

3. By means of the respective applications, the accused-applicants are seeking quashment of the entire proceedings of Sessions Trial No. 42 of 2023 (State Vs. Santosh Tiwari and others) arising out of Case Crime No.0076 of 2023 under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, (hereinafter to be referred to as "the Act) Police Station Kotwali Orai, District Jalaun at Orai pending before Special Judge, (Gangster Act), District Jalaun at Orai as well as to quash the charge sheet dated 27.08.2023 and also to quash the summoning order dated

08.12.2023 passed in the aforesaid case.

4. The germane facts of the case are that a first information report has been lodged in Case Crime No. 0076 of 2023 under Section 2/3 of the Act at Police Station Kotwali Orai, District Jalaun at Orai wherein it has been averred that the applicants along with the co-accused have formed an organized criminal gang, who are engaged either collectively or individually are repeatedly indulged in anti-social and violent activities within the territorial limits of the District for their personal gain. It is further averred that by unleashing terror, fear in the locality, the applicants and the co-accused disrupted public peace and created such panic that innocent members of the public are deterred from coming forward to depose or lodge complaints against them through ordinary legal machinery. A gang chart was prepared, wherein the details of the criminal cases pending against the applicants have been described. Upon approval of the Gang chart by the concerned authorities, F.I.R. has been lodged against the applicants and the co-accused under the Act. The matter was entrusted for investigation, the investigating officer after collecting credible evidence oral as well as documentary evidence, disclosing prima facie complicity of the applicants as an active member of the gang, the investigation culminated in submission of charge sheet, upon which learned trial Court took cognizance vide order impugned and therefore the applicants are before this Court challenging the entire proceedings as well as charge sheet and cognizance order, as detailed in the preceding paragraph.

5. Learned counsel for the applicants has contended that merely on the basis of case(s) shown against the applicant in the gang chart, Gangsters Act has been imposed upon the applicants. Learned counsel further argued that the applicants are neither a gang leader nor they are member of any gang and that the applicants never acted or conducted themselves as such. He further submits that the Act of 1986 merely defines the status of accused-applicants indulging in a crime, specified in the definition clause as a "gangster" going by the definition of "gang" and "gangsters" provided respectively under sub-sections (b) and (c) of Section 2. Learned counsel thus argued that the Act of 1986 does not create a crime/offence. Apart from the aforesaid submission, learned counsel also argued that the gang chart merely demonstrates the involvement of the applicants in a crime, as specified under the clauses of

Section 2(b) of the Act of 1986 for which punishment is already prescribed. He thus submits that Gangsters Act has been roped upon the applicants without an offence being created. It is the settled principle in law that there can be no punishment without an offence in law. Learned counsel has placed reliance upon a reported decision of Hon'ble Apex Court rendered in the matter of ***Shiv Pratap Singh alias Chinu Vs. State of U.P. and others*** passed in ***Criminal Appeal No. 3979 of 2026: 2026 INSC 894***.

6. Learned Additional Government Advocate has vehemently opposed the application and submitted that the charge sheet has been filed after a comprehensive and fair investigation which reveals sufficient credible material substantiating the applicants' complicity in organized gang activities. It is contended that the statutory requirements prescribed under the Gangsters Act and the Rules of 2021 were strictly adhered to; the gang-chart was prepared collectively incorporating the substantive base cases of the gang members and was duly approved by the competent administrative authorities, upon joint satisfaction.

7. Learned A.G.A. further contends that even a solitary criminal antecedent or collective base cases satisfy the threshold under Section 2(b) of the Act, and that the learned trial court, having found a prima facie case disclosing the commission of the offence, rightly took cognizance and summoned the applicants, which calls for no interference by this Court, in exercise of powers conferred under Section 528 BNSS. However, learned A.G.A. could not dispute the ratio of the Hon'ble Apex Court in the matter of ***Shiv Pratap Singh alias Chinu (supra).***

8. I have heard learned counsel for the applicants, learned A.G.A. and perused the material on record.

9. The Hon'ble Apex Court in the matter of ***Shiv Pratap Singh alias Chinu (supra)*** thoroughly analyzed the foundational architecture of the U.P. Act 1986 Act and in paragraph nos.43, 52, 54 held as under:-

43. "…..... what is obviously absent in the U.P. Act is a provision determining the offence as one created under the Act. After defining gang, which includes commission of the offences listed under sub-clauses (i) to (xxv) and defining gangster as a member or leader or organiser of a gang,

the punishment is prescribed for a gangster without an offence being created by statute; which makes the penal act, stillborn."

"52. Article 20(1) encapsulates the principle of "nullum crimen nulla poena sine lege", (No crime or punishment can exist without a penal law); there can be no punishment without an offence in law. As we found, the Act of 1986 does not create a crime/offence and it merely defines the status of a person indulging in a crime, specified in the definition clause, as a 'gangster' going by the definition of 'gang' and 'gangster' provided respectively under sub-sections (b) and (c) of Section 2. The status is also determined not by a procedure in the enactment but a prescription made in the Rules. The power to frame Rules is found from the Act, in Section 23, which enables the State Government to make rules for carrying out the purposes of this Act and to provide any contravention of the Rules to be punishable with a term of imprisonment not exceeding 6 months, with or without fine, not exceeding Rs.1,000/-. The Rules provided for a Gang Chart to be prepared by the police, recommended through its hierarchy and approved in a joint meeting of the higher authorities of the Police and the head of the District Administration. The preparation of the Gang Chart and the involvement in a crime, as specified under the clauses of Section 2(b) determines the status of a person, as a gangster, for which punishment is prescribed, as we time and again observed in this very same judgment; without an offence being created."

"54. A 'gangster' is defined under the Act and the determination of who a gangster is, for the purpose of punishment, is as prescribed in the Rules, left to the ipsi dixit of the Executive. The creation of crime, or to make an act or omission subject to penal consequences as an offence, is essentially a legislative function and it cannot be thrown away and left to sprout in the thickets of subordinate legislation. As we noticed, the provisions of the Act could lead to a detention of the accused without trial for long, which is akin to a statute enjoining preventive detention. Though preventive detention has been held to be permissible even in the teeth of Article 21, the same is hedged with safeguards, which are held to be sacrosanct and even a minor procedural violation would entail release of the detenu. The safeguards in preventive detention are numerous, since it is the subjective satisfaction of the Administration and the Police that leads to a detention, the period in

which such detention continues being the exclusive premise of the State Government, who also has the authority to release the detenu at any point of time. The period provided in which such detention order has to be forwarded to the State Government; the materials to be supplied to the detenu; the right of representation to the various authorities, at every stage, as granted to the detenu; the reference to an Advisory Board constituted by statute and the decision to be arrived there at within a time frame, mitigates and erases to an extent the rigour & malice of subjectivity, which subjectivity pervades a preventive detention order. The subject enactment, the U.P. Act not only permits detention for a period without anything more than the inclusion in a Gang Chart but also enables a trial and punishment on the basis of the very same Gang Chart, in addition to the pre-trial incarceration, but without an offence being created by the Act itself. It is akin to the English proverb: 'Give a dog a bad name and hang him'.

10. The Hon'ble Apex Court has authoritatively held that the Act suffers from an incurable statutory defect by prescribing penal consequences for being a "gangster" under Section 3 without actually enacting, creating, or defining an independent substantive offence under the statute. The executive apparatus and subordinate rules cannot be permitted to supply or manufacture a penal offence where the parent statute has failed to create the same. Furthermore, the practice of preparing an omnibus gang chart wherein cases are collectively incorporated and approved routinely by executive authorities without establishing independent statutory culpability cannot validate an otherwise unconstitutional prosecution. When the foundational statute itself has been declared "stillborn" for the purposes of prosecuting individuals under Sections 2 and 3 of the Act, initiating or continuing criminal trials solely grounded on the inclusion of an accused in an administrative gang-chart is impermissible and amounts to a sheer abuse of the process of law and therefore, in the light of the law laid down by the Hon'ble Supreme Court in ***Shiv Pratap Singh alias Chinu (supra)***, this Court finds that the continuation of criminal proceedings against the applicants under the provisions of the Act cannot be legally sustained, having no statutory base to stand on and thus the same is liable to be quashed.

11. In view of the above, the proceedings of Sessions Trial No. 42 of 2023

(State Vs. Santosh Tiwari and others) arising out of Case Crime No.0076 of 2023 under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, (hereinafter to be referred to as "the Act) Police Station Kotwali Orai, District Jalaun at Orai pending before Special Judge, (Gangster Act), District Jalaun at Orai as well as charge sheet dated 27.08.2023 and also the summoning order dated 08.12.2023 passed in the aforesaid case., are hereby quashed as against the applicant.

12. Accordingly, the instant application is allowed.

13. It is clarified that this order shall not affect, impede, or prejudice any pending trial, investigation, or proceedings against the applicant in the underlying base case(s) under the general penal law, which shall proceed to their logical conclusion on their own merits in accordance with law.

(Dr. Gautam Chowdhary,J.)

October 7, 2026
S.Ali

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad