

inference of the suspected involvement of the present accused-applicant in conspiracy with any of the officers, officials and employees, found prima facie guilty in committing the irregularities and illegalities in the process of recruitment process under the contract. It seems that the present accused-applicant unnecessarily brought into the next of implication without logical and legal reasons and basis.

37. Thus, the facts mentioned in the complaint and in both the charge sheets submitted by the Investigating Officer of the S.I.T. are not disclosing the commission of any cognizable offence under the relevant sections of the I.P.C. with which the present accused-applicant is arraigned and, therefore, the cause of action clearly arose for him to challenge the continuance of criminal proceeding in the impugned order of cognizance dated 9.9.2021.

38. In view of the above facts and discussions the impugned summoning order dated 9.9.2021 passed by the learned Special Court, Anti-corruption, C.B.I. Central, Lucknow is set aside to the extent of the applicant "Bhavesh Jain" and all the orders passed in furtherance whereof and the entire subsequent proceedings in Sessions Case No. 752 of 2021 (C.B.I. Vs. Mohd. Azam Khan, etc.) under Sections 201, 204, 420, 467, 468, 471, 120-B I.P.C. and Section 66 of the I.T Act, 2000 against the accused applicant arising out of F.I.R. lodged on 25.4.2018 bearing No.2 of 2018 registered at Police Station- S.I.T. Sadar, Lucknow pending in the court of learned Special Court, Anti-Corruption, C.B.I. (Central), Lucknow to the extent of present accused applicant "Bhavesh Jain" are quashed.

39. Accordingly, the application under Section 482 Cr.P.C. is *allowed*.

-----  
**(2022)06ILR A360**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: LUCKNOW 23.05.2022**

**BEFORE**

**THE HON'BLE KARUNESH SINGH PAWAR, J.**

Application U/S 482 No. 2897 of 2020

**Pradeep Kumar Mishra** ...Applicant  
**Versus**  
**State of U.P. & Anr.** ...Opposite Parties

**Counsel for the Applicant:**  
 Sri Ramakar Shukla

**Counsel for the Opposite Parties:**  
 G.A.

**Criminal Law - Code of Criminal Procedure, 1973 -Section 173(2), 482 – U.P. Gangsters & Anti-Social Activities (Prevention) Act, 1986 -Section 2, 3(1) – Indian Panel Code, 1860 -Section 120(b), 302, 34, 504, 506:- Application - Validity of Charge sheet, summoning order and for quashing the proceeding of Session Trial under Gangsters Act - Gang chart has been prepared & approved by the Competent Authorities on very same day in a hasty manner and without application of mind – showing only two cases out of which one is not related with accused and in anr. case charge sheet was not forwarded by the police to the court concern as on date – in view of settled law i.e. Gangsters Act cannot be used as weapon to wreak vengeance to harass the accused – Petition allowed - impugned proceedings of session trial as well as Charge sheet & summoning orders are quashed with direction to the competent Authority to proceed against the petitioner as per law. (Para – 5, 8, 9)**

**Application (U/s 482) is allowed. (E-11)**

**List of Cases cited: -**

1. Ram Raheesh & anr. Vs St. of U.P. & ors. (2011 vol. 73 ACC 559)
2. Matchumari China Venkatareddy & ors. Vs St. of A.P. (1994 CrLJ 257)
3. Master Alias Ramzan Vs St. of UP (AIR online 2020 All 2766)
4. Ashok Kumar Dixit Versus St. of U.P., AIR 1987 All. 235

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. The petition has been filed under Section 482 CrPC for quashing proceeding of Sessions Trial No.6 of 2018 State versus Sonu alias Santosh and others vide case crime No.279 of 2017 under section 3(1) of U.P. Gangster & Anti Social Activities (Prevention) Act, 1986, P.S. Kotwali Nagar, district Sultanpur as regards the petitioner as well as the charge sheet dated 25.5.2018 and summoning order dated 28.5.2018.

2. Heard learned counsel for the petitioner and learned A.G.A. for the State.

3. Learned counsel for the petitioner is permitted to delete respondent No.2 from the array of parties, during course of the day.

4. Facts of the case are that a first information report was registered against the petitioner. As per the first information report, while the complainant was on patrolling duty on 27.5.2017, during patrolling, he came to know that Sonu Singh alias Santosh Singh resident of district Jaunpur is a desperate criminal and is having an organised gang. He is a gang leader and he along with Ajeet Yadav, Deepak Mishra, Sandeep Mishra,

Praeep Mishra, Raghunayak Dubey, Anil Pandey alias Santu and Ezajullah are active members of gang.

It has also been alleged that the gang has created a terror in districts Sultanpur, Jaunpur, Ghazipur and other districts and to earn economic and physical benefits, they are habitual for committing offences given under Chapters XVI, XVII and XXII of the Indian Penal Code. It is further alleged that the gang leader Sonu Singh alias Santosh Singh and Ajeet Yadav used to commit contract killing and on 8.2.2017 with active support of other members of the gang, they have committed murder of prestigious businessman Bharat Bhushan Mishra. To curve the increasing anti social activities of the gang, gang chart has been approved by the District Magistrate, Sultanpur on 26.5.2017.

5. Learned counsel for the petitioner submits that merely on the basis of two cases, i.e. Case Crime No.63 of 2017 under sections 302, 34, 120-B I.P.C., P.S. Kotwali Nagar, district Sultanpur and Case Crime No.153 of 2017 under sections 504, 506 I.P.C., P.S. Kotwali Nagar, district Sultanpur, U.P. Gangster & Anti Social Activities (Prevention) Act, 1986 has been imposed against the petitioner.

It is next submitted that in case Crime No.63 of 2017 (supra), the petitioner has been granted bail vide order dated 25.5.2017 and before the petitioner could be released from jail in compliance of the order, in order to nullify the bail order granted in favour of the petitioner, with ulterior motive, the police of police station Kotwali Nagar, district Sultanpur has falsely prepared the gang chart on

26.5.2017 which is one day after the bail order was passed, in a mechanical manner in utter haste and without examining the material on record by the authorities.

It is submitted that preparing of the gang chart in a mechanical manner and in haste and the manner in which it has been approved is evident from the fact that the Station Officer of police station Kotwali, district Sultanpur has forwarded the gang chart on 26.5.2017. The Circle Officer received the gang chart on the same day and he also signed it on 26.5.2017 which was forwarded to the Addl. Superintendent of Police, Superintendent of Police and District Magistrate, Sultanpur. All the authorities have signed the gang chart on the same day, including the District Magistrate, Sultanpur who approved it on the very same day, i.e. on 26.5.2017. It is submitted that the entire exercise has been done in haste and without application of mind.

In this context, learned counsel has relied on **Ram Raheesh and another versus State of U.P. and others (2011)73 ACC 559** in which this court has deprecated the practice of recommending and forwarding the gang chart and approving it on the same day and held that before granting approval to the gang chart, subjective satisfaction of the District Magistrate is required. Relevant paragraph 12 is extracted below :

*"12. Having considered the submissions made by the learned Counsel for the parties, we, prima facie are of the view that the gang chart has been approved in a mechanical manner by the District Magistrate and the said decision to lodge the FIR on that basis has been taken in haste. The haste with which, without examining the*

*material on record by the authorities concerned, Gang chart has been approved is evident from the fact that on 15.10.2010 Inspector, Kotwali prepared the Gang chart and submitted to the Circle Officer, Hardoi City for approval. On the same day, he referred the matter to the Additional Superintendent of Police, Hardoi, who in turn, on the same day referred the matter to the Superintendent of Police, Hardoi. The Superintendent of Police, Hardoi made a note dated 15.10.2010 "recommended" and forwarded the gang chart to the District Magistrate, who in his turn, approved the gang chart on the same day i.e. 15.10. 2010. Thus it cannot be said that the District Magistrate at any point of time recorded subjective satisfaction before imposition of the Gangsters Act."*

It is next submitted that in the gang chart, there are two cases imposed against the petitioner. In Case Crime No.153 of 2017 under sections 504, 506 I.P.C., the petitioner has no concern, at all. The case has wrongly been shown against the petitioner which again shows total non-application of mind of the district authorities. The fact that the petitioner has no concern with case crime No.153 of 2017 has been admitted by the State in para 12 of the counter affidavit.

As regards other case, i.e. case crime No.63 of 2017 (supra), charge sheet has been prepared on 25.5.2017 and according to 'Z' register, (register which records forwarding of the charge sheet to the concerned Judicial Magistrate), the same was forwarded to the Magistrate on 23.6.2017 and the cognizance was taken by the Magistrate on the same day, i.e. on 23.6.2017.

It is further submitted that according to para 12 of the circular dated

18.9.2012, issued by the Director General of Police, U.P. No.42 of 2012, only those cases should be shown in gang chart in which charge sheet has been filed.

In the case in hand, the gang chart was prepared on 26.5.2017 and at the time of preparation of gang chart, it is admitted case that no charge sheet was submitted before the court and was lying before the police authorities. It is submitted that out of two cases shown in the gang chart, as referred to above, the petitioner has no concern as regards Case Crime No.153 of 2017 (supra) and in other case, i.e. in Case Crime No.63 of 2017, charge-sheet was yet to be forwarded to the court below at the time of preparation of gang chart.

In support of his contention, learned counsel has relied on **Matchumari China Venkatarreddy and others** versus **State of A.P.** 1994 CrI. L.J. 257 in which it has been held that unless the court takes the charge sheet on record for examination for taking cognizance or not, it cannot be said that a police report (charge sheet) is filed as contemplated under section 173(2) CrPC.

In support of his argument, learned counsel has further relied on **Master Alias Ramzan** versus **State of U.P.** AIR Online 2020 All 2766 (relevant para 11), in which it has been held that only those cases shall be included in the gang chart in which the police has prepared charge sheet and the same has been filed before the court concerned.

It is submitted that in the present case, at the time of preparation of the gang chart on 26.5.2017, charge sheet in case crime No.63 of 2017 (supra) was still lying with the police authorities. It is submitted that the entire exercise of preparation of the

gang chart and lodging of the first information report is malicious which is evident from the fact that as per the first information report lodged on 27.5.2017 with the allegation that when the then Inspector Incharge of police Station Kotwali Nagar, district Sultanpur Mr. Chandrashekhar Singh was on patrolling duty, then he came to know about the gang of the petitioner and the fact that the petitioner is a gang leader, whereas one day prior to it, entire exercise of preparation of the gang charge was completed by the police authorities.

It is also submitted that although the gang chart was prepared and charge sheet has been filed in haste against the petitioner. It is submitted that in the entire investigation, the investigating officer did not show that while allegedly committing the offence, the petitioner gained any advantage like temporal, pecuniary or other advantage. No such material of any sort has been collected by the investigating officer. Counter affidavit filed by the State is also silent in this regard. .

Learned counsel has further relied on **Ashok Kumar Dixit** versus **State of U.P.** AIR 1987 All. 235 (relevant para 75), in which this Court has observed that the provision of the Gangsters Act cannot be used as a weapon to wreak vengeance to harass the accused.

6. Section 2 of the Gangsters Act defines the gang as under :

"2. ....

(a) .....

(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 (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 immovable 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 undertakings 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 Wildlife Protection Act, 1972;

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

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

(c) "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;

(d) "public servant" means a public servant as defined in Section 21 of the Indian Penal Code (Act No. 45 of 1860), or any other law for the time being in force, and includes any person who lawfully assists the police or other authorities of the State, in investigation or prosecution or punishment of an offence punishable under this Act, whether by giving information or evidence relating to such offence or offender or in any other manner;

(e) "member of the family of a public servant" means his parents or spouse and brother, sister, son, daughter, grandson, granddaughter or the spouses of any of them, and includes a person dependent on or residing with the public servant and a person in whose welfare the public servant is interested;

(f) words and phrases used but not defined in this Act and defined in the Code of Criminal Procedure, 1973, or the Indian Penal Code shall have the meanings respectively assigned to them in such Codes."

7. A perusal of the definition shows that if an offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code is committed, in order to gain any undue temporal, pecuniary, material or other advantage, then on account of such activity by use of

violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order, such a person is held to be indulged in anti-social activities. To bring the accused in the definition of Gangster, the very motive of such accused for committing the offence is relevant. The material collected by the investigating officer must reveal that there was a motive of making wrongful economic gain while committing the crime.

In the present case, this court has noted that although the accused are facing the charge of committing murder, however, there is no material to show that they have committed the crime in order to derive any wrongful economic gain.

8. It is admitted case of the State that the accused petitioner has no concern with case crime No.153 of 2017 (supra), as admitted in para 12 of the counter affidavit. It is also admitted case of the State that when the gang chart was prepared, charge sheet was not forwarded by the police authorities, rather it was forwarded to the court concerned on 25.6.2017. In this context, learned counsel has produced an information sought under Right to Information Act which is taken on record and it also shows that the charge sheet has been filed in the court on 23.6.2017 for the first time. Therefore, in view of the law laid down by this court in the case of **Master Alias Ramzan** (supra), the said charge sheet which was yet to be filed in the court could not have been considered for the purpose of preparation of the gang chart.

9. Considering the argument advanced by the petitioner's counsel as well as learned A.G.A. for the State as also going through the entire material on record and the case laws referred to herein above,

I am of the view that the petition is liable to be and is hereby allowed.

The impugned proceedings of Sessions Trial No.6 of 2018 State versus Sonu alias Santosh and others vide case crime No.279 of 2017 under section 3(1) of U.P. Gangster & Anti Social Activities (Prevention) Act, 1986, P.S. Kotwali Nagar, district Sultanpur as regards the petitioner as well as the charge sheet dated 25.5.2018 and summoning order dated 28.5.2018 are quashed. However, it shall be open for the competent authority to proceed against the petitioner as per law.

-----  
**(2022)06ILR A366**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: LUCKNOW 03.06.2022**

**BEFORE**

**THE HON'BLE AJAI KUMAR SRIVASTAVA-I,  
 J.**

Application U/S 482 No. 3457 of 2022

**Ashwani Kumar (Mishra) ...Applicant**  
**Versus**  
**State of U.P. & Anr. ...Opposite Parties**

**Counsel for the Applicant:**

Sri Tung Nath Tiwari, Sri Ramesh Kumar Dwivedi, Sri Sunil Srivastava

**Counsel for the Opposite Parties:**

G.A.

**(A) Criminal Law - Code of Criminal Procedure, 1973 -Section 231, 311, 313, 482:- Application for permitting the present accused to cross examine the PW-3 whose examination-in-chief had already been recorded twenty one year back & also cross-examined in detailed on behalf of other co-accused which was further adopted by the counsel for the present applicant & other co-accused - proceeding**