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Criminal Law – Constitution of India, 1950

- **Article - 226 - Criminal Procedure Code, 1973 - Section 2(wa), - Indian Penal Code, 1860 - Sections 34, 120-B, 302, 307**

- **U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 - Sections 2(b), 2(b)(1) to (XXV), 2(c), 3(1) - U.P. Gangster and Anti-Social Activities (Prevention) Rules, 2021 - Rule 5, 5(1), 5(2), 5(3)-(a),(b),(c),(d),(e), 16, 17, 18 & 24 - National Security Act, 1980 - Section 3(2)**

- Writ Petition – challenge to proceedings under the Gangster Act – FIR lodged under the Gangster Act - questioned for non-compliance with mandatory procedural safeguards as per Gangster Rules – petitioner in jail – plea raised that FIR was registered without adherence to Rule 5(3)(a), which mandates “due discussion” among officials prior to gang-chart preparation – reliance placed on precedents including *Sanni Mishra*, *Abdul Lateef*, and *Ram Manohar Lohia* – petitioner pointed out irregularities in gang-chart approval process and asserted that victims in base cases lack locus standi in Gangster Act proceedings – Court’s observed that - (i) judgments cited by the St. found to be inapplicable to the present context, (ii) victims have no right to oppose a writ petition under the Gangster Act, (iii) mandatory “due discussion” among competent authorities prior to gang-chart preparation was conspicuously absent, indicating lack of application of mind, (iv) FIR under the Gangster Act appeared to be lodged in a mechanical manner, with glaring inconsistencies such as branding the petitioner absconding despite his incarceration – court held that, (i) Branding someone a gangster requires careful procedural compliance, especially when the individual is already facing trial in base cases, (ii) petitioner was falsely implicated under the Gangster Act - Consequently, impugned FIR, charge-sheet and the gang-chart are quashed. (Para - 7, 17, 19, 20, 21)

Writ petition stands allowed. (E-11)

Writ Petition Allowed. (E-11)

List of Cases cited:

1. Sudha Singh Vs St. of U.P. & anr.- (2021) 4 SCC 781,
2. Daxaben Vs The St. of Guj. & ors. - 2022 Live Law (SC) 642,
3. Jagjeet Singh & ors. Vs Ashish Mishra @ Monu & anr.- 2022 Live Law SC 376,
4. Zeba Rizwan Vs St. of U.P. - AIR (2022) 4 All LJ 175,
5. Criminal Appeal No. 46 of 2009 (Pappu @ Dhani Ram Vs St. of U.P.) - 2024 0 Supreme (All) 258 (),
6. Criminal Misc. Bail Application No. 32226 of 2015 20 (Shahab @ Shahabuddin Vs St. of U.P.),
7. Criminal Misc. Writ Petition No. 9428 of 2024 (Rajeev Kumar @ Raju Vs St. of U.P. And 2 Others),
8. Criminal Misc. Writ Petition No. 12808 of 2023 (Rahul Saxena Alias Bhola/Bholu Vs St. of U.P. & Others),
9. Md. Rahim Ali @ Abdur Rahim Vs St. of Assam, 2024 SCC OnLine SC 1695,
10. Mohammad Wajid Vs St. of U.P., 2023 SCC OnLine SC 951,
11. Jay Kishan & ors. Vs The St. of U.P. & ors.- (2025) 3 SCR 65,
12. Ram Manohar Lohia Vs St. of Bihar & anr.- AIR 1966 Supreme Court 740,
13. Sanni Mishra Vs St. of U.P. & ors.- 2024 (1) ADJ 231 (DB),
14. Abdul Lateef Vs St. of U.P. & ors.- (2024) 128 ACC 876

(Delivered by Hon’ble Siddhartha Varma, J.

&

Hon'ble Madan Pal Singh, J.)

1. By means of the instant writ petition the First Information Report, lodged under Section 3(1) of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (*hereinafter referred to as the "Gangster Act, 1986"*), dated 22.11.2023 which had given rise to Case Crime No. 861 of 2023 has been challenged.

2. Brief facts which preceded the lodging of the first information report are as follows:

(i) On 10.08.2023, one Anuj Chaudhari was murdered and a first information report was lodged on the same day which gave rise to Case Crime No. 598 of 2023. It was registered under Sections 302, 307/34 of I.P.C. Four accused persons namely Amit Kumar, Pushpendra, Aniket and Prabhakar were named in the first information report. It was also alleged that there was involvement of some other persons about whom the first informant, Sandeep Singh did not know.

(ii) On 01.11.2023, the angle of conspiracy was brought forth and Section 120-B of the I.P.C. was added during investigation. The petitioner was implicated for his conspiratorial role on the recovery of some firearm. On 07.11.2023, Case Crime No. 818 of 2023 under Section 7/25 of the Arms Act was registered and thereafter the instant case under the Gangster Act, 1986 was got registered under Section 3(1) of the Gangster Act, 1986. The police, for the purposes of preventing any disturbance of public order had also under Section 3(2) of the National Security Act, 1980, detained the petitioner. The order of detention was passed on 03.12.2023.

3. In the instant case, we are concerned with the first information report which was lodged on 22.11.2023 under the Gangster Act, 1986. After the first information report was lodged, the instant writ petition was filed on the ground that the exercise as was required to be undertaken by the Authorities under the U.P. Gangster and Anti Social Activities (Prevention) Rules, 2021 (*hereinafter referred to as the "Gangster Rules, 2021"*) for coming to the conclusion that the applicant was in fact to be proceeded with as a gangster under Section 2(b) and (c) of the Gangster Act, 1986 was not followed. Learned counsel for the petitioner submitted that when the Gangster Act, 1986 was enacted, there was always an apprehension that the Authorities were misusing the Act in question and that when the accused in the base cases, on the basis of which the Gangster Act, 1986 was being invoked, was bailed out then the accused was invariably being implicated under the Gangster Act, 1986. Learned counsel for the petitioner has submitted that when the Gangster Act, 1986 was enacted there was always a fear that without prima facie concluding that a person was a gangster, the first information report was being lodged. Learned counsel for the petitioner states that the High Court by its orders dated 14.10.2003 and 12.11.2003 in the case of **Amarnath Dubey vs. State of Uttar Pradesh and Anr.** passed in **Criminal Misc. Writ Petition No. 6249 of 2003** had directed the State to take appropriate measures for the preparation of gang chart and for the streamlining of the investigation so that no accused was unnecessarily harassed. He pointed out to two communications of the Director General of Police dated 24.10.2003 and 20.11.2003 which were an effort to streamline the lodging of the first

information report under the Gangster Act, 1986. Thereafter, in that very writ petition, the Principal Secretary of the State of U.P. on 02.01.2004 issued certain directions with regard to the preparation of the gang chart in relation to the offences under the Gangster Act, 1986. Thereafter, learned counsel for the petitioner submits that the State ultimately promulgated the Gangsters Rules, 2021 and he specifically referred to Rules 5, 16, 17, 18 and 24 and therefore the same are being reproduced here as under:

“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).

16. Forwarding of Gang-Chart.—*The following manner shall be followed in the forwarding of Gang-Chart:*

(1) Forwarding of the gang-chart by the Additional Superintendent of Police: The Additional Superintendent of Police will not only take a quick forwarding action in the case but he will duly peruse the gang-chart and all the attached forms; and when it is satisfied that there is a just and satisfactory basis to pursue the case, only then will he forward the letter along with the recommendation given below on the gang-chart to the Superintendent of Police/Senior Superintendent of Police.

“Thoroughly studied the gang-chart and attached evidence. The basis of action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act,

1986 exists. Accordingly, forwarded with recommendation.”

(2) Forwarding of the gang-chart by the district police in-charge: When the gang-chart along with all the Forms is received by the Senior Superintendent of Police/Superintendent of Police with the clear recommendation of the Additional Superintendent of Police, he will also thoroughly analyze all the facts and when it is confirmed that all the formalities of the Act have been fulfilled and there is a legal basis for taking action in the case, then he should forward the gang-chart to the Commissioner of Police/District Magistrate stating that: “I have duly perused the gang-chart and attached forms and I am fully satisfied that all the particulars mentioned in the case are correct and there is a satisfactory basis for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. Accordingly, approved.”

(3) Resolution of the Commissioner of Police/District Magistrate: When the gang-chart is sent to the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of Police/District Magistrate and when he is satisfied that the basis of action exists in the case, then he will approve the gang-chart stating therein that: “duly perused the gang-chart and attached Forms in the light of the evidence attached with the gang-chart satisfactory grounds exist for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The gang-chart is approved accordingly.”

It is noteworthy that the words written above are only illustrative. There is no compulsion to write the same verbatim but it is necessary that the meaning of approval should be the same as the

recommendations written above, and it should also be clear from the note of approval marked.

17. Use of independent mind.—

(1) The Competent Authority shall be bound to exercise its own independent mind while forwarding the gang-chart.

(2) A pre-printed rubber seal gang-chart should not be signed by the Competent Authority; otherwise the same shall tantamount to the fact that the Competent Authority has not exercised its free mind.

18. Format of the Gang Chart.—

Gang Chart shall be sent only in the manner as given in Form No.—1 of these rules.

24. Expeditious Investigation.—

(1) The investigation of any offence under the Act shall, as far as possible, be completed within six months.

(2) In unavoidable circumstances, after the approval of the district police in-charge, a maximum extension of three months can be provided.

(3) In no case, can the investigation be extended for more than one year.”

4. Learned counsel for the petitioner thereafter referred to a few of the judgments of this Court which had expressed their dissatisfaction with regard to the implementation of the rules before the gang chart was prepared. They were **Sanni Mishra Vs. State of Uttar Pradesh and Ors.** reported in **2024 (1) ADJ 231 (DB)** and **Abdul Lateef vs. State of Uttar Pradesh and Ors.** reported in **(2024) 128 ACC 876**. Learned counsel for the petitioner referring to the judgment of **Abdul Lateef (Supra)** submitted that the High Court had taken note of the fact earlier also in various writ petitions that the

competent authority before the preparation of the gang chart was not exercising its independent mind. Referring to those judgments and also to **Abdul Lateef (Supra)** learned counsel for the petitioner submitted that subsequently Government Orders were issued by the Director General of Police dated 19.01.2024 and 21.01.2024 and he states that by those two Government Orders there was again an endeavour of the State Government to see that the Provisions of Rules 5(3)(a) and Rules 16 & 17 of the Gangster Rules, 2021 were followed. Learned counsel for the petitioner therefore submitted that when the State had to form an opinion that a gang was operating and therefore a gang chart comprising the names of the gangsters had to be prepared then it had to *prima facie* conclude that the group of persons who were to be termed as a gang were

(i) either acting collectively or singly,

(ii) by violence or threat or show of violence or intimidation or coercion or otherwise,

(iii) were having an object of disturbing public order or gaining any undue temporal pecuniary material or other advantage for the members of the gang either individually for themselves or for others and

(iv) to disturb the public order and to gain undue pecuniary material or other advantage they were indulging in anti-social activities enumerated in Section 2(b) (I) to (XXV) of the Gangster Act, 1986.

5. Learned counsel for the petitioner reiterated that since the preparation of the gang chart, after the Gangster Act, 1986 was enacted was being prepared very arbitrarily, the Gangsters

Rules, 2021 were framed and it was categorically stated that after the gang chart was prepared under Rules 5(1) of the Gangster Rules, 2021 by the concerned In-charge of Police Station/Station House Officer/Inspector for the purposes of initiating proceedings under the Gangsters Act, 1986, it had to 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 gang. He further submitted that thereafter the Rules 5(3) (a),(b),(c),(d) and (e) of the Gangsters Rules, 2021 had to be followed. He specifically relied upon the Rule 5(3)(a) of the Gangsters Rules, 2021 and stated that after the gang chart was prepared by the police under Rule 5(1) and 5(2) of the Gangsters Rules, 2021 the gang chart had to be presented to the District Head of Police after recommendation of the Additional Superintendent of Police and then the gang chart had to be approved after (i) due discussion, (ii) a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.

6. Learned counsel for the petitioner laid much stress on the fact that a person who was already suffering on account of the lodging of the base case had to be prevented from further unessential suffering and, therefore, before the lodging of the first information report under the Gangsters Act, 1986 and before the approval of the gang chart prepared by the police there had to be (i) due discussion, (ii) in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/ Superintendent of Police and thereafter the group of persons who were to be considered as gangsters and who were, as per the police, operating as a

gang had to be booked by the lodging of a first information report. Learned counsel for the petitioner submitted that due discussion was not an empty formality but had to be a full fledged exchange of views. Learned counsel for the petitioner relied upon the meaning of the word “due discussion” as had been given out in the Advanced Law Lexicon Dictionary, which was “The general consideration of a subject before a meeting, in which, as far as possible, all persons may be allowed to air their views”. Similarly, he referred to the Black’s Law Dictionary wherein “discussion” has been explained as “The act of exchanging views on something; a debate”

7. In the instant case, learned counsel for the petitioner states that the petitioner was, in connection with the Case Crime No. 598 of 2003, arrested on 01.11.2023 and that too in a conspiratorial role. Learned counsel for the petitioner therefore submitted that had there been a due discussion in a joint meeting of the officials as were named in Rule 5(3)(a) of the Gangsters Rules, 2021 then they would have definitely seen that the petitioner was already in jail since 01.11.2023 and there was absolutely no question of his indulging in any act as is contemplated under Section 2(b) (I) to (XXV) of the Gangster Act, 1986. Learned counsel for the petitioner submits that even if the petitioner had been implicated in a crime under Section 302, 307/34 and 120-B of I.P.C. there had to be a finding arrived at in the joint meeting that the petitioner by his acts had either singly or collectively, by violence or threat or show of violence or intimidation or coercion or otherwise participated in the anti-social activities named under Section 2(b) (I) to (XXV) of the Gangster Act, 1986 for the purposes of disturbing public order or of

gaining any undue temporal pecuniary material or other advantage for himself. Learned counsel for the petitioner states that to come to the conclusion that the petitioner was disturbing public order there had to be a finding with regard to it. Relying upon a judgment of Supreme Court in **Ram Manohar Lohia vs. State of Bihar And Anr.** Reported in **AIR 1966 Supreme Court 740**, learned counsel for the petitioner states that disturbance of public order had to be distinguished from a general disturbance of public tranquillity. He submitted that every illegal act which a person does and which is to be found in the list given under Section 2(b) (I) to (XXV) of the Gangster Act, 1986 would definitely cause some kind of disturbance to public tranquillity but whether it would result in the disturbing of public order had to be actually seen and this could have done by due discussion and deliberation as is conceived in Rule 5(3)(a) of the Gangsters Rules, 2021. Also, learned counsel for the petitioner submitted that if any undue temporal pecuniary material or other advantage had been gained by the petitioner by his acts of violence or threat or show of violence, then with regard to that also there should have been a finding in black and white by the officials named under Rule 5(3)(a) of the Gangsters Rules, 2021. Learned counsel for the petitioner states that the Rules 16 and 17 of the Gangsters Rules, 2021 definitely state that everything had to be done after due application of mind.

8. Learned counsel for the petitioner further relied upon a judgment of Supreme Court in **Jay Kishan and Ors. vs. The State of Uttar Pradesh and Ors.** reported in **(2025) 3 SCR 65** and specifically referred to paragraphs no. 22 to 27 and therefore the same are being reproduced here as under :

“22. However, the answer to the moot question would lie in the interpretation accorded to the definitions *supra* in conformity with the object and intent of the Act. This would have to be examined in juxtaposition with the FIR.

23. Scrutiny of the cases cited in the FIR to invoke the Act against the appellants *prima facie* reveal that the same substantially relate to and/or emanate from certain property and monetary transactions. The said transactions are primarily civil in nature. No doubt, addition of various Sections of the IPC in the three CCs may come under the ambit of the offences specified in Section 2(b) of the Act. However, undoubtedly, mere invocation of certain Sections of the IPC could not and would not preclude the Court from, in a manner of speaking, lifting the veil, to understand what actually lies beneath the material, which is sought to be made the basis for invoking the Act. In **Mohammad Wajid v State of Uttar Pradesh, 2023 SCC OnLine SC 951**, this Court stated:

“34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of

the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he

would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.’

(emphasis supplied)

24. Our reference *supra* to lifting the veil finds resonance in the ‘read in between the lines’ approach adverted to in **Mohammad Wajid** (*supra*). Ultimately, the right to life and liberty guaranteed under Article 218 of the Constitution of India cannot be overlooked only due to the reason that criminal cases have been registered against a person. It would be

plainly unwise to accord any unfettered discretion to the authorities concerned when it comes to invoking the Act. The more stringent or penal a provision, greater the emphasis and requirement for it to be strictly construed. In **Md. Rahim Ali @ Abdur Rahim v State of Assam, 2024 SCC OnLine SC 1695**, it was stated:

*'45. The debate has long been settled that penal statutes must be construed strictly [Tolaram Relumal v. State of Bombay (1954) 1 SCC 961 : (1955) 1 SCR 158 at Para 8; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd (2004) 1 SCC 391 at Paras 57-58; Govind Impex Pvt. Ltd. v. Appropriate Authority, Income Tax Dept. (2011) 1 SCC 529 at Para 11, and; Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company (2018) 9 SCC 1 at Para 24]. Equally, 'If special provisions are made in derogation to the general right of a citizen, the statute, in our opinion, should receive strict construction....' ...'*⁹

(emphasis supplied)

25. Compliance and strict adherence mean that only an eyewash by making allegations with a view to set up grounds to justify resort to the Act would not suffice. Material(s) must be available to gauge the probability of commission of the alleged offence(s). Necessarily, this would have to be of a level higher than being merely presumptive. We have perused the FIR-CC 92 of 2023, certain extracts from the English translation whereof read as under:

'...giving illusion of selling his plot, committing treachery, to extort money and land, amassing illegal money, for deriving unfair financial physical benefits through unfair means, earn money through anti-social activities with which they maintain them and their families. There is fear and terror of them in general public.

Due to their fear and terror, no person of public becomes ready to give witness against them and to resister case... The gang leader and the members of the gang have committed antisocial activities. This gang leader and his active members are involved in committing anti-social activities. Therefore, it is not justified for the above accused to remain free between general public. Keeping in view the crimes committed by them...' (sic)

26. While the three CCs find reference in the FIR-CC 92 of 2023, a glance at the afore-extract would exhibit a certain vagueness. In our considered opinion, the same would not meet the threshold requirement to enable recourse to the Act. Obviously, the allegations in the CCs are yet to be adjudicated finally by a competent court. We may hasten to add that not for a minute are we to be misunderstood to mean that the Act cannot be invoked basis pending cases. Of course, it can be. However, the case(s) against the person(s) qua whom the Act is to be invoked cannot be run of-the-mill – it must be serious. The severity required for the underlying case(s), we think, ought not to be judicially strait jacketed as a lot would turn on the specific peculiarities of each case. The situation would be very different though, if the allegations levelled in the underlying case(s) had been proved at trial - it could have been a good ground to sustain and justify action under the Act. In that scenario, we would have ordinarily refrained from any interdiction. In the present matter, for the three CCs, as trial has yet to commence/is continuing/has not been concluded, for the present, there remain only indications and open-endedness to the allegations. In other words, in praesenti, the underlying CCs do not appear to fall within the net of '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', as mandated under Section 2(b) of the Act. The situation, thus, would clearly operate to the benefit of the appellants. As the Ccs referred to in the FIR are three, we are not required to deal with **Shraddha Gupta** (supra).*

27. The matter is capable of being looked at from a different lens. The complainant(s)/informant(s) in the three Ccs have resorted to their remedies under criminal law. In fact, a fourth CC, as informed by learned counsel for R5, also stands lodged against the appellants. Assuming that all the allegations in the three (or four, including the CC not referred to in the FIR) CCs are correct, there is no mention of any instance, post-registration of the said CCs, of the appellants implementing/acting on the said alleged threats. The complainant(s)/informant(s) have also resorted, where required, to civil proceedings. In the overall picture that emerges from the above, resort to the Act by the State seems premature and uncalled for."

9. In the instant case, the first information report itself had been lodged on the basis of the fact that the petitioner alongwith the other gangsters in his gang was indulging in offences like theft and was consequentially earning money. He submits that a bald allegation like this in fact was an arbitrary act on the part of the police. He further submits that when the petitioner had stated in paragraph 16 of this writ petition that no provisions of Rule 5(3)(a) of the Gangster Rules, 2021 were followed then, in answer, a very casual reply had been given. For ready reference the paragraph no. 16 of the writ petition and paragraph no. 21 of the counter

affidavit, which was the reply to the paragraph no. 16 of the writ petition are being reproduced here as under:

“(Paragraph no. 16 of the writ petition)

16- यह कि उत्तर प्रदेश गिरोह बन्द एवं समाज विरोधी क्रिया-कलाप (निवारण) नियमावली 2021 के नियम 5 (i) (ii) (iii) का अनुपालन नहीं किया गया है। इस सन्दर्भ में यहाँ यह विशिष्ट रूप से उल्लेखनीय है कि नियमावली के नियम 3 में यह स्पष्ट रूप से वर्णित / उपबन्धित है कि गिरोहचार्ट संक्षिप्त रूप में नहीं बल्कि पुलिस आयुक्त/ जिला मजिस्ट्रेट / वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक की संयुक्त बैठक में सम्यक रूप से विचार-विमर्श के पश्चात् अनुमोदित किया जावेगा, परन्तु याची के प्रकरण में जिला मजिस्ट्रेट/वरिष्ठ पुलिस अधीक्षक / पुलिस अधीक्षक की संयुक्त बैठक नहीं हुई है, यह तथ्य प्रस्तावना संस्तुति व अनुमोदन के परिशीलन से भली प्रकार सिद्ध व प्रमाणित होता है।”

“(Paragraph no. 21 of the counter affidavit)

21- यह कि याचिका का प्रस्तर सं0-16 में वर्णित कथन असत्य एवं निराधार है, स्वीकार नहीं है, इसके उत्तर में यह कहना है कि वरिष्ठ पुलिस अधीक्षक मुरादाबाद द्वारा पुलिस अधीक्षक (नगर), जनपद मुरादाबाद क्षेत्राधिकारी कार्यालय / नोडल अधिकारी, जनपद मुरादाबाद एवं प्रभारी निरीक्षक, थाना सिविल लाईन्स, मुरादाबाद की आख्या व संलग्न साक्ष्य / प्रपत्र का गहन अध्ययन व परिशीलन कर उत्तर प्रदेश गिरोहबन्द और समाज विरोध क्रिया-कलाप (निवारण) अधिनियम, 1986 के अधीन की गयी कार्यवाही की संस्तुति के आधार पर गिरोह चार्ट डिस्ट्रिक्ट मजिस्ट्रेट, मुरादाबाद द्वारा अनुमोदित किया गया है। अतः उत्तर प्रदेश गिरोहबंद एवं समाज विरोधी क्रियाकलाप नियमावली, 2021के नियम-5 का पूर्णतः अनुपालन किया गया है।”

10. Learned counsel for the petitioner stated that despite the fact that no casualness had to be there and everything, as per Rule 17 of the Gangsters Rules, 2021, had to be done after full application of mind, the respondents i.e. State Authorities while filing the counter affidavit in paragraph no. 28 had stated that the petitioner had indulged in activities which were to be found in Chapter XII and

XVII of the I.P.C. Further, it was stated in paragraph no. 28 and much emphasis was laid on it that the petitioner was being searched for and that he was absconding and was not cooperating in the investigation. Learned counsel for the petitioner since has relied upon paragraph no. 28 of the counter affidavit, the same is being reproduced here as under:

“28- यह कि याचिका का प्रस्तर सं0-25 में वर्णित कथन याची ने मात्र अपने बचाव में किया है, अस्वीकार है। इसके उत्तर में यह कहना है कि याची व अन्य सहअभियुक्तगण का एक संगठित गिरोह है, जिसका वह सक्रिय सदस्य है, जो अपने तथा अपने साथियों के आर्थिक व भौतिक लाभ पूर्ति के उद्देश्य से भारतीय दण्ड विधान के अध्याय 12 व 17 में वर्णित अपराध कारित करने का अभ्यस्त है तथा याची के विरुद्ध गैंगस्टर एक्ट की कार्यवाही किये जाने के प्रथम दृष्टया साक्ष्य पाये जाने पर गैंगस्टर एक्ट में आरोपित किया गया है। याची व अन्य सहअभियुक्तगण द्वारा कारित घटना को देखते हुए थाना क्षेत्र व अन्य थाना क्षेत्र में भय व आतंक का माहौल व्याप्त हो गया है जिसके कारण जनता का कोई गवाह इनके विरुद्ध गवाही व प्रथम सूचना रिपोर्ट पंजीकृत कराने का साहस नहीं कर पाता है जिसका समाज में स्वच्छंद विचरण करना जनहित में नहीं है।

इसके अतिरिक्त यह कहना है कि प्रश्नगत अभियोग की विवेचना में याची द्वारा सहयोग किये जाने हेतु उसकी तलाश की जा रही है, परन्तु याची द्वारा विवेचना में सहयोग नहीं किया जा रहा है और वह फरार चल रहा है। प्रश्नगत अभियोग की विवेचना प्रचलित है और साक्ष्य संकलन कार्यवाही की जा रही है तथा आरोप पत्र साक्ष्य संकलन के अभाव में अभी तक प्रेषित नहीं गया है।”

11. Learned counsel for the petitioner states that petitioner was in jail ever since 01.11.2023 in connection with the Case Crime No. 598 of 2023, under Sections 302, 307/34 and 120-B of I.P.C. and therefore for the respondents to say that he was absconding and he was not cooperating in the investigation was a blasphemy and for this he submits that not only the first information report be quashed but the deponents of the counter affidavit be also punished and be brought to book.

12. Learned counsel for the petitioner thereafter submitted that the petitioner was a peace loving law abiding individual and that he was a teacher in the Junior High-School, Mahalakpur Vidyalay, Moradabad. He was definitely not a gangster and that he had no connection with Prabhakar Singh who was allegedly the gang leader. In fact, he was not even named in the first information report which had given rise to Case Crime No. 558 of 2023. Learned counsel for the petitioner, therefore, states that the lodging of the first information report had to be preceded by a gang-chart which in its turn had to be preceded by a joint meeting. In the instant case since neither there was a joint meeting nor a gang-chart was prepared according to the rules, the first information report itself was a waste paper. Learned counsel for the petitioner submitted that when the gang-chart was approved without being preceded by a joint meeting then even the approval of the gang-chart was a waste paper. Since the District Magistrate, Moradabad and the Senior Superintendent of Police, Moradabad had put their signatures to their approval without any dates and the Superintendent of Police had approved the gang-chart on 19.11.2023, while the Nodal Officer had so approved the gang-chart on 17.11.2023, learned counsel for the petitioner, therefore, stated that neither was there any prior discussion nor was the gang-chart prepared as per Rules 16 and 17 of the Gangster Rules, 2021. Learned counsel for the petitioner stated that the judgment of this Court dated 28.08.2023 passed in **Criminal Misc. Writ Petition No. 12808 of 2023 (Rahul Saxena Alias Bhola/Bholu vs. State of U.P. And 3 Others)** was not applicable in the case of the petitioner as it had only stated that there was no requirement of any notice of joint meeting to the petitioner. He submits that

definitely no notice was mandatory to the petitioner but what was mandatory, was that a joint meeting which ought to have preceded the preparation of the gang-chart and in the instant case, the respondents had not come up with the case that the gang-chart was preceded by a “due discussion”.

13. Similarly, learned counsel for the petitioner had also invited the attention of the Court to the judgment of this Court dated 07.06.2024 passed in **Criminal Misc. Writ Petition No. 9428 of 2024 (Rajeev Kumar @ Raju vs. State of U.P. And 2 Others)** and had submitted that the judgment had stated that if the dates were not mentioned in the gang-chart under the signatures of signing authorities, then it did not mean that a joint meeting had not preceded the preparation of the gang-chart. Learned counsel for the petitioner stated that this judgment did not apply to the case of the petitioner as it had only mentioned about the signatures on the approval of the gang-chart. There was no mention of the joint meeting before the preparation of the gang-chart.

14. Upon being made aware of the fact that Sri Krishna Kant Pandey, who was a counsel for the victim in the base cases, was opposing the writ petition, learned counsel for the petitioner submitted that in the instant case, no victim had come forward to get the first information report lodged. Learned counsel for the petitioner relying upon an order of this Court dated 13.07.2016 passed in **Criminal Misc. Bail Application No. 32226 of 2015 (Shahab @ Shahabuddin vs. State of U.P.)** and specially on the following:

“The above case law is not applicable to the facts of this bail application. I am of the considered view

that Smt ,Rahimunnisha, whose son and nephew were allegedly murdered by the applicant and others does not come within the category of victim of this case under section 2/3 of U.P. Gangster Act and so the learned counsel of Smt. Rahimunnisha, Sri Deepak Dubey, has no locus standi, to be heard in this bail application.”

Submitted that the victim had no locus standi to oppose the petition.

15. Similarly, the learned counsel for the petitioner relying upon paragraph 26 of a judgment of the Allahabad High Court passed in **Criminal Appeal No. 46 of 2009 (Pappu @ Dhani Ram vs. State of U.P.)** reported in **2024 0 Supreme (All) 258** submitted that under the Gangster Act, 1986 a victim in the base case was not a victim in the first information report under the Gangster Act, 1986. He relied upon paragraph no. 26 of that judgment and the same is being reproduced here as under:

“26. The criminal jurisprudence has developed that the victim is being accorded proper opportunity of being heard not only at the various stages of trial and even at the stage of disposal of bail. But the story herein is a bit different. The matter in question is under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and not under the IPC or any other Special Act and the complainant of the said case is the S.O. of the police station-Fatehpur Chaurasi, District-Unnao. So the counsel for the victim of the predicate offence i.e. Case No.90 of 1998 does not come within the category of “victim” pertaining to the present case, thus, the present prosecution has been initiated against the appellant only on the basis of gang chart, which records the criminal history of the appellant of various nature.”

Learned counsel for the petitioner also, relying upon **AIR (2022) 4 All LJ 175 (Zeba Rizwan vs. State of U.P.)**, has submitted that in fact in a case under the Gangster Act, 1986 there is no victim as is defined under Section 2(wa) of Cr.P.C.

16. Sri Krishna Kant Pandey has appeared in the Court and, despite the fact that he was appearing for a victim in the base cases, we allowed him to assist the Court. He has argued that the victim had a *locus standi* to appear in the case and for that matter, he relied upon a judgement of Supreme Court in **(2021) 4 SCC 781 (Sudha Singh vs. State of Uttar Pradesh and Anr.)**. He also relied upon a judgment of the Supreme Court reported in **2022 Live Law (SC) 642 (Daxaben vs. The State of Gujarat & Ors.)**. Similarly, he has relied upon another judgment of the Supreme Court in 2022 Live Law SC 376 (Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr). From the judgment at hand he relied upon paragraph no. 4 of it and the same is being reproduced here as under:

“4. On 03.10.2021, an annual Dangal (wrestling) competition was being organised by Ashish Mishra @ Monu, i.e., Respondent Accused. The program was to be attended by Mr. Ajay Mishra, as well as Mr. Keshav Prasad Maurya, Deputy Chief Minister of the State of Uttar Pradesh, for whom a helipad was constructed in the playground of Maharaja Agrasen Inter College, Tikonia. A crowd of farmers started gathering near the helipad in the morning of 03.10.2021. The route of the Chief Guest was thus changed to take him by road. But the changed road route was also passing in front of the Maharaja Agrasen Inter College, where the protesting farmers had been gathering in large numbers. This led the authorities to

take recourse to yet another alternative way to reach the Dangal venue.”

17. Even though from the cases which Sri Krishna Kant Pandey relied upon, we are of the view that the victim had no right to oppose a petition under the Gangster Act, 1986, we are noting down his submissions. Sri Krishna Kant Pandey has submitted that the petitioner was not such a person who could be made to go free after the quashing of the F.I.R. He submitted that he was a dreaded criminal and, therefore, the first information report under the Gangster Act, 1986 be not quashed. He also submitted that he was a threat to the public peace and he submitted that as per the first information report itself he was definitely gaining undue temporal pecuniary material or other advantages for himself by indulging in various crimes as were enumerated under Section 2(b) (I) to (XXV) of the Gangster Act, 1986. Sri Pandey, however, could not, despite various opportunities granted to him, show to the Court as to whether there was any due discussion before the preparation of the gang-chart and whether the gang-chart was prepared as per Rule 16 of the Gangster Rules, 2021.

18. Sri Amit Sinha, learned Additional Government Advocate made his submissions and submitted that the lodging of the first information report was a result of a due exercise undertaken by the State. In fact, the first information report was to be followed by an investigation and after the police would submit charge-sheet, the trial would commence and only thereafter punishment would be given to the petitioner. Learned Additional Government Advocate also submitted that a charge-sheet in the case had also been forwarded. He submitted that it was not a case under

the preventive detention and that a full fledged trial still awaited the petitioner.

19. Having heard learned counsel for the parties, we are of the view that a “due discussion” ought to have preceded the preparation of the gang-chart. The Gangster’s Act, 1986 was enacted to deal with those criminals who commit crime by forming a gang or with regard to those who assist or abet the illegal activities of a gang which indulges in offences which are mentioned under Section 2(b) (I) to (XXV) of the Gangster Act, 1986. Not only that, if a person was a gangster, a finding had to be arrived at that he was either collectively or singly by violence or by threat or show of violence or by intimidation or coercion disturbing public order or was gaining any undue temporal pecuniary material or other advantages for himself or for the gang. The alleged gangster in the instant case as per the Act itself was already a criminal in other offences and for those offences, he was already facing trial. To brand a person as a gangster and to lodge a first information report in that regard, the Gangster Act, 1986 and the Gangster Rules, 2021 had provided certain precautionary measures and chief amongst them was that before a gang-chart was to be prepared a definite “due discussion” had to take place between the officials as per Rule 5(3)(a) of the Gangster Rule, 2021. Further, as per the Rules and the Act the gang-chart had to be thereafter prepared and approved by the officials as per Rule 16 of the Gangster Rule, 2021 after absolute application of mind. Also, it had to be seen that simply because a person, who was an accused in the base cases, had been bailed out, was not troubled by a further implication under the Gangster Act, 1986 and for this purpose a complete machinery had been provided under the Act and the

Rules and chief amongst those machineries was a “due discussion” amongst the officials.

20. In the instant case, we find that absolutely no “due discussion” had taken place. In fact even while counter affidavit was filed, it was so done without any application of mind. The paragraph no. 21 of the counter affidavit though had stated that the approval of the gang-chart was there but nothing had been said about the due discussion which had to precede the preparation of the gang-chart. Also, we find that the first information report had been lodged in the most casual manner. The base case had mentioned about the conspiratorial role of the petitioner in a murder case but the first information report in the instant case of Gangster Act had stated that he was involved in “theft etc”. Also, we find that though the petitioner was in jail since 01.11.2023 but in paragraph 28 of the counter affidavit it had been stated that the petitioner was absconding and that he was not participating in the investigation despite the fact that he was already in jail in the base case. All this definitely goes to show that the petitioner was being falsely implicated under the Gangster Act, 1986. There was definitely no “due discussion” as per Rule 5(3)(a) of the Gangster Rule, 2021 and also the gang-chart was not prepared after due application of mind.

21. For the reasons as have been stated above, we are of the view that the first information report dated 22.11.2023 which gave rise to Case Crime No. 861 of 2023, registered under Sections 3(1) of the Gangster Act, 1986 deserves to be quashed. Also, since in the writ petition itself the prayer was made with regard to the quashing of all consequential orders etc., we are of the view that the charge-sheet

which has been forwarded by the police after due investigation be also quashed. Still further, we are of the view that even the gang-chart, which was prepared without any due discussion and without any application of mind, deserves to be quashed and, therefore, the gang-chart which is made the basis of the first information report is also quashed.

22. The writ petition stands allowed.

(2025) 5 ILRA 224

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 22.05.2025

BEFORE

**THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Criminal Misc. Writ Petition No. 21016 of 2024

Mohammad Zubair ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Devaang Savla, Rajrshi Gupta, Tanmay Sadh

Counsel for the Respondents:

Kapil Tyagi

Criminal Law – Constitution of India, 1950 - Article 19(1)(a), 19(2), 21 & 226 - Bhartiya Nyaya Sanhita (BNS) – Sections 132, 132(1), 221, 152, 191(2), 193(3), 196, 221, 228, 298, 299, 302, 351, 351(2), 353 & 356(3) - - The Information Technology Act, 2000 - Sections 66 - Writ Petition – seeks to quash FIR – alleging that petitioner’s tweets, including a video, incited violence and led to an attack on Dasna Devi Temple – plea taken that FIR is a misuse of law aimed at curbing dissent, asserting that tweets

are protected under Article 19(1)(a) and lacked any intent to provoke rebellion or separatism – Section 152 BNS added without proper investigation – St.’s counsel opposed plea, contending that petitioner’s influential tweets incited subversive activities and endangered national integrity, thereby attracting restrictions under Article 19(2) – St. insists FIR involves serious allegations and cannot be quashed in part – Court finds that – (i) India is a country with diverse religions, tribes and races, and tweets made by petitioner, if misunderstood by any section of society, could potentially affect public harmony, – (ii) the “test of fire in a crowded theatre” is not applicable in the present case, – (iii) while Section 152 BNS serves as a safeguard for the St. against seditious activity, whether petitioner’s St.ments excited secession, armed rebellion or encouraged separatist sentiments is a matter to be determined through investigation, – (iv) investigating agencies are best equipped to examine the allegations and the truth is yet to emerge, – (v) interim protection granted earlier was not misused by petitioner – Court held – a false implication may prejudice rights guaranteed under Article 21, hence, refrains from interfering at this stage – direction issued to continue investigation in the instant case, with protection that petitioner shall not be arrested or harassed in any manner pursuant to the FIR, till conclusion of investigation, subject to full cooperation – writ petition disposed of with further directions that petitioner shall remain available for investigation and shall not leave the country. (Para – 44, 45, 46, 49, 50, 52, 53, 55)

Writ Petition Allowed. (E-11)

List of Cases cited:

1. Tejender Pal Singh @ Timma Vs St. of Raj. (S.B. Criminal Misc. (Pet.) No.5005/2024 decided on 16.12.2024),
2. Javed Ahmad Hajam Vs St. of Mah. & anr.- (2024) 4 SCC 156,
3. Mohammad Wajid & anr.Vs St. of U.P. & ors.- 2023 SCC Online SC 951,
4. St. of Har. Vs Bhajan Lal, reported in 1992 Supp (1) SCC 335,