

ii) The applicant will not pressurise/intimidate with the prosecution witnesses.

iii) The applicant will appear before the trial court on the date fixed.

[61] In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

[62] It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(2025) 5 ILRA 1828
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2025

BEFORE

THE HON'BLE MAHESH CHANDRA
TRIPATHI, J.
THE HON'BLE ANIL KUMAR-X, J.

CrI. Misc. Writ Petition No. 8881 of 2025

Jitendra Paswan ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sri Ajit Narain Mishra

Counsel for the Respondents:

G.A.

Criminal Law-The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986-Sections 2 & 3(1) -The Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021- Rule 5 (3) (A)---It is not disputed that the earlier writ petition was allowed on procedural grounds and

that liberty was granted to initiate fresh proceedings in accordance with law. From the record, it appears that the authorities have now complied with the requisite procedural mandates including completion of base case investigations, preparation of gang-chart, convening of a joint meeting, approval by the District Magistrate after application of mind. The petitioner has a long-standing criminal history and the allegations pertain to organized crime across multiple districts---No procedural illegality or arbitrariness has been demonstrated in the initiation of the present proceedings under the Act, 198.

Petition dismissed. (E-15)

List of the cases referred:-

1. Dharmendra Kirthal Vs St. of U.P. & ors.2013 INSC 510
2. Ashok Kumar Dixit Vs St. of U.P. AIR 1987 All 235
3. Vinod Bihari Lal Vs St. of U.P. 2023 SCC Online All 143

(Delivered by Hon'ble Mahesh Chandra
 Tripathi, J.

&

Hon'ble Anil Kumar -X, J.)

1. Heard Sri A.N. Mishra, learned counsel for the petitioner and Sri Paritosh Malviya, learned AGA-I for the State-respondents.

2. The present writ petition has been filed seeking quashing of the impugned First Information Report dated 13.04.2025, registered as Case Crime No.0244 of 2025, under Sections 3(1), 2(b) (i), 2 (b) (xi), and 2 (b) (xxv) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at Police Station Chiluatal, District Gorakhpur, in respect of the petitioner. A further prayer has been made for issuance of a direction

restraining the respondents from arresting the petitioner pursuant to the said FIR.

3. The brief facts as per prosecution case are that the fourth respondent has lodged the impugned FIR against the petitioner and six other persons with allegation that one Ram Pravesh Rajbhar is leader of gang and the petitioner is a member of the aforesaid gang. The members of the gang have formed an organized criminal gang and are actively operating at the district level. This gang, for their financial and worldly gain, on 16.05.2022, assaulted a person and looted ₹7 lakhs near DPS School, Maniram, resulting in Case Crime No.230/2022 under Section 394 IPC being registered at the local police station. During the investigation, based on the arrest of the accused and supporting evidence, Section 394 IPC was replaced with Section 395 IPC, and charge sheets were submitted on 14.09.2022 and 31.03.2023. The FIR further discloses that due to criminal acts of the accused, a sense of fear prevails among the general public, and the society is being adversely affected. After due examination of the records and the crimes committed by the gang, all documents were prepared and sent to the Nodal Officer by the then Officer-in-Charge Sanjay Mishra. The Nodal Officer prepared the gang chart and forwarded it for further action and approval. The said gang chart was approved in a joint meeting of the Senior Superintendent of Police and the District Magistrate. In the offences listed in the gang chart the charge sheets have been filed which are pending consideration before the competent court. The free movement of this gang is not in the interest of society. It is extremely necessary to take action against the gang under the Act, 1986.

4. The impugned FIR is assailed primarily on the ground that the allegation

contained in the FIR is totally false and baseless. Earlier, for the same set of allegations, gangster proceedings were initiated against the petitioner and other co-accused, culminating in registration of FIR dated 28.12.2023, in Case Crime No. 0752 of 2023, under Section 3(1) of the Act, 1986 at the same police station. The FIR was challenged in Criminal Misc. Writ Petition No.4991 of 2024, which was allowed by a Division Bench of this Court on the ground that the Competent Authority had failed to apply its independent mind while recommending and approving the gang-chart, in violation of Rule 5 (3) (A) of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2012. The gang-chart was forwarded and approved by the District Magistrate, Gorakhpur in a summary manner, without convening a joint meeting.

5. Learned counsel for the petitioner submits that similar procedural lapses exist in the present proceedings also, which warrants interference by this Court. He submits that while recommending and approving the gang-chart, the Competent Authority has utterly failed to apply its independent mind. The authorities have again failed to comply with the provisions enumerated in the Rules, 2021 thereby rendering the invocation of the Act, 1986 against the petitioner as unsustainable. He has placed reliance upon Rule 5(3) (a) of the Rules, 2021, which provides that 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. He submits that Rule 17 of the Rules, 2021 provides that the Competent Authority shall be bound to exercise its own independent mind while forwarding the gang-chart but in the

present case, they have not applied their own mind.

6. Per contra, learned AGA-I has vehemently opposed the writ petition and submits that the Division Bench, while quashing the earlier FIR, had granted liberty to the State to initiate fresh proceedings strictly in accordance with law. He submitted that the authorities have now fully complied the Rules, 2021. A joint meeting was duly convened on 12.03.2025, wherein the District Magistrate opined that sufficient material existed to invoke the Gangsters proceeding against the petitioner. A gang-chart was accordingly prepared after considering the relevant base cases. He further submitted that the petitioner has a criminal history of six cases and is alleged to be a member of a gang active in multiple districts including Gorakhpur, Siddharth Nagar, and Maharajganj.

7. Heard rival submissions and perused the record.

8. Before delving into the facts of the instant case, it is apposite to consider the relevant definition of "Gang" given under Section 2 (b) of the Act, 1986, which reads as under:

"2(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, 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 or the Narcotic Drugs and Psychotropic Substances Act, 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, or

(vi) offences punishable under Section 3 of the Public Gambling Act, 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, 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 The 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. "

9. The origin of the Act, 1986 was a genesis of 'desperate times need, desperate measures'. It was enacted to curb the rise of organized crime and anti-social behaviour in the State and to facilitate deterrent action against repeat offenders and criminal syndicates, whereas the Rules, 2021 have been promulgated under the Act, 1986, which provides detailed procedure for preparing a gang-chart, including obtaining approvals from designated officers and ensuring the base cases are

supported by charge sheets and recovery memos. Rule 5 (3) (A) mandates the convening of a joint meeting before the chart is approved by the District Magistrate or Commissioner of Police.

10. The primary objective of the Act, 1986 is to prevent organized crimes and gangster activities within the State of Uttar Pradesh. It aims to dismantle criminal networks and prevent the growth of illicit activities. The Act, 1986 empowers law enforcement agencies and State authorities to take necessary measures against gangsters to ensure the safety and security of the citizens. It mandates provisions for the identification, tracking, and preventive detention of repeat offenders. By detaining repeat offenders, it seeks to prevent recidivism.

11. The Act, 1986 also contains adequate provisions, which allow for the confiscation and forfeiture of any property obtained illegally or as a result of criminal activity under Section 14. The provisions are intended to target the financial gains of the gangsters, weaken their operations and deter others from engaging in similar anti-social activities. Under Section 5, the Act, 1986 also provides to constitute Special Courts for the speedy trial of offences under this Act to guarantee swift justice to the victims. The act aims at fostering a safe and peaceful environment in Uttar Pradesh.

12. The Act, 1986 had stood the test of constitutional validity in the case of ***Dharmendra Kirthal vs. State of U.P. and Ors.***³ wherein the Apex Court, while dealing with the question of constitutional validity of the provisions of Act, 1986 (Act 7 of 1986) being violative of Articles 14, 21, 22(4) and 300A of the Constitution of India, has held:-

"44. It is a crime of a different nature. Apart from normal criminality, the accused is also involved in organized crime for a different purpose and motive. The accused persons under the Act belong to altogether a different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is mandated to be held by the special courts in an expeditious manner. The intention of the legislature is to curb such kind of organized crimes which have become epidemic in the society. In Kartar Singh (supra), the majority has said, "Legislation begins where Evil begins". The legislature, as it seems to us, being guided by its sacrosanct duty to protect the individual members of society to enjoy their rights without fear and see that some people do not become a menace to the society in a singular or collective manner, has enacted such a provision. In this context, we may refer with profit to the authority in The Works Manager, Central Railway Workshop, Jhansi v. Vishwanath and Ors. (1969) 3 SCC 95, wherein a three-Judge Bench, though in a different context, has observed that certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms. We have referred to the said observations only to highlight how the legislature in a welfare State immediately steps in for social reforms to eradicate social vices. Similarly, sometimes it is compelled to take steps to control the frenzied criminal action of some anti-social people. In the case at hand it can be stated with certitude that the legislature has felt that there should be curtailment of the activities of the gangsters and, accordingly, provided for stern delineation with such activities to establish stability in society

where citizens can live in peace and enjoy a secured life. It has to be kept uppermost in mind that control of crime by making appropriate legislation is the most important duty of the legislature in a democratic polity, for it is necessary to scuttle serious threats to the safety of the citizens. Therefore, the legislature has, in actuality, responded to the actual feelings and requirements of the collective."

13. In **Ashok Kumar Dixit v. State of U.P.**⁴ it was held by this Court that for taking action under the Act, 1986 the authority must be prima facie satisfied regarding the involvement of the accused and an overt act is not mandatory, a reasonable and proximate connection between the occurrence and the activity of a person sought to be apprehended is enough to prove active complicity. For ready reference, the relevant portion of the judgement is reproduced herein under.

"For booking a person under the provisions of the Act the authorities have to be prima facie satisfied that a person has acted. The authority has to be satisfied that there is a reasonable and proximate connection between the occurrence and the activity of the person sought to be apprehended and that such activities were to achieve undue temporal, physical, economic or other advantage. There need not be any overt or positive act of the person intended to be apprehended at the place. It is enough to prove active complicity which has a bearing on the crime."

14. In **Vinod Bihari Lal vs. State of UP**⁵ it has been recently held by the Apex Court that a gang can be recognized under Section 2 (b) even if there is no actual disturbance of public order, as long as the

gang's objective is to obtain undue advantage through anti-social acts. For ready reference, the relevant portion is reproduced herein under.

"So far as the disturbance of public order is concerned, as already noticed hereinabove, a group of persons can have two alternate objects to "For booking a person under the provisions of the Act the authorities have to be prima facie satisfied that a person has acted. The authority has to be satisfied that there is a reasonable and proximate connection between the occurrence and the activity of the person sought to be apprehended and that such activities were to achieve undue temporal, physical, economic or other advantage. There need not be any overt or positive act of the person intended to be apprehended at the place. It is enough to prove active complicity which has a bearing on the crime." qualify as a gang under Section 2(b) of the Act of 1986: They may have for their object the disturbance of public order or the gaining any undue temporal, pecuniary, material or another advantage for a member of the group or any other person. All that is necessary is that to attain either of the two objects, the group of persons, acting singly or in unison, should indulge in one of the enumerated anti-social activities envisaged under various clauses of sub-Section (b) of Section 2 of the Act of 1986."

15. 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, 1986 and this would have to be examined in juxtaposition with the FIR.

16. In the present case, it is not disputed that the earlier writ petition was

