

Neutral Citation No. - 2025:AHC:79679

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Reserved

Court No. - 76

Case :- APPLICATION U/S 482 No. - 20422 of 2024

Applicant :- Vinay Kumar Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Arvind Kumar Mishra, Devendra Mishra

Counsel for Opposite Party :- G.A.

AND

Case :- APPLICATION U/S 482 No. - 32108 of 2024

Applicant :- Rajaram Kesharwani And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Afzal Ahmad Khan Durrani

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Arvind Kumar Mishra and Shri Afzal Ahmad Khan Durrani, learned counsel for the applicants, learned Additional Advocate General assisted by Shri Vibhav Anand Singh, learned A.G.A. for the State-respondents, in both the applications, and perused the material on record.

2. The instant applications have been preferred challenging the entire proceedings arising out of Case Crime No.161 of 2022, under section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 registered at Police Station Karari, District Kaushambi¹, pending trial in the Court of learned Additional Sessions Judge/FTC-1st, Kaushambi, as well as cognizance order dated

¹ *Hereinafter referred to as the FIR*

24.1.2024 passed by learned Additional Sessions Judge/FTC-1st, Kaushambi.

3. The applicants' case emerges from the approval of the gang-chart, and on perusal it's observed that the gang leader Ajay Kumar Saroj, son of Jeete resident of Goraju Police Station Paschim Sarira, District Kaushambi, along with his co-accused members; **(i)** Rahul, son of Chhidda, resident of Ghasiya Ka Pura, Police Station- Paschim Sarira District- Kaushambi, **(ii)** Vinay Kumar Gupta son of late Govind Prasad, resident of Buksi Ka Purwa, Police Station- Paschim Sarira, District Kaushambi, and **(iii)** Rajaram Kesharwani son of Chhedilal resident of Goraju, Police Station- Paschim Sarira, District Kaushambi, has been operating an organized gang at district level. The members of this gang have amassed huge illegal money by doing illegal mining and transportation based on fake *Ravanas*; due to the activities of the gang, the government is suffering huge revenue loss. By doing such acts, the said gang has created so much fear in the public that people are unable to muster the courage to complain against them due to their fear. Earlier, such mining *maafias*, as per newspaper reporting, caused the death of mining officers in road accidents who attempted to stop illegal mining. Due to their terror in public, the normal life and law and order situation causing disruption, therefore, the criminal act committed by the said gang is covered under sub-section (1) of section 2B of the Gangsters Act, 1986.

4. Based on the aforesaid facts, an FIR was registered and after conclusion of the investigation, the police report was filed, against the applicants and after that the applicants have been summoned vide impugned summoning order 24.1.2024.

5. Learned counsel for the applicants submits that the applicants have been falsely implicated based on a single case. False and fabricated allegations of involvement of the applicants in illegal mining have been levelled at the behest of real mining *Maafia*, who are involved in illegal mining with the aid and assistance of local police. It is further submitted that without taking into confidence- the local police and the revenue authorities- no such activities to any stretch of imagination is possible in the current bureaucratic set-up. It is next submitted that the alleged gang leader is extremely a poor man and does not even own a *pakka* house. The other co-applicants are living ordinarily life and have no income from known or unknown sources- contrary to the allegations made in the gang chart. The District Magistrate and Superintendent of Police have approved the gang chart mechanically without *prima-facie* satisfying themselves on the material presented before them by the Nodal Officer.

6. *Per contra*, learned A.A.G. invited the Court's attention to the gang chart and argued that there are serious allegations of illegal mining against the applicants. Further argued that from the bare reading of the material on record, it's *prima-facie* revealed that the provisions of the Gangsters Act have been invoked against the applicants after arriving at a logical conclusion of involvement of the accused in the illegal mining by the two senior most officers of the district.

7. In the given circumstances, this Court vide order dated 3.7.2024 directed; (i) S.P., Kaushambi to file entire material presented by the Nodal Officer before him and the District Magistrate, Kaushambi, to justify invoking of provisions of Gangsters Act based on a single case, (ii) the S.P., Kaushambi shall also provide a list of cases from all police stations- falls under his jurisdiction in which the provisions of

Gangsters Act have been invoked based on a single case, and (iii) list of such accused who are facing criminal charges- FIRs- in more than five cases from all the police stations of the District Kaushambi, along with their complete dossier or any other relevant information, deemed necessary by S.P. in align with the object of this order.

8. The Sub Divisional Magistrate, Manjhanpur was directed to file a report on the financial status, containing property details (ancestral and self-acquired), bank account statements of last three years, and the property possessed by all accused since 2017, namely the gang leader Ajay Kumar Saroj, co-accused persons Rahul, Vinay Kumar Gupta, and Raja Ram Kesharwani, or any other information supporting the allegations made in the gang-chart after taking approval from the District Magistrate.

9. In compliance thereof, the S.D.M., Manjhanpur, by way of an affidavit dated 25.7.2024, has apprised the Court that an inquiry was conducted in terms of the order passed by this Court, and during the inquiry, it's revealed that the gang leader Ajay Kumar Saroj resides in village Bakarganj, Majra Goraju, District Kaushambi and has no movable and immovable property in his name and works as a labourer. Likewise, co-accused Rahul is landless, has no bank account and works as a labourer in Pune, Maharashtra. The applicant, Vinay Kumar Gupta, resides with his brothers in a house jointly owned by the brothers and owns a bike. The accused, Raja Ram Kesharwani, owns two tractors and one bike. The account statements of all the accused, by and large, show the bare minimum transactions in contrast to the allegations made in the gang-chart.

10. Based on the foregoing facts, to facilitate fair adjudication A.C.S. (Home), the then District Magistrate and S.P. Kaushambi, who

had given approval for the initiation of the proceedings under Gangsters Act *qua* applicants were directed to appear virtually through video conferencing before this Court.

11. The then District Magistrate, Kaushambi and the then Superintendent of Police, Kaushambi, submitted their explanations regarding their approval for invoking the provisions of Uttar Pradesh Gangsters and Anti Social Activities (Prevention), Act, 1986 against the applicants. However, the Court was not satisfied with the officers' approach and reasoning based on the contents of the gang-chart. Whereas the A.C.S. (Home), apprised the Court that, after perusal of the orders passed by this Court and hearing the officers a comprehensive training schedule needs to be scheduled to sensitize the officers about the legal and procedural requirements mandated under the Gangsters Act, 1986 and Rules framed thereunder in the year 2021.

11.1 For sure, this initiative by the Home Department shall be a significant step towards improving the work culture by enhancing the professional skills of officers posted at the district level. The State Government's initiative will foster continuous engagement of officers with the general public.

11.2 The Court emphasized that District Magistrates and Commissioners of Police/ S.S.Ps./ S.Ps. in districts require continuous training to enhance their professional skills. It's observed that these officers rely heavily on reports prepared by the SHO and SI, which has a cascading effect on individuals and the administration of the rule of law. A more just, equitable, and cautious approach is necessary when applying stringent legal provisions to citizens. A reliance has been placed upon Rule 5(3)(a) of the Uttar Pradesh Gangsters and

Anti Social Activities (Prevention), Rules, 2021², in which a joint meeting of the district's head, both civil administration and police, is required for approval of gang chart with reasoned findings on the material placed by the Nodal Officer, besides other provisions and Rules framed thereunder the Uttar Pradesh Gangsters and Anti Social Activities (Prevention), Act, 1986³.

12. In light of the foregoing discussions, the present case was directed to be re-investigated by a competent officer, considering the affidavit filed by the S.D.M., Manjhanpur and other relevant materials that emerged during the hearing. It was also directed to conduct an inquiry by an officer of Home Department not below the rank of Deputy Secretary in conducting a flawed investigation by the S.H.O. P.S. Karari, District Kaushambi and the then Nodal Officer.

13. In compliance thereof, the Joint Secretary (Home) submitted an inquiry report dated 10.12.2024 *inter-alia* holding that the S.H.O. was found to be negligent and a departmental inquiry was proposed to be held at district level *qua* him and the then Additional Superintendent of Police, Kaushambi- the Nodal Officer- was directed to remain vigilant and sensible while performing official duty.

14. The Additional Superintendent of Police/ Nodal Officer, Kaushambi, vide compliance affidavit dated 11.12.2024 informed the Court that in re-investigation all the accused persons have been exonerated by police from all the charges and a closure report has been filed before the Court on 9.12.2024 *qua* all accused and recorded a finding in S.C.D. Parcha No.14. Therefore, the grievances raised by the applicants stands resolved.

² *Hereinafter referred to as Rules, 2021*

³ *Hereinafter referred to as Act, 1968*

15. This Court repeatedly encounters with cases wherein non-application of mind by the District Magistrates/Commissioners of Police/Senior Superintendents of Police/Superintendents of Police has been observed that the approvals are granted mechanically in a routine manner in contravention of the provisions of the Act, 1968 and Rules, 2021.

16. During the hearing of this case, numerous judgments were cited by both the applicants and the State. Upon perusal of these judgments in light of the Rules, 2021, this Court observed that the police have repeatedly failed to comply with them. This non-compliance has resulted, on one hand, in a denial of justice to the victim, and on the other, has provided the police with a tool to perpetrate atrocities against resourceless, innocent, and vulnerable individuals for ulterior motives. More often than not, such misuse ends up benefiting the actual gangsters, who are shielded rather than brought to justice. Therefore, the Home Department, in consultation with the Director General of Police, was directed to prepare a *check list and training schedule* for all District Magistrates and Commissioners of Police/Senior Superintendents of Police/Superintendents of Police to sensitize the officers to ensure compliance.

17. Learned A.A.G. for the State-respondents handed over a copy of the office memorandum/circular dated 02.12.2024, issued by Secretary (Home), and the same has been taken on record. On perusal of the office memorandum dated 02.12.2024 reveals that the Home department has formulated guidelines in compliance with the directions issued by the Supreme Court in ***Gorakh Nath Mishra v. State of U.P. (Diary No. 2673 of 2023)***. The guidelines are outlined herein:

“(1) The provisions of the Act shall be invoked only when a crime has been committed by a gang either individually or collectively with the intention of disturbing public order or to obtain any undue, worldly, economic, material, monetary, or other gain for themselves or others, through violence, threat of violence, display, intimidation, persecution, or by any other means.

(2) The gang chart shall be prepared by the Station House Officer/Officer-in-Charge of the police station by writing the details of the gang's criminal activities in Form No. 3 of the Rules, 2021 and shall be enclosed with the gang chart.

(3) A certified copy of the gang register maintained at the police station shall also be enclosed with the gang chart. Additionally, criminal details collected through DCRB and CCTNS/ICJS shall also be attached.

(4) The gang chart must clearly specify under which sub-clause of clause (b) of Section 2 of the Gangsters Act the crimes described in the chart fall.

(5) The current status of all cases mentioned in the gang chart must be clearly stated.

(6) All information in the gang chart must be correctly and accurately recorded, and no unverified or false information should be included.

(7) Full compliance with the provisions of Rule 5 of the Rules, 2021 must be ensured. Cases for which action has

already been taken under the Act against the accused should not be mentioned in the gang chart. However, a list of such cases shall be attached with the gang chart in the format prescribed under Rule 5.

(8) Upon receipt of the file at the office of the Police Commissioner/District Magistrate, a thorough re-examination of all facts shall be conducted and, as per Rule 5(3)(a) of the Rules, 2021, the Police Commissioner/District Magistrate shall approve the gang chart only after being satisfied in a joint meeting with the Senior Superintendent of Police/Superintendent of Police.

(9) In addition to strict compliance with the above-mentioned government orders regarding preparation, approval, legal scrutiny, and other relevant actions of the gang chart, a register shall be maintained to record the resolutions of joint meetings of the District Magistrate/Police Commissioner/Senior Superintendent of Police/Superintendent of Police under Rule 5(3)(a) of the Rules, 2021. Furthermore, the Police Commissioner/Senior Superintendent of Police/Superintendent of Police and District Magistrate as well as the Nodal Officer shall ensure that they mention the date below their signatures while signing the gang chart.

(10) The satisfaction of the competent authorities must reflect that they have applied their mind not only to the gang chart but also to the documents/forms attached to it.

(11) The date of filing of the charge sheet under the original case must be mentioned in Column 6 of the gang chart, except in cases covered under Rule 22(2) of the Rules, 2021 where the Gangsters Act may be applied during investigation. According to Rule 8(3) of the Rules, 2021, the latest status of the cases and convictions or relevant court proceedings against the gang as shown in the gang chart must be clearly mentioned. Therefore, strict compliance with this rule must be ensured by updating the status of each case as of the date of approval of the gang chart.

(12) As per Rule 10(1), the recovery memo and a certified copy of the charge sheet must be attached with the gang chart.

(13) Rule 16(1) of the Rules, 2021 lays down the rules related to the forwarding of the gang chart by the Additional Superintendent of Police. Hence, the Additional Superintendent of Police must clearly record their satisfaction regarding the gang chart as per the prescribed rule.

(14) Under Rule 16(2) of the Rules, 2021, the District Police Officer, i.e., the Senior Superintendent of Police/Superintendent of Police, shall, after studying the recommendation of the Additional Superintendent of Police under Rule 16(1), record their satisfaction and forward the gang chart to the Police Commissioner or District Magistrate for approval.

(15) As per Rule 17(2) of the Rules, 2021, use of pre-printed rubber stamps for signing the gang chart is prohibited. Accordingly, approval on the gang chart shall be recorded only after proper application of an independent mind by the competent authority, and pre-printed rubber stamps shall not be used.

(16) Under Rule 20(3) of the Rules, 2021, after the investigation related to the gangster is complete but before submitting the charge sheet or final report to the court, the investigation-related documents must be forwarded to the concerned prosecutor by the Additional Superintendent of Police. Therefore, it must be ensured that all investigation records related to the gangster are examined by the concerned prosecution officer.

(17) If the prosecution officer points out any illegality or irregularity in the investigation or in the documents collected during the investigation, the same must be rectified. Only after the prosecution officer confirms that no illegality or irregularity remains, the Additional Superintendent of Police shall forward the documents to the Senior Superintendent of Police or Superintendent of Police for approval under Rule 20(4) of the Rules, 2021.

(18) Under Rule 26(1) of the Rules, 2021, whenever the above-mentioned charge sheet is sent before the Police Commissioner/Senior Superintendent of Police/Superintendent of Police for necessary approval under Rule 20, a thorough re-examination of all documents must compulsorily be done by them.

(19) Under Rule 36 of the Rules, 2021, a proper investigation must be conducted regarding the movable and immovable properties of the gangster and their sources of acquisition. If evidence regarding illegal occupation of land by the gangster is to be collected, then the investigating officer must collect revenue records and evidence from the revenue authority.

(20) Under Section 14 of the Act, a report with complete details and documentary evidence of the property for attachment must mandatorily be submitted before the Police Commissioner/District Magistrate. A copy of the order of attachment of gangster's property passed by the Police Commissioner/District Magistrate must also be included in the investigation.

(21) The case registered in a police station related to the gangster shall not be investigated by that same station. If the SHO/Officer-in-Charge of the registering station is posted or transferred to the investigating station, they must inform the nodal officer and refrain from conducting the investigation themselves, as it would put them in a position of both complainant and investigator.

(22) Under Rule 64 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021, district-level, divisional-level, and state-level committees have been constituted for the supervision, review, and management of proceedings under the Gangsters Act. The quarterly meetings of the district-level committee chaired by the Police Commissioner/District Magistrate

must be ensured. Similarly, meetings of the divisional-level committee chaired by the Divisional Commissioner must compulsorily be convened every six months.

(23) It must be ensured that no gangster receives any benefits from government services, businesses, leases, or government schemes under any circumstances. Measures like attachment of property, appointment of administrator, confiscation, suspension or cancellation of licenses, and recovery should be employed as required.

(24) The investigation under this Act should be completed within six months. If not possible, an extension of a maximum of 3 months at a time may be granted after approval by the district police officer. No further extension shall be permitted beyond this.

(25) The investigating officer must mention the name, address (permanent and temporary), phone number, and relevant details of the accused and witnesses in the charge sheet.

(26) The district police officer must conduct a thorough review of all facts and evidence collected during the investigation before granting approval to send the charge sheet/final report to the concerned court.

(27) If the investigating officer deems it appropriate, police custody remand of the gangster must be taken within the first 60 days.

(28) At the time of the gangster's initial remand and each subsequent remand, the investigating officer must

personally appear before the special court with the complete case diary.

(29) The report with full details of the property and documentary evidence for attachment under Section 14 of the Act must mandatorily be sent by the investigating officer to the Police Commissioner/District Magistrate.

(30) If an order for attachment of the gangster's property has been passed by the Police Commissioner/District Magistrate, a copy of that order must also be included in the investigation.

(31) Proceedings under Section 14 and approval of the gang chart/registration of the FIR must be presented before the district-level supervisory committee.

(32) For effective conviction, compliance with the following provisions is essential:

(i) If actions under Sections 107, 108, 109, 110 of the Cr.P.C. (now Sections 126, 127, 128, 129 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the National Security Act, 1980, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1970, or the Uttar Pradesh Goonda Act, 1970 have been taken against the accused mentioned in the gang chart, such details must be clearly mentioned in the gang chart and certified copies of such orders must be attached.

(ii) Full compliance with Section 12 of the Act must be ensured, which provides that a trial under this Act shall take precedence over any other case against the accused

pending before any other court. The other case shall remain suspended until the trial under this Act is concluded. Hence, all prosecutors must ensure that an application to suspend the trial of such other cases is filed.

(iii) While investigating under this Act, the investigating officer must collect evidence that clearly shows that the gangster engages in anti-social activities described under the Act, with the intent to disturb public order or to gain any undue temporal, economic, material, or other benefit for themselves or others, either alone or collectively, through violence, threat of violence or display, intimidation, persecution, or by other means.

(33) Mere attachment under Section 14 is not sufficient; confiscation of the attached property in favour of the state by the Gangster Special Court is also necessary. Therefore, regular and intensive review of the same must be done at the district and divisional levels.

(34) Notably, a checklist was sent with Office Memorandum No. 4080/6-Pu0-9-2024-1842633 dated 24.09.2024. Based on letter No. 5-1-Writ-44-2024/5302/2024 dated 29.11.2024 from the Additional Director General of Police (Prosecution), U.P., Lucknow, a new checklist has been prepared after due consideration, incorporating the checklist points mentioned therein as Enclosure-1. Before approval of the gang chart and registration of FIR, all points of the checklist attached as Enclosure-1 must be fulfilled. These

checklist points are illustrative and not exhaustive. Therefore, stakeholders are expected to prepare a detailed and effective checklist in this regard.”

18. The letter dated 29.11.2024, issued by the Office of the Director (Prosecution), Uttar Pradesh, indicates that two checklists have been prepared for police officers- one by the Home Department and the other by the Directorate of Prosecution. These checklists have been forwarded to the Director General of Police, Additional Director General of Police (Prosecution), all Commissioners of Police, District Magistrates, Senior Superintendents of Police/Superintendents of Police in Uttar Pradesh, and the relevant section of the Home Department for strict compliance.

19. The existence of two separate checklists may lead to confusion among Investigating Officers and Prosecution Officers at the district level. Therefore, based on the foregoing discussions, the Additional Chief Secretary (Home) is hereby directed;

(i) To ensure that a single check list be prepared based on the two check lists - discussed aforesaid - prepared by the Department of Home and the Directorate (Prosecution), herein within 30 days of this order, and shall further ensure strict adherence by the investigating officer with the check list during investigation.

(ii) The Director General of Police, in consultation with the Department of Home shall jointly prepare a compendium containing: (a) guidelines formulated by the Home Department in compliance of *Gorakh Nath Mishra's case (supra)*, (b) circular bearing no. DG/Circular No.-06/2018 dated 19.02.2018, issued by the Director General of Police, (c) a single check list, and (d) the other instructions issued under the authority of this order.

(iii) The Director General of Police, Uttar Pradesh shall ensure the strict implementation of the circular bearing no. DG/Circular No.-06/2018 dated 19.02.2018, issued by the Director General of Police, whereby it has been made mandatory to every Investigating Officer that upon completion of investigation, prior to submission of charge-sheet/final report, the Investigating Officer must forward the draft charge sheet along with case diary to the Prosecution Officer through the Circle Officer. The Prosecution Officer shall review the case diary and evaluate the evidence collected during the investigation. If any shortcomings or inconsistencies are found, they shall be indicated, and further investigation shall be directed to address those issues. The case diary shall be returned to the Investigating Officer *via* the same channel after the Prosecution Officer's review, and only thereafter, the charge sheet or final report shall be submitted to the Court.

(iv) The Director General (Prosecution) shall issue general guidelines to all the Prosecution Officers to review the charge sheet along with the case diary in a time-bound manner. The number of days to complete the said exercise shall be decided by the Department of Prosecution.

(v) The charge sheet shall be filed along with a duly paginated **Index** containing; (a) serial number, (b) date-wise brief description of the investigation in seriatim- CD wise details, (c) details of document collected during investigation, (d) brief description of steps taken by Investigating Officer, (e) details of Section 94 B.N.S.S., 2023 notice, issued to “any person” to produce document and other thing, and (f) or any other details as deem fit by the Investigating Officer.

(vi) Every Investigating Officer upon completion of investigation, prior to submission of charge-sheet/final report, must make an

endorsement in the case diary a day prior or on the date of submission of the charge sheet to the Court that the guidelines issued in compliance of *Gorakh Nath Mishra's case (supra)*, the steps mentioned in the check list and the mandate of circular bearing no. *DG/Circular No.-06/2018 dated 19.02.2018, issued by the Director General of Police*, has been complied with in letter and spirit. The copy of the Case Diary, containing the aforesaid details, shall be forwarded to the Court following the report under Section 193 BNSS, 2023.

(vii) If preceding **Direction No. (v)**, has not been complied with by the Investigating Officer, the learned Special Judge, Chief Judicial Magistrate, or the learned Magistrate, as the case may be, shall immediately communicate the non-compliance to the Commissioner of Police or the Senior Superintendent of Police/Superintendent of Police and direct that appropriate departmental action be initiated against the Investigating Officer. It is equally the duty of the Court to ensure that the orders passed by the Constitutional Courts are strictly implemented by the authorities, upholding the rule of law in both letter and spirit.

(viii) A fresh Office Memorandum/Circular should be accordingly issued by the Home Department, instructing Director General of Police and the Directorate (Prosecution) to issue a fresh Circular/Office Memorandum to their respective officers based on the foregoing ***directions***.

(ix) The A.C.S. (Home) shall submit a compliance report through Registrar (Compliance) within 45 days from the date of receipt of a copy of this order.

20. The Registrar (Compliance) is hereby directed to transmit a copy of this order forthwith to the Additional Chief Secretary (Home), the Director General of Police, and the Director General (Prosecution) for effective compliance.

21. A copy of this order shall also be forwarded to all the learned District Judges of Uttar Pradesh through the Registrar General of this Court, with a direction to circulate the judgment among all Judicial Officers to ensure compliance with direction no.(vii).

22. With the aforesaid observations and directions, the instant applications are hereby *disposed of*.

Order Date:- 12.5.2025

Shafique

Vinod Diwakar, J.