

Court No. - 64

Reserved
A.F.R.

Case :- APPLICATION U/S 482 No. - 36921 of 2019

Applicant :- Vinod Bihari Lal

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

Counsel for Applicant :- Rajiv Lochan Shukla

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

This Application under Section 482 of the Code of Criminal Procedure, 1973¹ has been preferred by Vinod Bihari Lal, Director (Administration), Sam Higginbottom University of Agriculture, Technology and Sciences, P.S. Naini, District Prayagraj, seeking to quash the proceedings of Special Sessions Trial No.54 of 2019, State vs. Vinod B. Lal and others (arising out of Crime No.0850 of 2018), under Section 2/3 of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986², Police Station Naini, District Allahabad, pending in the Court of the Special Judge (Gangsters Act), Allahabad.

2. The First Information Report³ giving rise to the crime, which after investigation, has culminated in the charge-sheet impugned, was lodged on 28.07.2018 at P.S. Naini, then District Allahabad, now Prayagraj by Pradeep Kumar Mishra, Station House Officer, P.S. Naini, District Prayagraj. On the basis of the impugned charge-sheet, Special Sessions Trial No.54 of 2019 was registered on the file of the Special Judge (Gangsters Act), Allahabad. The FIR says that the S.H.O. along with his companion constables and the driver returned to Station after taking care of the law and order in the area and doing investigation. During the course of time that he was looking after the area, he came to know that Vinod B. Lal son of Bihari

1 for short, 'the Code'

2 for short, 'the Act of 1986'

3 for short, 'the FIR'

Lal, resident of Agriculture Campus, Naini, Prayagraj and David Dutta son of A.B. Dutta, a resident of 86, Myorabad, P.S. Cantt., Prayagraj, are an organized gang, whereof Vinod B. Lal is the leader. This gang, comprising two men, is proficient in the commission of economic crimes through fraud and deceit, being offences of the kind, described in Chapters XVI, XVII and XXII of the Indian Penal Code, 1860⁴ and by perpetration of such offences, the members of the gang gain personal, material and pecuniary benefit for themselves. This they do by tampering and forging documents. By commission of such offences, they accumulate wealth and because of their fear and terror amongst members of the public, no one comes forward to lodge a report against them or muster courage to testify in Court.

3. It is further on said in the FIR that for the act of the two accused in running a Christian Public School at Katju Road, Shahganj, without the permission of the Development Area, an FIR was lodged on 21.07.2017 by Diwakar Nath Tripathi, Vice Chairman, Bharatiya Janata Party, Kashi Kshetra, Allahabad. On the basis of the said FIR, Crime No.170 of 2017 was registered, under Sections 406, 419, 420, 467, 468, 471, 120-B IPC, P.S. Shahganj. It was investigated and after collection of material, that came to fore a charge-sheet was filed in Court on 21.01.2018.

4. On 09.08.2017, Diwakar Nath Tripathi aforesaid lodged an FIR, giving rise to Crime No.476 of 2017, under Sections 406, 419, 420, 467, 468, 471, 120-B IPC, wherein after investigation and collection of material, substantiating the allegations, a charge-sheet was filed in Court on 04.10.2017.

5. On the 25th of August, 2017, B. Shahim Siddiqui son of late Nasimuddin Siddiqui, resident of 7D, Mahewa, Naini lodged

⁴ for short, 'IPC'

an FIR at P.S. Naini, giving rise Crime No.726 of 2017, under Sections 147, 148, 323, 504, 506, 307 IPC against Ram Kishan and others, wherein after investigation on the basis of material collected, a charge-sheet was filed against Vinod B. Lal on 01.03.2018.

6. Again on 17.12.2017, an FIR lodged by Diwakar Nath Tripathi at P.S. Civil Lines, Crime No.761 of 2017, under Sections 419, 420, 406, 467, 468, 471, 120-B IPC was registered against P.C. Singh and others. In the aforesaid case, after investigation, on the basis of material collected, a charge-sheet was filed against Vinod B. Lal and others on 09.04.2018.

7. On the 17th of December, 2017, Rudra Narain Pathak son of Chandra Shekhar Pathak, a resident of Rampur, P.S. Ramnagar, District Varanasi submitted a written information to P.S. Mutthiganj, on the basis of which Crime No. 244 of 2017, under Sections 147, 419, 420, 467, 468, 471, 504, 506 IPC was registered against Arun Paul and others. Investigation ensued and on the basis of materials collected, a charge-sheet was filed on 01.04.2018 against R.K. Gaban and Vinod B. Lal for offences punishable under Sections 419, 420, 467, 468, 471 IPC.

8. It is on the basis of all these material, the informant reported that Vinod B. Lal and David Dutta have committed an offence punishable under Section 2/3 of the Act of 1986. The gang-chart relating to the aforesaid accused has been approved by the District Magistrate. With so much of information, the present crime was reported and registered under the Act of 1986.

9. The gang-chart relating to the gang, headed by the applicant and of which Davit Dutta was shown as the sole

member, was approved by the District Magistrate, Allahabad on 28.07.2018. The gang-chart carries the approval of the Senior Superintendent of Police, Allahabad dated 27.07.2018 and the recommendation of the Superintendent of Police, Trans Yamuna and the Circle Officer, Karchhana.

10. The Police after investigation have filed a charge-sheet, on the basis of which the Special Judge (Gangsters Act), Allahabad has taken cognizance on 09.08.2019. During investigation, the Police have recorded the statements of the three first informants of the five base cases, on the foot of which the present crime under Section 2/3 of the Act of 1986 was registered, leading to the impugned proceedings.

11. Heard Mr. Manish Tiwari, learned Senior Advocate assisted by Mr. Kumar Vikrant, learned Counsel for the applicant and Mr. Shashi Shekhar Tiwari, learned A.G.A. appearing on behalf of the State.

12. It is submitted by Mr. Manish Tiwari, learned Senior Advocate appearing for the applicant, that even if all allegations in the impugned charge-sheet are regarded as true, no case under Sections 2/3 of the Act of 1986 is made out against the applicant. In order to support the aforesaid submission, Mr. Manish Tiwari has referred to the definition of a gang in Section 2(b) of the Act of 1986. He submits that there are two essential ingredients to constitute a gang. The two essential ingredients, according to Mr. Manish Tiwari, are 'violence' or 'disturbance of public order' indulged in by a group of persons, acting either singly or collectively, for the purpose of pecuniary gain etc.

13. It is the learned Senior Advocate's submission that none of the offences charged against the applicant, either involve violence or the disturbance of public order. Therefore, even if

there be allegations about pecuniary gain, the consequences under the Act of 1986 would not attach. He next submits that there are five base cases registered against the applicant, on the foot of which the present prosecution has been launched under Section 2/3 of the Act of 1986. But, in each of those crimes, the applicant has been given judicial reprieve of some kind or the other either by this Court or the Supreme Court. Therefore, in the submission of the learned Senior Advocate, the base cases are not available to provide foundation to the prosecution to pursue the present case under the Act of 1986. It is in the last submitted by the learned Senior Advocate that there is violation of Rules 5(2), 5(3), 16 and 17 of The Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021⁵, vitiating the gang-chart. He has emphasized that non-adherence to these rules has vitiated the basis of registration of the crime and *a fortiori* the police report and the prosecution. He has drawn the Court's attention to the aforesaid Rules.

14. Mr. Shashi Shekhar Tiwari, learned A.G.A. has opposed the motion to admit this application to hearing. Mr. Tiwari has submitted that violence and disturbance of public public order alone are not essential to constitute a group of persons into a gang under Section 2(b) of the Act of 1986. The definition is much wider and other kinds of actions directed to gain any temporal, pecuniary, material or other advantage for himself or another member of the group, acting singly or together, can constitute the group into a gang, within the meaning of the Act of 1986.

15. It is next submitted that the crimes that have been registered against the applicant, wherein charge-sheets have been filed, form the basis, amongst other things, to proceed

⁵ for short, 'the Rules of 2021'

against the applicant for commission of an offence punishable under Section 2/3 of the Act of 1986. The mere fact that interim orders or interim reliefs in the said base cases have been granted to the applicant, does not mean that the basis for taking action under the Act of 1986 is removed. Mr. Tiwari next submits that so far as compliance with the Rules of 2021 is concerned regarding drawing up of the gang-chart, there is substantial compliance with the requirements.

16. Upon hearing learned Counsel for the parties, this Court is of opinion that in order to consider the first submission of Mr. Manish Tiwari, it is imperative to refer to the provisions of Section 2(b) of the Act of 1986, which reads:

"2. Definitions.—In this Act,—

(a) x x x

(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 (Act no. 2 of 1974), namely—

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act no. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act no. 4 of 1910) or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force, or

(iii) occupying or talking 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 (Act no. 61 of 1985)

(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 (Act no. 104 of 1956), 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 right 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 Wildlife Protection Act, 1972;

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

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

(c) x x x x

(d) x x x x

(e) x x x x

(f) x x x x"

17. A perusal of the aforesaid provision shows that violence or disturbance of public order alone are not the *sine qua non* of a gang as defined under the Act of 1986. It postulates a group of persons, who either acting singly or collectively, employ violence, or threat or show of violence, or intimidation, or coercion, 'or otherwise' with the object of (i) disturbing public order; (ii) or of gaining any undue temporal, pecuniary, material; or other advantage for himself or any other person, indulge in anti-social activities, enumerated in clauses (i) to (xxii) of sub-Section (b) of Section 2 of the Act of 1986.

18. It is a well settled cannon of statutory interpretation that a statute should be read and understood according to its plain

grammatical meaning, unless that construction leads to an absurd result, or defeats the object and the very purpose of it.

19. A reading of sub-Section (b) of Section 2 of the Act of 1986 would indicate that with object of disturbing public order or gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, a group of persons acting singly or collectively may act by violence or threat or show of violence, or intimidation, or coercion or otherwise. Thus, the employment of the words 'otherwise' after the word 'coercion' indicates that the twin object of disturbing public order or gaining any undue temporal, pecuniary advantage etc. is the hallmark of a group acting through a member, singly or collectively, to qualify as a gang. The twin object of disturbing public order or gaining any undue temporal, pecuniary advantage etc. may be achieved through practice of violence, threat or show of violence, or intimidation etc. or otherwise. The employment of the word 'otherwise' after 'coercion' is not to be read *ejusdem generis* with the preceding word like coercion, intimidation, violence etc. Rather, the employment of the word 'otherwise' shows that the group may act in any manner to achieve the object of disturbing public order or gaining any undue temporal, pecuniary advantage etc., where violence or coercion or intimidation may not at all be involved. Of course, all that is done by the group, acting in unison or a member singly, must be indulgence in one or the other anti-social activities enumerated in the various clauses of sub-Section (b) of Section 2 of the Act of 1986. The construction placed on the words 'or otherwise', which are words of general import after specific words to exclude the rule of *ejusdem generis*, finds authoritative interpretation about it in **Animal Welfare Board of**

India v. A. Nagaraja and others⁶. There have been interpretations when the words 'or otherwise' have been construed *ejusdem generis* as in **United Bank of India v. Pijush Kanti Nandy and others**⁷. But, those cases depend on the context in which the words occur in the statute. In **Animal Welfare Board of India (supra)**, it was held while interpreting the provisions of Section 11 of The Prevention of Cruelty to Animals Act, 1960 thus:

"39. Section 11(1)(a) uses the expressions "or otherwise", "unnecessary pain or suffering", etc. Beating, kicking, etc. go with the event so also torture, if the report submitted by AWBI is accepted. Even otherwise, according to AWBI, the expression "or otherwise" takes in Jallikattu, bullock cart race, etc. but, according to the State of Tamil Nadu, that expression has to be understood applying the doctrine of *ejusdem generis*. In our view, the expression "or otherwise" is not used as words of limitation and the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. Jallikattu, bullock cart races and the events like that, fall in that expression under Section 11(1)(a). The meaning of the expression "or otherwise" came up for consideration in *Lila Vati Bai v. State of Bombay* [AIR 1957 SC 521 : 1957 SCR 721] and the Court held that the words "or otherwise" when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a)."

20. It would also be apposite to quote the provisions of Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, in the context of which the words 'or otherwise' were held not limited by preceding words invoking the *ejusdem generis* rule. Section 11 aforesaid reads:

"11. **Treating animals cruelly.**—(1) If any person—
(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so

6 (2014) 7 SCC 547

7 (2009) 8 SCC 605

as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) x x x

(c) x x x"

21. It is ultimately to be inferred from the context where the words 'or otherwise' have been employed and the object of the particular provision, whether the said words are to be construed *ejusdem generis* or free. Here, the words are not a meaningless or vague end to the preceding meaningful words of the same genre. Rather, the words 'or otherwise' are words of wide import to describe anything, which has the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for a member of the group or any other person comprising it, by indulging in the enumerated anti-social activities. Temporal and pecuniary advantages may be gained through anti-social activities of a non-violent kind as well, so long there is a group of persons determined to do it individually or in unison. Therefore, in the opinion of this Court, there is no reason to read the words 'or otherwise', occurring in sub-Section (b) of Section 2 of the Act of 1982 *ejusdem generis*.

22. The question fell for consideration before a Division Bench of this Court recently in **Ambuj Parag Dubey and others v. State of U.P. and others**⁸, where it has been held:

"22. The expression 'or otherwise' as used in the definition of gang can be read conjunctively or disjunctively. If read conjunctively, the words 'or otherwise', in law, when used in a general phrase, following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned. The word "or" in "or otherwise" is a disjunctive that marks an alternative which generally corresponds to the words "either". An interoperation of the general words "or otherwise" limiting them to the matters

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and things of the same kind as the previous words (violence, intimidation, coercion) would make the general words "or otherwise" following the preceding specific words, redundant. These words "or otherwise" are not words of limitation, but of extension so as to cover all possible offences. The word "otherwise" is, therefore, not to be read "ejusdem generis" with the other instances of violence mentioned in the earlier part of sub-section.

23. Further, on perusal of the offences which have been included in the definition of Gang includes offences under Chapter-XVII of Indian Penal Code which include the offence of theft under Section 378, offences under Section 403 and the related sections dealing with criminal misappropriation of property, Section 405 and allied sections deals with the crime of criminal breach of trust, dishonest misappropriation of property. Section 410 and related sections concern stolen property, Section 420 and related sections deal with offences of cheating which only involve deception, fraudulent or dishonest inducement to a person or his property. It is evident from the provisions included within the definition of gang do not require existence of force or violence. Similarly, offences under Section 3 of U.P. Public Gambling Act may not necessarily involve the use of force. Thus, the word 'otherwise' has been employed disjunctively in the definition of gang and cannot be read as "ejusdem generis", with other incidents of violence mentioned in the earlier part of this sub-section (Vide: Verneet Kumar (supra))"

23. In view of what has been said above, this Court does not find any merit in the submission of Mr. Manish Tiwari that violence in one form or the other is a *sine qua non* for a group of persons to qualify as a gang under Section 2(b) of the Act of 1986.

24. Even if it be accepted for awhile that violence or threat of violence is essential to bring a group of persons acting individually or together within the mischief of a gang as defined under Section 2(b), this Court must take judicial notice of the contents of the FIRs relating to the base cases, on the foot of which the impugned prosecution has been launched. The FIRs

of the base cases in all fairness ought to have been annexed by the applicant. That has not been done. Nevertheless, since those FIRs are available on the website of the U.P. Police (UPCOP), this Court has looked into the contents of some of them. In Case Crime No.244 of 2017, under Sections 147, 419, 420, 467, 468, 471, 504, 506 IPC, P.S. Mutthiganj, District Prayagraj, the first informant has alleged as follows:

"प्रार्थी की उक्त आरजियात हड़पने की नीयत से लखनऊ डायसेशन ट्रस्ट एसोसिएशन के कथित सचिव अरुण पाल व उनके सहयोगी काल्विन थायडोर, विनोद बी लाल, यस बी लाल, डेनियल सुभान, आर के गबन, उषा हेमिल्टन, कमल मशीह, प्रफुल्ल मेसी, रिंकी स्वरूप, शशि प्रकाश जो एक अपराधी एवम भूमाफिया किस्म के व्यक्ति है जिनका एक संगठित गिरोह है जो शहर की खाली पड़ी जमीनों को अवैध कब्जा करने की नीयत से कूट रचित दस्तावेज तैयार कर जमीन हड़प लेते है इसी तरह प्रार्थी की आरजियात स्थित मौज मैकू उस्मान पुर उर्फ कटघर थाना मुट्ठीगंज को अवैध तरीके से हड़पने की नीयत से एक फर्जी कूट रचित दस्तावेज वाद सं० 170/ सन 1974 लखनऊ डायसेशन ट्रस्ट एसोसिएशन बनाम कमीशन इक्यूमिनिकल मिशन दाखिला दिनांक 04/04/1974 व आदेश दिनांक 10/04/1974 मुंसिफ बेस्ट इलाहाबाद पीठासीन अधिकारी के नाम के स्थान पर यस 0 पी० पाल अंकित है और दिनांक 24.04.1974 को हस्ताक्षर सी० पी० लाल का है एवं न्यायालय की कूटरचित फर्जी मुद्रा से तैयार कर हड़पने की साजिश किये है उक्त कूट रचित दस्तावेज की सत्यता के संबंध में प्रार्थी के अधिवक्ता के द्वारा मा० उच्च न्यायालय इलाहाबाद में जन सूचना अधिकार के तहत एक प्रार्थना पत्र इस आशय का दिया गया कि 01/04/1974 से 30/04/1974 के बीच मुंसिफ बेस्ट इलाहाबाद के पद पर पीठासीन कौन थे । मा० उच्च न्यायालय द्वारा अवगत कराया गया कि 01/04/1974 से 30/04/1974 बीच मुंसिफ बेस्ट इलाहाबाद के पद पर पीठासीन अधिकारी श्री चक्रवर्ती प्रभाकर मिश्र नियुक्त थे। कूट रचित जजमेंट / डिक्री की छाया प्रति एवम मा० उच्च न्यायालय द्वारा प्राप्त सूचना की छाया प्रति प्रार्थना पत्र के साथ संलग्न की जा रही है। मुंसिफ बेस्ट इलाहाबाद के कार्यालय एवं रिकर्ड रूम में इस मुकदमें के संबंध में रिकर्ड का मुयायना किया गया लेकिन न दाखिले के और न ही निर्णय के संबंध में कोई रिकर्ड नहीं है। दिनांक 20/08/2017 को समय लगभग 12.30 बजे दिन प्रार्थी अपने सहयोगी उदय प्रताप सिंह व शिव बहादुर सिंह के साथ आराजी संख्या 143 जिसमे बरसात का पानी भर गया था, को कुछ मजदूरों को ले कर साफ करवा रहे थे कि मौके पर अरुण पाल, आर के गबन उषा हेमिल्टन कमल मशीह, प्रफुल्ल मेसी, रिंकी स्वरूप आ गए और प्रार्थी को गाली देते हुए सफाई करने से मना करने लगे। प्रार्थी के मना करने पर उपरोक्त लोग उपरोक्त कूटरचित फर्जी जजमेंट / डिक्री का हवाला देते हुये धमकी दिए कि दोबारा इस जमीन पर आओगे तो बोटी बोटी काट कर इस जमीन में गाड़ देंगा उपरोक्त लोग अपराधी एवं भूमाफिया किश्म के व्यक्ति है ।

कूटरचित फर्जी दस्तावेज तैयार कर शहर की खाली जमीन पर कब्जा करने का संगठित गिरोह है प्रार्थी को भय व्याप्त है कि उपरोक्त लोग प्रार्थी की जमीन के लालच में प्रार्थी को जान से न मार दे प्रार्थी ने उपरोक्त घटना की सूचना मुद्दीगंज थानाध्यक्ष को दिया परंतु आज तक कोई कार्यवाही नहीं हुई।"

(emphasis by Court)

25. Again during investigation, Shahim Siddiqui, who is the first informant of Case Crime No.726 of 2017, under Sections 147, 148, 323, 504, 506, 307 IPC, one of the base cases, has said in his statement under Section 161 of the Code, a copy whereof is annexed as Annexure No.7 to the affidavit in support of the present application as follows:

"श्री सहीम सिददीकी पुत्र स्व 0 श्री नमीमुददीन सिददीकी निवासी 7 डी महेवा थाना नैनी इलाहाबाद ने पूछने पर बयान किये कि दिनांक 25.8.17 को समय करीब 5.30 बजे करीब अपने कालेज सुआर में अपने शैक्षिक कार्य के लिए गया था काम पूरा होने के बाद कैन्टीन के बाहर खड़ा होकर अपने दास्ते का इंतजार कर रहा था तभी अचानक कालेज के स्टाफ रामकिसन राकेश दूबे चार पांच अन्य लोग असलहे से लैश होकर मुझे मारते पीटते हुए कमरे में उठाले गये तथा मुझे जान से मारने की नियत से विनोद की बात के ललकारने पर मेरे ऊपर रिवाल्वर से फायर किया परन्तु गोली मिस हो गयी जिससे मेरी जान बच गयी। तथा मुझे गाली गुप्ता दिये व जान से..... अपना जान बचाकर भागा।"

(emphasis by Court)

26. In the circumstances, it cannot be said to be a case where the applicant may urge that there is no allegation about violence or threat of violence by him or at his instance by one or the other member of the group. To the contrary, there is abundant material about the group of persons, of which the applicant is the leader, threatening violence and indulging in coercion.

27. So far as the disturbance of public order is concerned, as already noticed hereinabove, a group of persons can have two alternate objects to 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 other advantage for a member of the group or any other person. All that is necessary is that in order 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. The submission of Mr. Manish Tiwari, therefore, that unless there is disturbance of public order by a group of persons, they cannot qualify as a gang within the meaning of Section 2(b) of the Act of 1986 is without substance.

28. The next submission of the learned Counsel for the applicant is that the five cases, on the foot of which the case under the Act of 1986 has been registered, culminating in the impugned prosecution, cannot at all form basis for taking action under the Act of 1986, inasmuch as different interim orders or reliefs in relation to the base cases have been granted by this Court or the Supreme Court. The five cases that are subject of the gang-chart, on the basis of which the impugned prosecution has been launched, and where, according to the applicant, interim orders have been passed by this Court or the Supreme Court are enumerated below in tabular form:

Sl. No.	Crime No.	Police Station/ District	Sections	Status
1	476 of 2017	Civil Lines/ Allahabad	406, 419, 420, 467, 468, 471, 120-B IPC	No coercive action, vide order dated 20.03.2023 passed by the Supreme Court in S.L.P. (Crl.) No.3337 of 2023
2	170 of 2017	Shahganj/ Allahabad	406, 419, 420, 467, 468, 471, 120-B IPC	Further proceedings stayed by this Court vide order dated 04.10.2018 passed in Application u/s 482 No.34944 of 2018
3	726 of	Naini/ Allahabad	147, 148, 323, 504,	No coercive action, vide order dated

	2017		506, 307 IPC	13.11.2018 passed by this Court in Application u/s 482 No.40320 of 2018
4	244 of 2017	Mutthiganj/ Allahabad	147, 419, 420, 467, 468, 471, 504, 506 IPC	Issue notice vide order dated 09.05.2019 passed by this Court in Application u/s 482 No.13820 of 2019
5	761 of 2017	Civil Lines/ Allahabad	419, 420, 406, 467, 468, 471, 120-B IPC	Further proceedings stayed vide order dated 07.12.2018 passed by this Court in Application u/s 482 No.44250 of 2018

29. It is well settled that the effect of a stay order directing stay of proceedings or of coercive steps or a bail order in a crime does not to efface the crime. It only puts in limbo some proceedings that are to be taken in the case based on the crime or some consequences like arrest, that would otherwise follow. A bail order ensures a temporary liberty for the accused pending trial or subject to other orders of the Court, but the accused, who is on bail, is not a man free from blemish or the overhanging shadow of the case awaiting trial. At times, an accused on bail is regarded as a man in constructive custody of the Court through the sureties. In this regard, reference may be made to the following observations of the Constitution Bench in **Sunil Fulchand Shah v. Union of India and others**⁹:

"24. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word "bail" is surety. In *Halsbury's Laws of England* [Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.], the following observation succinctly brings out the effect of bail:

⁹ (2000) 3 SCC 409

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned."

30. In view of this position to say that because of the indulgence of interim orders granted by this Court or the Supreme Court in one or the other five cases that are part of the gang-chart in the present prosecution, those cases are no longer available to the prosecution to proceed under the provisions of the Act of 1986, is a submission stated to be rejected.

31. The last submission advanced by Mr. Manish Tiwari is about the mandatory compliance with the provisions of Rule 5(2), 5(3), 16 and 17 of the Rules of 2021 framed under the Act of 1986. These Rules have been made by the State Government in exercise of powers under Section 23 of the Act of 1986 to carry out its purposes. Rules 5(2), 5(3), 16 and 17 are extracted below:

"5. General Rules.--

(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."

32. A perusal of Rules 5(2) and 5(3) shows that these relate to the gang-chart, its preparation and approval. There is nothing shown in the gang-chart here, which may show a violation of Rule 5(2) or 5(3). All that is required by Rule 16 is that the Authorities recommending registration of a case under the Act of 1986 should come to the conclusion with an independent application of mind that a case under the Act of 1986 ought to be registered. Likewise, the Authorities approving the gang-chart also should come to the conclusion on an independent application of mind that a case under the Act of 1986 ought to be registered against the accused on the basis of the activities of the gang. There is no prescription for the employment of particular words to serve as index of due application of mind.

33. It must be observed that at the stage of approving the gang-chart on the basis of materials placed, the competent Authority should satisfy himself that a case for prosecution under the Act of 1986 is made out. Collection of further materials to prosecute follows at a later stage when after registration of the case, investigation commences. At the stage of approval of the gang-chart, the approving Authority has to be convinced that a case for investigation under the Act of 1986 is made out.

34. In the opinion of this Court, therefore, any fallacy in the mode of approval of the gang-chart would not be of much

relevance, where the case is already up for trial after conclusion of investigation. This is not to say that the gang-chart betrays any violation of the Rules. A perusal of the material on record and the gang-chart shows due and independent application of mind by both the recommending and the approving Authorities. In connection with the contention advanced by the learned Senior Counsel for the applicant on this score, the holding of the Division Bench in **Ambuj Parag Dubey (supra)** is again of relevance, where it is observed:

“**36.** Rule 17 and 18 would have to be read together. Gang chart has to be sent in the prescribed Form No. 1. The endorsement to be made by each of the authorities have also been specified in Rule 16. The rule itself prescribes and mandates a printed Form. Rule 17 merely mandates that the competent authority while approving the gang chart should not be swayed by the recommendation of the police authorities mechanically but should satisfy himself independently that the grounds for prosecution is made out. The satisfaction at that stage is subjective and does not rest upon any evidence. The competent authority has to satisfy that the materials placed with the gang chart calls for prosecution. The stage of collecting evidence follows thereafter. The scope of judicial review is miniscule, the accused cannot challenge the FIR without challenging the gang chart. The question as to whether the antisocial activities of the proposed accused is that of a gang or gangster is a matter of investigation.”

35. In view of what has been said above, this Court does not find any good ground to quash the impugned proceedings.

36. This application **fails** and is **dismissed**.

Order Date :- 19.4.2023

Anoop