

(1)

A.F.R.

Court No. - 82

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14323 of 2021

Applicant :- Nishant@Nishu

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Shukla

Counsel for Opposite Party :- G.A.

WITH

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15138 of 2021

Applicant :- Amit

Opposite Party :- State of U.P.

Counsel for Applicant :- Paritosh Sukla

Counsel for Opposite Party :- G.A.

WITH

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15101 of 2021

Applicant :- Kashish Srivastava

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Dubey

Counsel for Opposite Party :- G.A.

WITH

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15110 of 2021

Applicant :- Nausad

Opposite Party :- State of U.P.

Counsel for Applicant :- Dhiraj Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

[1] Heard the submissions of respective learned counsels for the different applicants of their respective bail applications, learned A.G.A and perused the records of the case.

(2)

[2] Since all these above mentioned bail applications suffers from same vice of law i.e 'incomplete and defective gang chart' which does not indicate the accused's complete past credentials, giving ample room for miscarriage of justice, resultantly, the accused-applicant tends to be bailed out easily. Additionally, this court purposes to decide all the four bail applications on merits by a common order.

[3] The present order is in two parts, in the earlier part, all the four bail applications are decided on merits and in the later part, there is discussion/judgment on defective gang-chart and its adverse impact on bail as well as trial of the accused concern.

Before deciding the cases on merits, it is imperative to give factual narration of the issue of the respective bail applications :-

FACTUAL INTRODUCTION OF BAIL APPLICATIONS:-

[4] Applicant **Nishant @ Nishu** is behind the bars since 29.9.2020 in connection with Case Crime No. 433/2020 U/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 Police Station Civil Lines, District Muzaffar Nagar.

[5] Learned Counsel states that the gang chart annexed as Annexure No. 2 to the affidavit shows that Usman @ Sheru is its gang leader and the applicant has been shown as its active member

(3)

of that gang. Only ONE case is shown in the gang chart to the credit of the applicant at Police Station Civil Lines, District Muzaffar Nagar.

[6] On this, it has been contended by learned counsel that since only one case is shown in the gang chart, having Case Crime No. 306/2020 on which the applicant is on bail. The copy of the bail order is annexed as Annexure No.3 to the affidavit. Thus on the above factual premises, it has been argued that, on account of singular case in which the applicant has already been bailed out and have never misused the liberty of bail. Besides this, it is further submitted that there is no justifiable reason for the prosecution to implicate the applicant in U.P. Gangsters Act by imposing stringent condition and branding the applicant as its gang member. Thus applicant deserves to be bailed out.

[7] Similarly the accused of Bail Application No. 15138/2021, is **Amit**, the applicant facing incarceration since 16.8.2020 in connection with Case Crime No. 274/2020 U/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S. Madrak District Aligarh.

[8] Submission advanced by learned Counsel for the applicant, after drawing attention of the court, the gang chart (Annexure No.2) which shows that he is member of a alleged gang

(4)

and only TWO cases are shown in the chart to his credit. Argued by the counsel for the applicant that he is enjoying his freedom by way of bail in both the cases and has never misused the liberty so granted to him. The bail orders are annexed as Annexure No.3 to the affidavit, and thus, submitted that the applicant deserves to be bailed out in the instant case too.

[9] In this series, yet another case on behalf of **KASHISH SRIVASTAV**, who is behind the bars since 5.8.2020 in relation to Case Crime No. 290/2020 U/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S. Cantt, District Prayagraj (Allahabad). After showing the gang chart (Annexure No.2), contention advanced by the learned counsel for the applicant that only FOUR cases are shown in the chart. The applicant is on bail in all the four cases by different courts. Bail orders are annexed as Annexure No.3 to the affidavit. Learned Counsel has toed same lines of arguments as his predecessors and tried to impress upon the court that the applicant too is entitled for bail.

[10] Last case in this chain is on behalf of **NAUSHAD**, the accused/applicant, who is facing prosecution by way of Case Crime No. 590/2020 U/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S. Fatehpur, District Saharanpur.

(5)

[11] The gang-chart annexed as Annexure No.2 to the affidavit clearly indicates that there are only TWO cases to the credit of the applicant and on different occasions in both these cases he was granted bail. The bail orders are annexed as Annexure No. 3 and 4 to the affidavit. Thus argued by the counsel that he has not misused the liberty of bail and as such, he is entitled for bail in the instant case too.

[12] Thus from the above, it is clear that in all the four bail applications, the gang-chart which were annexed clearly indicates that less than five cases are to the credit of respective accused applicants and in all those cases the applicants were on bail but the informants of respective FIRs after clubbing few of the previous cases(not mentioned in the gang chart) allegedly branded the accused/applicants as member/or the leader of a particular gang, who are indulge in committing heinous offences, through their illegal organization, against innocent persons of the society. They all are as per habit commit serious and heinous offences of different types and shades. It has been argued by the learned counsels for the applicants that informants of these FIRs are police personnels(mostly SHOs of the police station), after over-stapping their powers vested in them and with motive to saddle the applicants with additional criminal liability, have illegally fasten

(6)

more stringent prosecution by way of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. It is argued that instant prosecution is nothing but gross misuse of powers vested in them (informant), which was later on blindly supported and approved by the local police and administrative superior authorities while approving the gang chart.

[13] Per contra, learned A.G.A. vehemently opposed the prayer for bail of the respective accused/applicants, after putting the record straight. It has been contended by learned A.G.A. that submissions advanced by various counsels for the applicants are factually incorrect and wrong. All the applicants are harden and habitual offenders, involved in an organized criminal activities posing serious threat to the society. It has been contended that :-

(a) The applicant **Nishant @ Nishu** in addition to the cases shown in the gang chart, he has got 15 other cases to his credit, which is clear from his bail rejection order. A person who is involved in 15+ cases, deserves no sympathy from the Court.

(b) The applicant **Amit** too is involved in two other cases, in addition to the cases shown in his gang chart.

(7)

(c) Accused **Kashish Srivastav**, the third applicant is involved in three other cases in addition to the cases shown in his gang chart. Thus in total the number of cases swelled from four to seven cases.

(d) And at the end, the applicant **Naushad** in all, there are EIGHT cases to his credit, though the gang-chart has shown only SIX cases.

[14] Indeed, in opinion of the Court, it is a cabbalistic and mysterious situation where the applicants at the stage of their bail before this Court are taken by surprise by the State. This is beyond the settled tenets of fair play and equality. No accused shall be taken by surprise. The Court is failed to appreciate the alleged impediment in preparing full and complete gang chart of that bunch of alleged outlawed persons. The prosecution has to stick upon the stand taken by them from the day one.

[15] It is not the discretion of the prosecution to add or subtract the number of cases from his gang chart according to their sweet will and at the time of consideration of their bail applications, serve out those cases which are not in the chart. The Court is at loss to appreciate this practice by the prosecution. Learned A.G.A. too has failed to solve this puzzle and lift the veil from this uncanny situation. The Court records its deep anguish, resentment to such type of hide and seek practice by none other than the State

(8)

(Prosecutor) itself. The Court takes it like that, the prosecutor are hiding the cards in their sleeves so as to poison and bias the judicial mind of the Court against the applicant and succeeds in getting their bail applications rejected showing and swelling the number of cases against the applicant. This is explicitly a malpractice on the part of the prosecution, who instead of giving holistic view regarding criminal antecedents of the concern person, has given only a piecemeal and incomplete picture in their respective gang chart. The Court does not want to become a party to such type of underhand dealing and short coming on the part of prosecutor. After assessing the facts of the case and the antecedents of accused persons, this court is of the considered opinion that all the applicants namely; (i)Amit, (ii)Kashish Srivastav and (iii)Naushad be released on bail. The bail applications of above named accused/applicants stands allowed.

[16] Let the applicants, Amit, Kashish Srivastav and Naushad, who are involved in the aforesaid sections of U.P. Gangsters Act, 1986 be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE

(9)

FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HER COUNSEL. IN CASE OF HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

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

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.

Since the bail application has been decided under extra-ordinary circumstances under prevailing COVID pandemic, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition:-

(10)

1. *The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.*
2. *The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.*
3. *The computer generated copy of such order shall be self attested by the counsel of the party concerned.*
4. *The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.*

[17] So far as the applicant Nishant@Nishu is concerned, since there are 15+ cases are shown in the bail rejection order, this court cannot shut its eyes having long criminal history. Thus learned counsel for the applicant is directed to file a supplementary affidavit explaining the antecedents of applicant Nishant @ Nishu after annexing relevant bail orders/trial judgments and the stage of the different trials, within four weeks. Learned A.G.A. may also file counter affidavit within same period with revised gang chart with full details. List this bail application of Nishant @ Nishu only in the second week of July, 2021 before appropriate Court for consideration of his bail.

(II) Now the Court intends to decide the second part of the issue :-

(11)

[18] After deciding the above mentioned bail applications, the Court is saddled with more important question of law, which indeed is boggling to the Court, that is to say, incomplete and half backed gang-chart of individual accused by which the accused/applicant takes out the benefit from the same and gets easily bailed out. The said gang-chart is prepared by concern informant (mostly SHOs of the police station), which was later on affirmed and approved by higher police as well as administrative authorities of the district branding that individual as 'Gangster'.

[19] The basic aim and objective of Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, is to make special provisions by giving sharp teeth to the police to curb and cope with “gangsters and their anti-social activities” and for matters connected therewith or incidental thereto. The State legislature brought into force the above mentioned legislation on 15th January, 1986 with a view to handle the menace of ‘Organized Crime’ in the State in more effective way. The Act is exhaustive and defines gangsterism and gangsters therein. Section 23 of the above Act, U.P. Act No. 7 of 1986 empowers the State Government may, by notification make RULES for carrying out the purposes and object of the enactment in more uniform and definite manner, ruling out any grain of arbitrariness in the procedure.

(12)

[20] Learned counsels for the rival parties are not at variance in informing the Court that no RULES have been framed even after lapse of 35 years of the said enactment by the State Government giving a ample space to the police authorities to misuse the powers and harass innocents according to their whims and capricious. The Court has experienced that these police authorities have fasten plural numbers of proceedings under the aforesaid Act, without waiting the final outcome from the law courts with regard to the earlier proceedings.

[21] Taking the advantage of this void when there are no rules or procedure for the present Act, only, an incomplete and half backed gang-charts were prepared by the informants of different bail applications which were later on mechanically approved by the responsible higher police authorities of the district, against that Gang. Accordingly, the named accused are fasten with additional criminal liability by way of lodging of the FIR under the U.P. Gangsters Act, 1986. This Court is of considered opinion that without being tested in the crucible of its trial before the competent law court, it would not serve the objective and purpose of present enactment merely by adding the numbers of proceedings under present Act or other ancillary enactments.

(13)

[22] As mentioned above, since the features are in fluid stage, different benches of this Court since 2003 while deciding various proceedings, have cautioned the police and executive time and again, that no case of false implication shall recur either by any malpractice or motivated prosecution by the police authorities. In response to these directions of this Court, Principal Secretary, Home and the then D.G. Police vide his letter dated 24.10.2003 wrote following letter: -

डीजी परिपत्र संख्या-27/2003

वी०के०बी० नायर

आई०पी०एस०

पुलिस महानिदेशक
उत्तर प्रदेश,

1, तिलकमार्ग, लखनऊ।

दिनांक- अक्टूबर, 24, 2003

प्रिय महोदय,

उ०प्र० में अपराधी, अपराधियों, अराजक तत्वों, समूह बनाकर अपराध करने वाले लोगों, समाज विरोधी क्रिया कलापों में संलग्न व्यक्तियों पर नियन्त्रण रखने तथा उनकी गतिविधियों पर अंकुश बनाये रखने के उद्देश्य से प्रदेश में उ०प्र० गुण्डा नियन्त्रण अधिनियम 1970 एवं उ०प्र० गिरोह बन्द एवं समाज विरोधी क्रिया कलाप (निवारण) अधिनियम 1986 का प्रावधान है।

इन अधिनियमों का उपयोग केवल पात्र व्यक्तियों के विरुद्ध ही हो एवं इसका दुरुपयोग न हो, इसलिए इस विषय पर समय समय पर विस्तृत निर्देश जारी किये गये हैं, किन्तु मा० उच्च न्यायालय तथा इस मुख्यालय के संज्ञान में कुछ ऐसे प्रकरण आये हैं, जिससे यह प्रतीत होता है कि इन अधिनियमों का दुरुपयोग रोकने के लिए शासन द्वारा जो दिशा-निर्देश जारी किये गये हैं उनका उचित ढंग से अनुपालन नहीं किया जा रहा है।

मा० उच्च न्यायालय ने रिट याचिका संख्या 6249/2003 अमरनाथ दुबे बनाम उ०प्र० राज्य एवं अन्य में उ०प्र० समाज विरोधी क्रिया-कलाप और गिरोह बन्द अधिनियम के दुरुपयोग पर अप्रसन्नता व्यक्त किया है तथा यह निर्देश दिया है कि उपरोक्त का दुरुपयोग करने वाले अधिकारियों पर भारी अर्थदण्ड लगाया जा सकता है।

अतः उपरोक्त दोनों अधिनियमों के क्रियान्वयन के सम्बन्ध में निम्नलिखित दिशा-निर्देश जारी किये जा रहे हैं। आप अक्षरशः अनुपालन सुनिश्चित करें, आपको यह भी सचेत किया जाता है कि यदि भविष्य में कोई ऐसा प्रकरण संज्ञान में आता है जिससे यह प्रतीत हो कि इन निर्देशों का उल्लंघन किया गया है या प्रकरण के विश्लेषण से ऐसा स्पष्ट हो कि आपकी या आपके किसी अधीनस्थ द्वारा जानबूझकर, लापरवाही या त्रुटिपूर्ण आचरण के कारण किसी निर्देश व्यक्ति के विरुद्ध उपरोक्त अधिनियमों के अन्तर्गत कार्यवाही की गयी है तो दोषी अधीनस्थ पुलिस कर्मियों के अतिरिक्त आपके विरुद्ध कठोर दण्डात्मक कार्यवाही की जायेगी।

(14)

उ0प्र0 समाज विरोधी क्रिया कलाप एवं गिरोह बन्द अधिनियम 1986 के अन्तर्गत कार्यवाही—

1— उ0प्र0 गिरोह बन्द अधिनियम एवं समाज विरोधी क्रिया कलाप (निवारण) अधिनियम 1986 के अन्तर्गत कार्यवाही करने के लिए उ0प्र0 शासन के शासनादेश संख्या— 3216/8-9-1986 दिनांक 23 जून, 1986, शासनादेश संख्या 3352/ छ-पु0-9-1997 दिनांक 10 अक्टूबर, 1997 द्वारा विस्तृत दिशा निर्देश जारी किये गये हैं। किसी भी अपराधिक प्रवृत्ति के व्यक्ति के विरुद्ध कार्यवाही करने से पूर्व यह सुनिश्चित करें कि सम्बन्धित व्यक्ति इस अधिनियम के अन्तर्गत कार्यवाही किये जाने के लिए पात्र है।

2— किसी भी गिरोह के विरुद्ध कार्यवाही करने के लिए उसके विरुद्ध केवल उन्हीं मामलों को आपराधिक सूची में सम्मिलित मानना चाहिए जिन मामलों में पुलिस द्वारा विवेचना के उपरान्त आरोप-पत्र प्रेषित की जा चुकी है या न्यायालय द्वारा विचारण के उपरान्त अभियुक्त को दोषमुक्त किया जा चुका है, उसे आपराधिक विवरण में सम्मिलित न किया जाय।

3— जिन मामलों के आधार पर उ0प्र0 समाज विरोधी क्रिया कलाप एवं गिरोह बन्द अधिनियम के अन्तर्गत कार्यवाही की गयी है उसी आधार पर पुनः कार्यवाही न की जाये अर्थात् किसी गिरोह के विरुद्ध उ0प्र0 समाज विरोधी क्रिया कलाप एवं गिरोह बन्द अधिनियम के अन्तर्गत कार्यवाही करने के बाद कोई नया अपराधिक कृत्य प्रकाश में आने पर ही उ0प्र0 समाज विरोधी क्रिया कलाप के अन्तर्गत कार्यवाही की जाये।

4— किसी गिरोह के विरुद्ध कार्यवाही प्रारम्भ करने के लिए थानाध्यक्ष द्वारा गिरोह के आपराधिक विवरण का उल्लेख करते हुए चार्ट तैयार किया जायेगा तथा चार्ट के अतिरिक्त गिरोह के क्रिया कलापों का विवरण देते हुए तथा गिरोह के किन-किन व्यक्तियों के विरुद्ध कार्यवाही किया जाना प्रस्तावित है, उसका स्पष्ट उल्लेख करते हुए प्रतिवेदन प्रस्तुत किया जायेगा जो क्षेत्राधिकारी तथा अपर पुलिस अधीक्षक की स्पष्ट संस्तुति के बाद वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक को प्रस्तुत किया जायेगा।

5— वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी अपने स्तर पर गिरोह के सदस्यों के आपराधिक विवरण तथा उनके क्रिया कलापों का भली भांति परीक्षण के उपरान्त जिलाधिकारी के साथ विचार-विमर्श करके सूची को अन्तिम रूप प्रदान करेंगे।

6— प्रतिवेदन तथा गैंग चार्ट पर वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक एवं जिलाधिकारी के अनुमोदन के उपरान्त अग्रिम कार्यवाही की जायेगी।

7— इस अधिनियम के अन्तर्गत पंजीकृत अभियोगों की विवेचना अनिवार्यतः थाना प्रभारी द्वारा की जानी चाहिए।

8— इस अधिनियम के अन्तर्गत पंजीकृत अभियोगों की विवेचना के बाद आरोप-पत्र भेजने से पूर्व जिलाधिकारी से सहमति प्राप्त कर ली जायेगी।

9— विवेचना की अवधि में मा0 उच्चतम न्यायालय के आर0 सरला बनाम टी0एस0 वेल एवं अन्य में पारित निर्णय दिनांक 13 अप्रैल, 2002 का भी अनुपालन किया जाये।

[23]

Here, it is pertinent to mention here that above letters

were issued by the D.G. Police and thereafter G.O. Dated

(15)

02.01.2004, pursuant to the direction given by this Court while deciding Writ Petition No. 6249/2003 Inre: Amar Nath Dubey Vs. State of U.P.

[24] Noticing the above letter, and the direction contained in the order of Division Bench of this Court, Principal Secretary (Homes) issued yet another set of procedure/instruction mentioning therein the manner in which gang chart in relation to offences under the Gangsters Act has to be prepared. These were all ad hoc practices adopted by higher bureaucracy just to make a stop gap arrangement and an effort to plug the void, in place of formal Rules as contemplated by Section 23 of the Act. Clause 2 of these instructions would indicate the details of information that has to be contained therein. The said instruction issued by Principal Secretary Homes, in the shape of Government Order is extracted herein below: -

‘संख्या 137 प्र0सं0/6-पु0-11-2003-58 (रिट)/2003

प्रेषक,

अनिल कुमार,
प्रमुख सचिव,
उ0प्र0 शासन।

सेवा में,

समस्त जिलाधिकारी,
जनपदीय वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
उत्तर प्रदेश।
गृह (पुलिस) अनुभाग-11 लखनउ दिनांक 2 जनवरी 2004

महोदय,

मा0 उच्च न्यायालय, इलाहाबाद के द्वारा रिट याचिका संख्या 6249/2003 अमरनाथ दुबे बनाम उ0प्र0 राज्य एवं अन्य में उ0प्र0 गिरोहबन्द व समाजबिरोधी क्रिया कलाप निवारण अधिनियम के दुरुपयोग पर चिन्ता व्यक्त की है। मा0 उच्च न्यायालय ने उ0प्र0 गिरोहबन्द निवारण अधिनियम उ0प्र0 गुण्डा अधिनियम एवं एन0डी0पी0एस0 अधिनियम के सम्यक उपयोग हेतु आवश्यक दिशा निर्देश जारी करने एवं दुरुपयोग रोकने हेतु यथोचित कदम उठाने के लिए कडे निर्देश दिये है।

(16)

इन अधिनियमों के सम्यक सदुपयोग करने एवं इनके दुरुपयोग के रोकथाम हेतु समय समय पर विस्तृत निर्देश पूर्व में जारी किये गये हैं। परन्तु ऐसा प्रतीत होता है कि इन अधिनियमों का दुरुपयोग रोकने के लिए शासन/पुलिस महानिदेशक, उ०प्र० द्वारा जो दिशा निर्देश जारी किये गये हैं, उनका कड़ाई से अनुपालन नहीं किया जा रहा है। आप सहमत होंगे कि निर्दोष व निरपराध व्यक्तियों के विरुद्ध इन अधिनियमों के अन्तर्गत दिये गये अधिकारों का दुरुपयोग कुछ अधिकारियों द्वारा किये जाने के कारण शासन एवं पुलिस विभाग की छवि पर प्रतिकूल प्रभाव पड़ता है।

अतः इस सम्बन्ध में पुनः निम्नलिखित दिशा निर्देश दिये जा रहे हैं, जिनका कड़ाई से अनुपालन सुनिश्चित किया जाये—

1— समस्त थाना प्रभारी, क्षेत्राधिकारी, अपर पुलिस अधीक्षक वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, प्रभारी जनपद एवं जिलाधिकारी इस अधिनियम में दिये गये प्राविधानों का अध्ययन करके इसको भली भाँति समझ लें। इस हेतु यह जान लेना रहेगा कि जनपद स्तर पर एक कार्यशाला आयोजित करा ली जाये जिसमें सभी अधिकारियों के अलावा जनपद के जिला शासकीय अधिवक्ता— फौजदारी एवं ज्येष्ठ अभियोजन अधिकारी प्रभारी भी अवश्य उपस्थित रहे। यदि किसी अधिकारी की किसी स्तर पर इन अधिनियमों के किसी प्राविधान के बारे में किसी प्रकार की कोई शंका हो तो इस कार्यशाला में उनका निराकरण करा लिया जाये।

2— इन अधिनियमों के सम्यक प्रयोग करने, दुरुपयोग रोकने के सम्बन्ध में इस आदेश के माध्यम से निम्नवत दिशा निर्देश आपको दिये जा रहे हैं। कृपया इनका कड़ाई से अनुपालन सुनिश्चित कराये —

उ०प्र० गिरोहबन्द एवं समाज विरोधी क्रिया कलाप (निवारण) अधिनियम के सम्यक उपयोग करने/दुरुपयोग रोकने के सम्बन्ध में दिशा निर्देश—

1— इस अधिनियम के अन्तर्गत कार्यवाही केवल उन्हीं अपराधियों के विरुद्ध की जाये, जिनकी आपराधिक गतिविधि इस अधिनियम में दिये गये प्राविधान की परिधि के अन्तर्गत आती है।

2— किसी गिरोह के विरुद्ध कार्यवाही प्रारम्भ करने के लिए थाना प्रभारी द्वारा गिरोह के आपराधिक विवरण का उल्लेख करते हुए चार्ट तैयार किया जायेगा तथा **चार्ट के अतिरिक्त गिरोह के क्रिया कलापों का विवरण देते हुए** तथा गिरोह के किन किन व्यक्तियों के विरुद्ध कार्यवाही किया जाना प्रस्तावित है, उसका स्पष्ट उल्लेख करते हुए आख्या प्रस्तुत की जायेगी, जो क्षेत्राधिकारी तथा अपर पुलिस अधीक्षक की स्पष्ट संस्तुति के बाद वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी को प्रस्तुत की जाये।

3— वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी अपने स्तर पर गिरोह के सदस्यों के आपराधिक विवरण तथा उनके क्रिया कलापों का भली भाँति परीक्षण के उपरान्त जिलाधिकारी के साथ विचार विमर्श करके इस सूची को अन्तिम रूप प्रदान करेंगे।

4— उक्त आख्या तथा गैंग चार्ट पर वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी एवं जिलाधिकारी के अनुमोदन के उपरान्त अग्रिम कार्यवाही की जायेगी।

5— किसी भी गिरोह के विरुद्ध कार्यवाही करने के लिए उसके विरुद्ध केवल उन्हीं मामलों को आपराधिक सूची में सम्मिलित मानना चाहिए, जिन मामलों में पुलिस द्वारा विवेचना के उपरान्त आरोप पत्र प्रेषित किया जा चुका है। जिन मामलों में अन्तिम रिपोर्ट प्रेषित की जा चुकी है या न्यायालय द्वारा विचारण के उपरान्त अभियुक्त को दोषमुक्त किया जा चुका है उसे आपराधिक विवरण में सम्मिलित न किया जाये।

6— जिन मामलों के आधार पर उ०प्र० समाज विरोधी क्रिया कलाप एवं गिरोहबन्द अधिनियम के अन्तर्गत कार्यवाही की गयी है, उसी आधार पर पुनः कार्यवाही न की

(17)

जाये। अर्थात् किसी गिरोह के विरुद्ध उ०प्र० समाज विरोधी क्रिया कलाप एवं गिरोहबन्द अधिनियम के अन्तर्गत कार्यवाही करने के बाद कोई नया आपराधिक कृत्य जो इस अधिनियम के प्राविधानों की परिधि में हो, प्रकाश में आने पर ही उ०प्र० समाज विरोधी क्रिया कलाप के अन्तर्गत कार्यवाही की जाये।

7— इस अधिनियम के अन्तर्गत पंजीकृत अभियोगों की विवेचना अनिवार्यतः दूसरे थाने के प्रभारी द्वारा की जानी चाहिए।

8— इस अधिनियम के अन्तर्गत पंजीकृत अभियोगों की विवेचना के बाद वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी से अनुमोदन प्राप्त करने के उपरान्त ही आरोप पत्र न्यायालय प्रेषित किया जाय।

9— गिरोहबन्द अधिनियम के अन्तर्गत मुकदमा पंजीकृत करने के उपरान्त विवेचना के पश्चात् न्यायालय आरोप पत्र प्रेषित करने हेतु अनुमोदन देने के पूर्व वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी को भली भंति संतुष्ट हो लेना चाहिए कि वास्तव में मामला गिरोहबन्द अधिनियम की परिधि में आता है अथवा नहीं।

10— यहां यह भी स्पष्ट किया जाता है कि यदि किसी जनपद में इस अधिनियम में दिये गये प्राविधानों के सम्बन्ध में किसी अधीनस्थ अधिकारी द्वारा अपने कर्तव्य पालन की उपेक्षा करने अथवा अपने अधिकार का दुरुपयोग का कोई मामला प्रकाश में आता है तो सम्बन्धित थाना प्रभारी एवं दोषी पाये गये अधिकारी के अलावा जनपद के वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी भी उत्तरदायी माने जायेंगे।

.XXX XXXX XXX XXX XXXX XX XXX

सामान्य निर्देश—

1— इन दिशा-निर्देशों के अनुपालन सुनिश्चित कराने की जिम्मेदारी जनपद के वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी की है।

2— यदि किसी जनपद में इन अधिनियमों के दुरुपयोग किये जाने का कोई मामला प्रकाश में आये, तो किसी भी स्तर पर दोषी अधिकारियों/कर्मचारियों को बचाने का प्रयास न किया जाये, वरन दोष निर्धारण करते हुए तत्परता से दोषी के विरुद्ध कार्यवाही की जाये।

3— इन अधिनियमों के अन्तर्गत दिये गये प्राविधानों का दुरुपयोग किये जाने का यदि कोई मामला प्रथम दृष्टया सही पाया जाये तो सम्बन्धित थाने के प्रभारी एवं अन्य दोषी अधीनस्थ पुलिस कर्मियों को थाने से हटा दिया जाये एवं तत्परता से जांच कराकर उनके विरुद्ध दण्डात्मक कार्यवाही की जाये।

4— प्रत्येक माह जिलाधिकारी एवं वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, प्रभारी अपनी मासिक गोष्ठी में इस आदेश के माध्यम से दिये जा रहे दिशा-निर्देशों के अनुपालन के सम्बन्ध में भी अनुश्रवण किया करेंगे।

5— सभी को यह स्पष्ट किया जाता है कि शासन अथवा पुलिस महानिदेशक उ०प्र० के संज्ञान में यदि कोई ऐसा मामला आता है कि किसी मामले में इन अधिनियमों का दुरुपयोग किये जाने की जानकारी वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी को होने के पश्चात् भी पीडित पक्ष को न्याय नहीं दिलाया गया अथवा दोषी अधिकारी, कर्मचारी के विरुद्ध यथेष्ट कार्यवाही नहीं की गयी है, तो ऐसे मामलों में वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक प्रभारी जिम्मेदार माने जायेंगे।

भवदीय,

(अनिल कुमार)

प्रमुख सचिव

संख्या एवं दिनांक तदैव

(18)

प्रतिलिपि-निम्नलिखित को आवश्यक कार्यवाही हेतु-

- 1- पुलिस महानिदेशक, उ०प्र०।
- 2- पुलिस महानिदेशक, अभियोजन, उ०प्र०।
- 3- अपर पुलिस महानिदेशक, सी बी सी आई डी, उ०प्र०।
- 4- अपर पुलिस महानिदेशक, रेलवेज, उ०प्र०।

आज्ञा से,
(दीपिका दुग्गल)
विशेष सचिव

संख्या एवं दिनांक तदैव

प्रतिलिपि-निम्नलिखित को अनुपालन सुनिश्चित कराने हेतु-

- 1- समस्त मण्डल आयुक्त, उ०प्र०।
- 2- समस्त पुलिस महानिरीक्षक, जोन उ०प्र०।
- 3- समस्त परिक्षेत्रीय उपमहानिरीक्षक, उ०प्र०।

आज्ञा से,
(दीपिका दुग्गल)
विशेष सचिव

[25] I have perused the above Government communications in this regard. Its paragraph nos. 2,4,5 and 6 are relevant for the present purpose. From this communications, it is clear that for the purposes of additional prosecution under U.P. Gangsters Act, only with regard to those cases against the individual, in which charge-sheet has been submitted by the police. Those cases which have ended into acquittal or Final Report has been submitted shall be discounted from the gang chart. Para 3 of the above letter states, that after clubbing all the previous criminal cases/additional criminal case under the present Act a gang chart may be prepared by the police. Pending earlier proceeding under the present Gangsters Act, if subsequent or successive proceedings under the present Act is proposed, then earlier cases shall not be

(19)

included in succeeding gang chart. In para 4 of the letter, the concern S.H.O. of the Police Station is given responsibility to prepare the gang-chart of the concern individual. After the preparation said chart would be produced before the C.O./Addl. S.P. for its approval and thereafter, S.P./S.S.P. of the District shall give final shape to the gang chart. The concern S.P./S.S.P. would look into the proposed gang chart and after due modification (if at all is needed) give a final shape to the said gang-chart. So far as the successive prosecution under present Act is concerned, as mentioned above, while preparing the earlier gang chart, the cases shown in it shall be discounted in the second/successive gang chart.

TEST CASE :-

[26] At this juncture, this court proposes to mention the facts of **Criminal Misc. Bail Application no 14323 of 2021 in re: Nishant @ Nishu Vs. State of U.P.** as a sample. Table hereinbelow is extracted from his bail rejection order of the accused-applicant shows that there are as many as 15 cases are shown to his credit, which relates to the year 2018 and 2020. The list shows that he or the gang was mostly operational in different police stations of Muzzafarnagar and only one case at police station Ranipur, Haridwar. In the year 2018, the police has instituted one case, having case crime No.1203 of 2018 u/s 2/3 U.P. Gangster Act at

(20)

Police Station Kotwali Nagar, Muzaffarnagar against accused [Nishant@Nishu](#) with regard to above case-crime, the applicant approached this Court, seeking bail. In the years 2019, bail order of Criminal Misc. Bail application No.36841 of 2019 dated 18.09.2019 (annexure 16) shows that while allowing the above bail application, this Court has opined that gang chart in above case has indicated only 5 cases to the credit of applicant and that is why he has been bailed out. However, in the rejection order table of criminal cases of Nishant @ Nishu spells out the long criminal history of the applicant, is as follows :-

Sl.No.	Case Crime No.	Under Sections of I.P.C.	Police Station and District.
1.	846/18	392/411 IPC	Kotwali Nagar, Muzaffar Nagar.
2.	872/18	307 IPC	Kotwali Nagar, Muzaffar Nagar.
3.	873/18	25 Arms Act.	Kotwali Nagar, Muzaffar Nagar.
4.	211/18	393 IPC	Chapaaz, Muzaffar Nagar.
5.	358/18	392 IPC	Shahpur, Muzaffar Nagar.
6.	258/18	307/427 IPC	Manoorpur, Muzaffar Nagar.
7.	611/18	392 IPC	Nai Mandi, Muzaffar Nagar,
8.	621/18	392 IPC	Nai Mandi, Muzaffar Nagar.
9.	437/18	302, 120B IPC	Ranipur, Haridwar.
10.	811/18	302 IPC	Kotwali Nagar, Muzaffar Nagar.
11.	346/18	414 IPC	Civil Lines, Muzaffar Nagar.
12.	1203/18	2/3 of U.P. Gangsters Act.	Kotwali Nagar, Muzaffar Nagar.
13.	306/20	392/411	Civil Lines, Muzaffar Nagar.

(21)

		IPC	
14.	433/20	2/3 U.P. Gangster s Act.	Civil Lines, Muzaffar Nagar.
15.	347/20	2/25 Arms Act.	Civil Lines, Muzaffar Nagar.

[27] Thus, from above it is clear that there are two cases engaging U.P. Gangster Act (I) Case Crime No. 1203 of 2018 u/s 2/3 U.P. Gangsters Act, Police Station Kotwali Nagar, Muzzafarnagar; (II) Case Crime No. 433 of 2020 u/s 2/3 of U.P. Gangsters Act Police station Civil Lines, Muzafarnagar (instant case). From the records, it is born out, that in the earlier case gang chart of five cases were shown to the credit of the applicant and that is why, he has been bailed out by the bench of this Court on 18.09.2019(Annexure-16). In subsequent case, a gang chart showing only one case (Case Crime No. 306 of 2020 u/s 392/411 IPC Police Station Civil Lines, Muzzafarnagar to the credit of the applicant and thus, as mentioned above, learned counsel for the applicant hammered his submission, relying upon only one case.

[28] These short-comings are sufficient to point out the alleged loopholes in execution of above G.O. dated 24.10.2003 and the G.O. dated 02.01.2004. Clubbing the number of cases of accused-applicant of above two gang charts is 5+1=6 cases in all are to the credit of applicant. Then, from where these numbers were

(22)

swelled to 15 cases which finds mention in the bail rejection order? There is no proper or satisfactory and explanation to bridge this gap of 15 cases. Why all these cases were not shown in one gang chart in one go? Now, at the stage of bail, the state in order to poison the judicial mind and prejudice the court are giving the details of all these 15 cases. This is the precise question for which this court is extremely bothered and conscious. It is on the part of the alleged laxity by the author of the gang chart and thereafter a blind approval by the higher administrative and police authorities of the District, the harden accused persons, succeeds in getting the bail from the law court.

[29] As mentioned above, the underline idea and objective of U.P. Gangsters Act is to curb the menace of organized crime with iron hands. The provisions of the enactment is targeted against that individual who either singly or by way of a gang is in habit of committing crime listed in sub section 2(b) of the Act. He is dreaded criminal and an incurable disease to the society. By applying the provisions of present enactment, the individual is not prosecuted or punished for those offences which he has committed but he is charged for being habitual, dreaded and harden criminal who commits these offences in much more planned and organized way. It is highly risky to permit such persons to roam around freely

(23)

in the open society and the innocent persons of society remain on the tentacle hooks so long as the said accused is a free man and posing serious threat to the orderly society. Thus, after applying the stringent provisions of this Act, State has got right to screw such persons, put them behind the bars and attach their ill-gotten money.

[30] Now, reverting back to the facts of the test case. As mentioned above, that two different cases under Gangster Act were fasten against the accused individual, though from two different Police stations of district Muzzafarnagar. In the Gang chart of 2018, five cases were shown and in the instant Gang Chart only one case to his credit but, it is born out from rejection order that he has got 15 cases on his back. In the bail application, the applicant has annexed 13 bail orders granted to him by different law courts on different occasion with his tacit admission about his involvement but the benevolent informants of both these cases have shown 5+1 cases only. The D.O. Letter of D.G.P. dated 23.10.2003 and G.O. 02.01.2004 indicates that gang chart would indicate only those cases where the charge sheet have been submitted by the police. The said chart would be prepared by concerned S.H.O. of the Police Station and approved by C.O. and, thereafter, S.P./S.S.P. of the concerned district. There is a rider in the said Government communication that those cases in which earlier gang chart was prepared, shall be

(24)

discounted in subsequent gang chart. Both the proceedings under U.P. Gangster Act is yet to see its final verdict. As pointed out earlier, that both these gang charts are incomplete and give only partial picture of the facts of the case. This would give rise to a room to the S.H.O./Police Personnels to misuse their power by initiating number of proceedings under above Act time and again. This Court is often experienced such type of lapses and short falls in preparation of the gang chart which contains bare skelton of the cases and their respective numbers on which the gang chart is prepared is in most casual way and thereafter proceedings under U.P. Gangsters Act were initiated by the State.

[31] In the instant case, from the gang chart it is evident that the gang of which the applicant is its active member is mostly operating in district Muzzafarnagar. In the age of internet, computers and other helpful software etc. where information of entire world is on one's finger tips with the additional platforms in the shape of D.C.R.B./S.C.R.B./N.C.R.B./C.C.T.N.S. its operation is very convenient to prepare one's gang chart in extensive way. The callous and careless approach in preparing the gang chart would not only adversely affect the prospects of criminal prosecution against that individual, who are harden criminals but also the very object of the enactment would also go haywire. The

(25)

accused would have an easy access of the bails from the law courts. Usually, the Court admits on bail either on solitary or lesser number of cases against that accused applicant in his gang chart. In the absence of full and comprehensive information regarding criminal credentials of the individual, it creates extremely awkward situation for the prosecutors even in the law courts but also consume valuable time of the courts while holding archeological exercise to explore one's criminal antecedents. This is totally unacceptable situation. The Court requires entire "criminal horescope" of the individual of the past who has been charged under the U.P. Gangsters Act .

[32] Such type of incomplete or half backed gang charts is reflective of informant's attitude and, his professional incompetence. Any material lapse in preparing the exhaustive gang chart should be plugged at the earliest and not the stage of bail. Presently, it seems that the informant either does not want to prepare the complete gang chart for any 'particular reason' or 'motive' or he has got lack of information regarding antecedents of particular individual and his modes-operandi. It is true that there shall not be repetition of case crime numbers as it may attract the vice of double jeopardy, but there is no restriction if any "addenda" is added to the gang chart spelling out his previous criminal

(26)

antecedents. That would be easy for the law courts to fathom the depth and gravity of the individual seeking bail after having holistic and comprehensive picture of the criminal history. The Court expects that the gang chart must give a concrete information not only the crimes committed by him in his individual capacity but also as member of that gang. Besides this, the area of operation i.e. within the district or touching the other districts or even gone beyond the limits of the State. While considering the bail application of that accused, the Courts are also curious to know the stage of trial of other cases in which that individual is enjoying bail. The said gang chart must indicate that as to whether he has misused his liberty of bail by indulging any other offence after coming out of jail.

[33] The alleged gang is having any expertise in committing any particular type of offence or they are indulged in assorted crimes, their family background, social and financial status including his ill-gotten properties and their reputation in the locality where he normally resides. All these are material particulars, helpful while adjudicating the bail application and also during the trial.

[34] Thus, in nutshell, the Court completely discard the gang chart of accused/applicant [Nishant@Nishu](#) with the direction to the S.P. Muzaffar Nagar and informant to re-cast the fresh gang

(27)

chart, mentioning above details in it, within four weeks and produce them before the Court on the next date in the second week of July, 2021 by way of supplementary affidavit.

[35] Principal Secretary(Homes) Lucknow and the Director General of Police, Lucknow are hereby directed to :-

1). Start exercise to frame proper Rules of the present enactment pursuant to the provisions contained in Section 27 of the U.P. Act 7 of 1986 latest by 31st December, 2021 positively.

2). Meanwhile, issue proper circular to all the SSP/SPs of the District to appoint any officer at least C.O. Rank, be placed in the office of S.P. , either exclusively or with additional charge to become authority concern and author of gang chart of the individual, under the U.P. Gangster Act, 1986 who shall act as Nodal Officer of all the police stations within the District. The alleged gang chart of individual shall be elaborative, comprehensive on giving all the necessary details of that accused viz (i) name, sex, permanent address (ii) Number of total cases to his credit either in his individual capacity or as member of the gang. (iii) If there are successive prosecution under the U.P. Gangster Act, then details of previous cases in the form of “Addenda” (iv) Stage of trial of those cases before the trial court. (v) Family background, his social, financial status of that accused including his ill-gotten wealth. (vi)

(28)

Whether he has misused the liberty of bail granted to him earlier by the law courts and have indulged in subsequent offences. (vii) Area of operation of that gang within the district alone or in the adjoining districts or has gone beyond the limits of State and lastly types of cases, meaning thereby the gang is having expertise in committing particular type of offence or assorted crimes and lastly his general reputation in the locality. The Court requires a complete, extensive criminal dossier of that individual, with above mentioned particular.

[36] The S.P/S.S.P of the district after making in depth probe and cross-check, regarding authenticity of the gang chart shall approve it after putting his signatures. Any laxity by the authority concern in preparing the gang chart would warrant serious consequences on his own shoulders.

[37] The Special Judge(Gangster Act) which are operational in every Sessions Divisions in the State are also directed to speed up the trial and make all necessary endeavour to conclude the same within a year of submission of its charge sheet. The proceeding under the U.P. Gangster Act shall be given priority over any other trial.

[38] Normally, the Court shuns and avoid to give any advice to the State agency for the initiation of successive proceedings under the U.P. Gangster Act. It may suffer from the

(29)

vice of double jeopardy, but in a given and changed circumstances, they may lodge subsequent FIR under the aforesaid Act of 1986.

[39] The Court expects that concern responsible authorities would take the matter on highest priority and frame the rules as expected within time frame.

[40] Let the copy of this order be handed over to learned Registrar General, High Court of Judicature at Allahabad who shall transmit its copies to Principal Secretary(Homes), Director General of Police, Lucknow, all the S.P/S.S.Ps of the District as well as learned Sessions Judge of every Sessions Division to ensure its compliance in letter and spirit within time bound period. All the pending gang chart shall be amended accordingly.

Order Date :-19.03.2021

Sumit S