

Neutral Citation No. - 2024:AHC:161366-DB

A.F.R.

Reserved on: 21.08.2024

Delivered on: 03.10.2024

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 11077 of 2024

Petitioner :- Sukarmpal @ Amit Jat

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Babu Lal Ram, Ramesh Kumar

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Arun Kumar Singh Deshwal,J.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Arjun Singh Yadav, Advocate holding brief of Sri Babu Lal Ram, learned counsel for the petitioner and Sri Ratan Singh, learned AGA for the State.

2. The present writ petition has been preferred for quashing the FIR dated 29.02.2024 registered as Case Crime No.28 of 2024, under Section 3(1) U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station- Alinagar, District- Chandauli and for a direction to respondents-State not to take coercive action against the petitioner pursuant to aforesaid FIR.

3. Contention of learned counsel for the petitioner is that from perusal of the gang chart of the impugned FIR, it is clear that the charge sheet in the base case was filed on 20.12.2020 and after that, no case was registered against the petitioner and after more than three years impugned FIR was lodged on 29.02.2024 by approving the gang chart on 14.02.2024 which is in violation of proviso of Rule 4(2) of U.P. Gangster and Anti-Social Activities (Prevention) Rules, 2021 (*hereinafter referred to as the 'Gangster*

Rules'). It is further submitted by learned counsel for the petitioner that the impugned FIR was registered under Section 3(1) of the Gangster Act without mentioning the corresponding provision of Section 2(b) of the *U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986* (in short the 'Gangster Act') on the basis of which he was named a gangster, which is against the law laid down by this Court in the case of **Asim @ Hassim vs State of U.P. and another; 2024 (1) ADJ 125 DB.**

4. Per contra, learned counsel AGA for the State has submitted that case of the petitioner does not cover under the proviso of Rules 4(2) of the Gangster Rules, as the same is regarding the offences which do not fall within the purview of the Gangster Act. It is also submitted by learned AGA that so far as contention of counsel for the petitioner that guidelines issued in the judgment of **Asim @ Hassim (supra)** has been violated is also misconceived because that judgment was already referred to Larger Bench in the case of **Dharmendra @ Bhima and another vs State of U.P. and four others** in Criminal Misc. Writ Petition No.1049 of 2024 vide order dated 04.03.2024.

5. Considering the rival submissions of learned counsel for the parties and perusal of record, following two questions arise for determination of this case;

(i) Which offences are covered under the proviso of Rule 4(2) of the Gangster Rules, 2021.

*(ii) Whether the guidelines issued in **Asim @ Hassim (supra)** is still valid despite the reference of the same to the Larger Bench in the case of **Dharmendra @ Bhima (supra)**.*

6. For determination of the first question, it would be apposite to mention Rule 4 of the Gangster Rules, which is being quoted as under;

4. Presence at the scene of incident or direct participation in the incident not necessary.- (1) *Presence at the scene of incident or direct participation in the incident is not necessary: For committing the criminal act defined in clause (b) of Section 2 of the Act, if any person organizes the whole gang or abets or aids the gang leader or member of that gang or provides protection and shelter to any such person, with the knowledge that the person in question is a gang leader or member of a gang or involved in committing/aiding/ abetting a criminal act, before or after the commission of such activity, then such a person shall also be liable under the provisions of the Act even though the whole gang had not participated in the incident at the time of commission of the said incident or was not present at the scene of the incident.*

(2) *It is not necessary to commit any offence together: For a person to be a member of a gang under the Act, it is not necessary for him to have committed any offence together with all the members of the said gang. If a member of that gang has committed any offence which comes within the purview of the Act, along with any other member or gang leader, they may be presumed to be a gang:*

Provided that no such person shall be included in gang who has committed a few offences, which do not come within the purview of the Act, along with a member three years or earlier.

(3) *Subsequent Prosecution Sanction: If the evidence collected during the investigation also reveals evidence regarding the involvement of any person in the gang against whom the gang-chart is not approved, then the charge-sheet can be sent to the Special Court after obtaining prosecution sanction from the concerned Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.*

7. Rule 4(2) of the Gangster Rules provides that if a member of a gang committed an offence which comes within the purview of Gangster Act, 1986 along with any other member or gang leader that may be presumed to be a gang. Therefore, even if all the members have not committed offence together but a member can still be a person presumed to be a member of a gang, if he committed an offence along with other members, or gang leader. But the proviso of Rule 4(2) provides that if any person has committed any offence which does not come within the purview of the Gangster Act along with a member of a gang during the last three years or earlier then that person cannot be included in the gang. Therefore, for the applicability of proviso of Rule 4 (2) of the Gangster Rules, it is necessary that offence, committed by a person, even if, with a member of a gang three years or earlier, **should not come within the purview of Gangster Act** and if that

offence comes within the purview of the Gangster Act and the bar of nominating a person as member of gang despite the fact that he has not committed any offence during last three years, will not be applicable.

8. Now a question also arises which offence would come within the purview of the Gangster Act, 1986.

9. To decide the issue, it would be relevant to consider the definition of 'gang' as per Section 2(b) of Gangster Act. Rule 3 of the Gangster Rules prescribes the conditions for the punishment under the Gangster Act for the offence mentioned in Sub-clause (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act. Rule 6 of the Gangster Rules which provides that for preparing the gang chart alleged act of a gang falls **within the preview of the Gangster Act**. Section 2(b) of Gangster Act is being quoted as under;

"2. Definitions. In the Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986-

(a) "Code" -----.

(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 antisocial activities, 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 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

- (v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or
- (vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or
- (vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or
- (viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or
- (ix) offences punishable under Section 171-E of the Indian Penal Code (Act No. 45 of 1860), 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.

10. Rules 3 and 6 of the Gangster Rules are being quoted as under;

“3. Conditions of criminal liability.- (1) *The offences mentioned in sub sections (i) to (xxv) of clause (b) of Section 2 of the Act shall be punishable under the Act only if they are :*

(a) committed for disturbing public order; or

(b) committed by causing violence or threat or display of violence, or by intimidation, or coercion or otherwise, either singly or collectively, for the purpose of obtaining any unfair worldly, economic, material, pecuniary or other advantage to himself or to any other person.

6. Relevant provision of the Act to be specifically mentioned.- (1) *While preparing the gang-chart, it shall be clearly mentioned if the alleged act of gang falls within the purview of clause (b) of section 2 of the Act along with the relevant provision.*

(2) If the Investigating Officer makes an endorsement to the effect that the accused is causing panic, alarm or terror in public, then evidence shall be collected in this regard.

11. From the definition of gang under Section 2(b) of the Gangster Act, it is clear that merely becoming a member of a gang will not be punishable unless the gang falls within the purview of Section 2(b) of Gangster Act and for the punishment of the member or organizer or leader of a gang under the Gangster Act, conditions mentioned in Rule 3 must be fulfilled, which prescribes that offence mentioned in Sub-section (i) to (xxv) of Section 2(b) of the Gangster Act must be committed for disturbing public order or committed by causing violence or threat or coercion or otherwise for the purpose of obtaining unfair trustworthy, pecuniary, economic, material or other advantage. Therefore, merely because a person has committed any offence mentioned in Sub-section (i) to (xxv) of sub-section (b) of Section 2 of the Gangster Act will not itself come within the purview of the Gangster Act unless he is member of a gang falling under Section 2(b) of Gangster Act.

12. Even the Rule 4(2) of the Gangster Rules itself provides that, if a member of a gang has committed any offence which **comes**

within the purview of the Act along with any other members then he will be presumed to be a gang. Therefore, punishing a person under the Gangster Act basic condition to be a member of a gang under Section 2(b) of the Gangster Act must be satisfied.

13. Rule 6 of the Gangster Rules also provides that at the time of preparation of gang chart, it must be mentioned that act of gang **falls within the purview of Section 2(b) of the Gangster Act**. Therefore, it is clear that for bringing an offence within the purview of Gangster Act, it must be committed by a member of a gang for the object mentioned in Section 2(b) of the Gangster Act by doing the activities mentioned in Sub-Section (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act. **Therefore, if any offence is committed whether the same falls within the category of Sub-Section (i) to (xxv) of Section 2(b) of the Gangster Act or not, that will not come within the purview of the Gangster Act unless the same is done with the object mentioned in Section 2(b) of the Gangster Act.**

14. The Full Bench of Allahabad High Court in **Ashok Kumar Dixit vs State of U.P.; 1987 SCC Online All 203** also observed in paragraph 15 that a person is not liable to be punished under Gangster Act merely because he happens to be a member of group unless he chooses to join a group which indulges in anti-social activities defined under the Gangster Act with the use of force or otherwise for gaining material advantage to himself or other person. Again in paragraph 73 of the aforesaid judgement, the Full Bench observed that for booking a person under the provisions of Gangster Act, the authority has to be satisfied and there is a reasonable and proximate connection between the occurrence and the activity of the person and such activities were, to achieve undue temporal, physical, economic or other advantage.

Paragraph nos.15 and 73 of the aforesaid judgement are being quoted as under;

“15. For the same reason, the submission of Sri Rakesh Dwivedi (discussed later) to the effect that the Act attempts to punish a mere status of a person without there being any actus reus has to be rejected. A person is not liable to be punished under the Act merely because he happens to be a member of a group. He comes within the clutches of the Act only if he chooses to join a group which indulges in anti-social activities defined under the Act with use of force for gaining material advantage to himself or any other person. The element of actus reus is hence clearly present in the offence created under the statute. We will discuss this aspect of the case in greater depth later in this judgment.

73. In this behalf, provisions of the Act themselves provide intrinsic guidelines. If we advert to Section 2(b) of the Act, which defines the term ‘gangster’ we would find significant words. They are “acting”, ‘singly or collectively’, ‘violence or show of violence’, ‘intimidation’, ‘coercion’, or ‘unlawful means’. Thus, for booking a person under the provisions of the Act, the authorities have to be prima facie satisfied that a person has acted. The authority has to be satisfied that there is a reasonable and proximate connection between the occurrence and the activity of the person sought to be apprehended and that such activities were to achieve undue temporal, physical, economic or other advantage. There need not be any overt or positive act of the person intended to be apprehended at the place. It is enough to prove active complicity which has a bearing on the crime.”

15. Rules under Section 23 of the Gangster Act were framed for carrying out the purposes of this Act. Therefore, the rules must be interpreted in consonance with the object of the Gangster Act. The object and reason of the Gangster Act are quoted as under;

“Object and reason of the Act- Gangsterism and anti-social activities influenced the State Legislature in making introduction of such Act. The object and reason of the Act is that gangsterism and anti-social activities were on the increase in the state posing threat to lives and properties of the citizens. The existing measures were not found effective enough to cope with new menace. With a view to break the gangs by punishing the gangsters and to nip in the bud their conspirational designs it was considered necessary to make special provision for the prevention of and for coping with gangsters and anti-social activities in the State.”

16. In the case of **State of U.P. vs Babu Ram; 1961 SC 751**, the Hon’ble Apex Court observed that the Rules made under the statute are treated for the purpose of construction as if they were in the enabling Act and are to be of the same effect as if contained in the Act.

17. In 9th edition of G.P. Singh’s Principles of Statutory Interpretation, on page 78, it is observed that *“the words of a statute are first understood in their natural, ordinary or popular*

sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary". Therefore, the proviso of Rule 4 of Gangster Rules is to be interpreted as per the object of the Gangster Act and meaning of any words should be assigned the same meaning as it is made under the Gangster Act.

18. From the above analysis, it is clear that bar of proviso of Rule 4(2) of Gangster Rules, 2021 will apply only in those cases where the offences were committed three year or earlier from the date of preparation of gang chart and these offences do not come within the purview of Section 2(b) of the Gangster Act as well as under Rule 3 of the Gangster Rules, even though those offences may fall within the category of activities mentioned in Sections (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act.

19. So far as the second question is concerned regarding the reference of judgement of **Asim @ Hassim (supra)** to a larger Bench of **Dharmendra @ Bhima (supra)**, the law is well settled that mere reference to a Larger Bench will not dilute the proposition laid down by the judgement referred, therefore, guidelines issued in the case of **Asim @ Hassim (supra)** that FIR registered u/s 3(1) of the Gangster Act without mentioning corresponding provisions of Section 2(b) of the Gangster Act, based on which, he was named as gangster is illegal, is still holds good till the reference is decided. For ready reference, para 9 of **Asim @ Hassim (supra)** case is being quoted as under:

"9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster."

20. In the present case, the base case was registered under Sections 60/63 the Excise Act and Sections 419, 420, 307, 467, 468, 471 IPC in which charge-sheet was filed on 14.02.2020 and there was no material to show that base case, in the present case, comes within the purview of the Gangster Act though the same is punishable under the Excise Act as well as IPC and the charge sheet was filed more than three years back, therefore, bar of proviso of Rule 4(2) of the Gangster Rules is applicable and the petitioner cannot be named as a member of a gang on the basis of base case mentioned in the gang chart in which charge-sheet has been filed.

21. However, it is observed that if an earlier occasion the Gangster Act was imposed against a person and charge-sheet was filed then any subsequent illegal activities falling within Sub-section (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act would come within the purview of the Gangster Act, if there is other supporting material regarding his involvement in the activities of a gang and in that case the Gangster Act can be imposed, even after three years.

22. The impugned FIR is registered u/s 3(1) of the Gangster Act without mentioning the corresponding provision of Section 2(b) of the Gangster Act, therefore, the same is illegal in view of the law laid down in the case of **Asim @ Hassim (supra)**.

23. In view of the above, the present petition is **allowed** and the FIR dated 29.02.2024 along with its gang-chart is hereby quashed.

Order Date :- 03.10.2024

A.Kr.