



2026:AHC:671

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 48794 of 2025

Brijesh Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Abhishek Kumar Pandey, Birendra
Singh, Yash Pratap Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application under Section 528 BNSS has been preferred for quashing/ setting aside the impugned order dated 09.09.2025 passed by Additional District and Session Judge/Special Judge, Gangster Act, Court No. 13, Varanasi, in S.T. No. 176/2023 (State Vs. Akhilesh Singh and others), arising out of Case Crime No. 34/2022, under Section 3(1) of U.P. Gangster Act 1986, Police Station-Lohta, District-Varanasi, whereby the discharge application of the applicant arbitrarily rejected by the learned trial court.
3. Learned counsel for the applicant has submitted that the impugned order dated 09.09.2025, passed by the Additional District and Sessions Judge/Special Judge, Gangster Act, Court No. 13, Varanasi, in S.T. No. 176 of 2023, under Section 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the "Act, 1986"), is bad in law. It is further contended that the discharge application filed by the applicant was not considered in its proper perspective and the entire arguments advanced on behalf of the applicant were ignored by the learned trial court while passing the impugned order dated 09.09.2025.
4. Learned counsel further submits that the charge-sheet was not forwarded by the Officer-in-Charge of the concerned police station, which is a mandatory provision under Rule 26 (2) of the Uttar Pradesh Gangster and

Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as the "Rules, 2021"). It is also submitted that the charge-sheet was not prepared in accordance with Form No. 1 (format of gang chart), as the details of the criminal history were neither appended nor mentioned, and the dossier of the accused was also not appended, which are the basic requirements at the time of preparation of the gang chart.

5. It is further stated by learned counsel for the applicant that the competent authorities did not exercise their own independent mind while forwarding the gang chart and a pre-printed gang chart was signed by the competent authorities. As per requirement of law, the authorities concerned should have prepared the gang chart by writing in clear words, not by signing the printed/typed satisfaction. It is further submitted that the impugned order has caused serious prejudice to the applicant, inasmuch as the implication has been made only under Section 3(1) of the Act, 1986, without there being any implication under the charging provisions of the Act, 1986. It is also submitted that only two cases were shown against the applicant in the gang-chart. In one case, being Case Crime No.278 of 2020, he was exonerated by the Investigation Officer and in another case, being Case Crime No.181 of 2021, he was implicated with the aid of Section 120B IPC merely on the allegation that he had provided his motorcycle to the named accused persons.

6. It is submitted that no overt act has been attributed to the applicant in the aforesaid case and he was not even named in the first information report. Lastly, it is submitted that the impugned order has been passed in an arbitrary and illegal manner, thereby causing grave prejudice to the applicant.

7. Learned A.G.A. has opposed the submissions advanced by the learned counsel for the applicant and has submitted that there is no illegality or infirmity in the impugned order. It is further submitted that the present application lacks merit and is liable to be dismissed.

8. This Court finds that the contention raised by the learned counsel for the applicant has already been considered by this Court in case of **Asim @ Hassim Vs. State of U.P. and Another**, wherein the FIR under Section 3(1) of the Act, 1986 was quashed by the Division Bench of this Court vide order

dated 02.12.2023 in Criminal Misc. Writ No.18729 of 2023. The relevant paragraphs of the aforesaid case **Asim @ Hassim (supra)** are reproduced hereunder:-

"3. Contention of learned counsel for the petitioner is that in the impugned F.I.R., only Section 3(1) of Gangsters Act was mentioned which is the provision for imposing penalty upon gangsters. However, no other provision is mentioned showing the anti social activities in which the petitioner is alleged to have indulged on account of which the petitioner is being prosecuted as gangster.

4. After hearing learned counsel for the parties and on perusal of the record, this Court finds that the impugned F.I.R. has been registered u/s 3(1) Gangsters Act. This Section provides punishment for gangsters. However, Section 2 of Gangsters Act provides anti social activities which form the basis for classifying a person as a gangster. Section 2(b) defines "gang" and Section 2(c) defines "gangster". The definition of "gangster", mentioned in Section 2(c) clearly mentions that the person to be named as gangster must be involved in activities enumerated in Clause (b) of Section 2 of Gangsters Act. Section 2(b), 2(c) and 3 of Gangsters Act are being reproduced as under:-

"2(b). "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

(i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (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;

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

2(c). *"gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;*

3. Penalty. - *(1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:*

Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.

(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a

term which may extend to ten years but shall not be less than three years and also with fine."

5. From the provisions, quoted as above as well as from the perusal of other provisions of Gangsters Act, it is clear that a person can be prosecuted under Section 3 of Gangsters Act only after he falls under the definition of "gangster" being part of the gang which is involved in anti social activities as mentioned in Section 2(b)(i) to (xxv) of the Act. The purpose of making special provisions of Gangsters Act for dealing with gangsters and for preventing their anti social activities. The provision of this Act are stringent and are therefore required to be interpreted strictly so as to prevent their misuse on the part of State authorities.

6. Hon'ble Supreme Court, in the case of **Gulam Mustafa vs. State of Karnataka; 2023 SCC OnLine SC 603**, observed in paragraph-38 as under:-

"38. This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position."

7. With regard to enactments which have a stringent provisions of law, which effecting personal liberty under Article-21 of the Constitution of India, Hon'ble Apex Court in the case of **Ichhu Devi Choraria vs. Union of India and others; (1980) 4 SCC 531** has observed about personal liberty as under:-

"Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is

placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law."

8. *The aforesaid observation in **Ichhu Devi (supra)** was again considered by Hon'ble Apex Court in the case of **Ameena Begum vs. State of Telangana & others; (2023) 9 SCC 587.***

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.*

10. *Considering the aforesaid facts and circumstances, this Court is of the view that the impugned F.I.R. is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act. Therefore, the impugned F.I.R. is hereby quashed."*

9. In another judgment, passed by the Hon'ble Supreme Court in the case of **Vinod Bihari Lal Vs. State of U.P. and another, decided on 23.05.2025 in Criminal Appeal Nos.777-778 of 2025 (Arising out of SLP (Crl.) Nos.5376-5377 of 2023)**, the proceedings of Special Sessions Trial No.54 of 2019, arising out of FIR No.850 of 2018, under Section 2/3 of the Act, 1986 was quashed.

10. The relevant paragraphs of the aforesaid case **Vinod Bihari Lal (supra)** are reproduced hereunder:-

"20. The definition of "gang" under Section 2(b) of the Act of 1986 comprises the following essentials;

i. A group of persons i.e., there can be no gang of one person;

ii. The group of persons, acting either individually or collectively, indulges in anti-social activities as enumerated in clauses (i) to (xxv) of

Section 2(b);

iii. Indulgence in such anti-social activities is by means of violence, or threat, or show of violence, or intimidation, or coercion, or otherwise;

iv. Use of such means is with the object of disturbing public order, or gaining any undue temporal, pecuniary, material or other advantage for himself or any other person.

21. It is apparent that the definition of the term "gang" is not attracted by mere association with a miscreant group. For such a group to metamorphize into a gang, it must engage in anti-social activities enumerated in clauses (i) to (xxv) of Section 2(b), and these must be committed for the object mentioned thereunder. In essence, a group of persons falls within the ambit of Section 2(b) only when the requirements set forth in Rule 3 are satisfied.

*22. This Court in **Shraddha Gupta v. State of Uttar Pradesh**, reported as (2022) 19 SCC 57, held that an accused can be termed as "gangster" when he as a member of a gang, has indulged in any of the enumerated anti-social activities, whether by means expressly stated 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. The relevant observations are reproduced hereinbelow:*

"25. A group of persons may act collectively or any one of the members of the group may also act singly, with the object of disturbing public order indulging in anti-social activities mentioned in Section 2(b) of the Gangsters Act, who can be termed as "gangster". A member of a "gang" acting either singly or collectively may be termed as a member of the "gang" and comes within the definition of "gang", provided he/she is found to have indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act. xxx

27. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge-sheet, if it is found that the accused is a member of a

"gang" and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, 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 and he/she can be termed as "gangster" within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act."

(Emphasis supplied)

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24. A more lucid exposition of the essential requirements was provided in the recent decision of **Sukarmal v. State of U.P.**, reported in **2024 SCC OnLine All 5848**. The relevant observations are reproduced hereinbelow:

"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."

(Emphasis supplied)

25. From the above exposition of law, a group of persons may be said to constitute a gang only when they, either singly or collectively, indulge in any of the anti-social activity enumerated in clauses (i) to (xxv) of Section 2(b), by means specified therein, or otherwise, and most importantly, with the object of disturbing public order, or securing any undue temporal, pecuniary, material or other advantage for himself or any other person.

.....

51. The satisfaction of the approving authority is sine qua non for taking action under the Act of 1986. It is indispensable for the approving authority to record his satisfaction in his own words, to indicate application of mind before approving the gang-chart. The investigation under the Act of 1986 is yet to be conducted, but it must be independent, indicating the reasons justifying the exercise of jurisdiction under the Act of 1986.

52. *It is equally apposite to mention that the satisfaction must not be a cyclostyle reproduction of the application of mind communicated by the recommending authority. This is only possible when the approving authority meticulously refers to the materials on record on the basis of which he will come to the conclusion about existence of grounds justifying registration of an FIR under the Act of 1986. Needless to say, reiteration of the contents of the FIR or chargesheet does not constitute application of mind.*

53. *Such satisfaction must stand on certain grounds; it cannot arise in absence of any basis, leaving the liberty of the accused in a precarious position. The basis of satisfaction must bear a reasonable nexus with the facts present before the concerned authority. Thus, the decision of the recommending, forwarding, and approving authorities respectively must be at the behest of the application of mind to the relevant and material facts available on record.*

54. *An independent application of mind cannot be presumed unless it is demonstrable from the record that the approving authority has, in letter and spirit, independently considered all the materials that culminated in the preparation and placement of the gang chart before him. While the correctness of such application of mind may lie beyond the scope of judicial scrutiny, the absence thereof certainly does not. A mechanical or routine exercise of power by the recommending, forwarding, and approving authorities respectively is impermissible, as it directly impinges upon the liberty of citizens.*

.....

56. *Upon perusal of the material on record, more particularly the gangchart, it is abundantly clear that the said gang-chart was approved by the competent authority merely by affixing his signature on a pre-printed gang-chart, an act that reflects nothing short of a complete nonapplication of mind and constitutes a violation of Rules 16 and 17 of the Rules of 2021 respectively. At the cost of repetition, we would like to reiterate that the recommending, forwarding, and approving authority are not mere rubber-stamping entities.*

57. *The competent authority forwarded and approved the gang-chart without verifying whether it had been prepared in accordance with the Rules of 2021. Resultantly, the registration of the subject FIR is in complete violation of the procedural safeguards. We are at pains to observe that authorities, entrusted with the solemn duty of safeguarding life and liberty treat it with such casual indifference, truly a case of the fox guarding the henhouse.*

58. *The High Court of Allahabad in **Sanni Mishra v. State of U.P.**, reported as **2023 SCC OnLine All 2975**, came down heavily on the police authorities for the manner in which gang charts were being prepared, as well as the lack of application of mind by the District Magistrate in approving them. The Court laid down specific directions for the preparation of gang-charts prior to registration of an FIR under the Act of 1986. The relevant observations are reproduced hereinbelow:*

"22. In view of the above, this court lays down following directions for preparation of gang-chart before lodging FIR under the Gangster Act, 1986:

(1) Date of filing of chargesheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021. (ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.

(iii) There must be material available for the perusal of the court which shows that the District Magistrate before approving the gang-chart had conducted a joint meeting with the District Police Chief and held a due discussion for invocation of the Gangster Act, 1986.

(Emphasis supplied)

59. *We also deem it necessary to make certain observations regarding the investigation conducted pursuant to the approval of the gang-chart and the registration of the subject FIR under the Act of 1986 respectively. Rule 20 mandates that, during the course of investigation, evidence pertaining to the elements of economic, material, and worldly benefits must be specifically collected. Upon being satisfied that credible, substantial, and logically coherent evidence has been compiled in*

accordance with the requirements of the Act, the Additional Superintendent of Police shall forward the report to the Senior Superintendent of Police/Superintendent of Police for sanction."

11. From perusal of the gang chart, appended at page-34 onwards, it is clear that the authorities did not apply their independent mind and they signed on pre-printed format. As per Rule 17(2) of the Rules, 2021, signatures on pre-printed rubber seal gang chart are prohibited. Accordingly, the approval should be recorded on the gang chart by the competent authority only after proper use of independent mind. Under Rule 26 (1) of the Rules, 2021, whenever the aforesaid charge-sheet is sent to the Commissioner/ Senior Superintendent of Police/ Superintendent of Police, for granting the necessary approval under Rule 2021, they shall again duly peruse all the facts and as per Rule 26(2) of the Rules, 2021 before submitting the gang-chart in the court, the approval of the District police In-Charge is mandatory.

12. In view of the above, the impugned order dated 09.09.2025 passed by the Additional District and Session Judge/Special Judge, Gangster Act, Court No. 13, Varanasi is hereby quashed.

13. The trial court is directed to pass a fresh order on the discharge application of the applicant and also proceed further in accordance with law, after affording opportunity of hearing to the applicant. The trial court would pass a fresh order within a period of two months from the date of production of the certified copy of this order.

14. The application is, accordingly **disposed of** in the following terms.

15. There shall be no order as to costs.

Vivek Kumar Singh,J.)

January 5, 2026
Radhika