



2026:UHC:2926

Judgment Reserved on: 13.02.2026

Judgment Delivered on: 21.04.2026

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Criminal Appeal No. 337 of 2013

Hemu Pant @ Hemu Kalu and AnotherAppellants

Vs.

State of UttarakhandRespondent

Presence:

Mr. R.S. Sammal, learned counsel for the Appellant.

Mr. S.S. Chauhan, learned Deputy Advocate General, assisted by Mr. Vikash Uniyal, Brief Holder for the State of Uttarakhand

Ashish Naithani, J.

The present Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 by the appellants Hemu Pant @ Hemu Kalu and Manish @ Kanchu Matiyani challenging their conviction and sentence by the Special Judge (Gangster Act) / Sessions Judge, Nainital in Special Sessions Trial No. 5A of 2007 (State vs. Lakhan Singh Negi & Others) vide judgment and order dated 19.08.2013.

2. In that trial, the appellants were convicted under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Gangster Act"), and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs. 10,000/- each, with a default sentence of six months additional imprisonment in case of non-payment of the fine.

3. The State's case originates from Crime No. 329 of 2007, Police Station Haldwani, wherein the appellants were alleged to be

members of a gang engaged in anti-social activities, primarily on the basis of their inclusion in a gang chart and their alleged involvement in previous criminal cases. After investigation, charge-sheet was filed and the appellants were put to trial. The trial court, upon appreciation of evidence, recorded conviction as aforesaid, which is under challenge in the present appeal.

4. Heard learned counsel for the parties and perused the records.

5. Learned counsel for the appellants has assailed the impugned judgment on the ground that the same is contrary to law and the evidence available on record. It is submitted that the State has failed to establish the essential ingredients required for bringing the case within the ambit of the Gangsters Act.

6. Learned counsel for the Appellants contends that the entire case rests upon the gang chart and alleged criminal history of the appellants, without any independent or substantive evidence to demonstrate that the appellants were members of an organized gang or that they were acting in concert in furtherance of any common object.

7. It is further submitted that no independent public witness has been examined and the State case is based solely on official witnesses, whose testimony, in absence of corroboration, ought to have been scrutinized with greater caution.

8. It is also argued that mere registration of previous cases or criminal antecedents cannot, by itself, justify conviction under the Gangsters Act unless there is cogent material to establish continuity of unlawful activities and the existence of a gang as defined under the Act. Learned counsel submits that the trial court has failed to appreciate this settled legal position and has recorded conviction on the basis of presumptions and conjectures.

9. It is further urged that similarly placed co-accused persons have been acquitted, yet the appellants have been convicted without any distinguishing evidence, rendering the impugned judgment unsustainable.

10. Per contra, learned State counsel has supported the impugned judgment and submitted that the State has been able to prove its case beyond reasonable doubt. It is contended that the inclusion of the appellants in the gang chart, coupled with their involvement in criminal cases, clearly establishes their status as members of a gang engaged in anti-social activities.

11. Learned State counsel submits that the Gangsters Act is a special statute intended to curb organized crime, and the material placed on record sufficiently brings the case within its ambit.

12. It is further submitted that the testimony of police witnesses cannot be discarded merely on the ground of their official status, particularly when their evidence is consistent and inspires confidence.

13. Learned State counsel contends that the trial court has duly considered the oral and documentary evidence and has recorded a well-reasoned finding of conviction, which does not call for interference in appellate jurisdiction.

14. At the outset, it is to be noted that the conviction of the appellants has been recorded under Section 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, which is a special statute intended to deal with organized and continuing criminal activity. The statutory scheme of the Act makes it clear that mere involvement in isolated criminal cases is not sufficient; rather, the State is required to establish the existence of a “gang” within the meaning of Section 2(b) of the Act, and the participation of the accused in anti-social activities as a member of such gang.

15. Thus, the essential ingredients which the State must prove are: (i) existence of a group of persons acting either singly or collectively as a gang; (ii) continuity of unlawful activity; and (iii) involvement of the accused in such activity in furtherance of the common object of the gang.

16. Upon reappraisal of the evidence on record, this Court finds that the State has failed to establish these foundational requirements. The entire case of the State rests upon the gang chart prepared by the police authorities and the alleged criminal antecedents of the appellants. The witnesses examined are predominantly police officials, whose testimonies, upon careful scrutiny, are found to be formal in nature and confined to proving the preparation of the gang chart and the registration of previous cases.

17. However, there is a complete absence of substantive evidence to demonstrate that the appellants were acting in concert or in coordination as members of an organized gang. No material has been brought on record to show any meeting of minds, common design, or concerted action linking the alleged criminal acts with each other so as to constitute a continuing course of conduct. The prosecution has also failed to establish any nexus between the alleged offences and the existence of a gang as contemplated under the Act.

18. The concept of “continuing unlawful activity”, which is central to the applicability of the Gangsters Act, has also not been substantiated. Mere registration of previous cases, without proof of their outcome or without demonstrating that such acts form part of an organized pattern of criminal activity, cannot satisfy the statutory requirement.

19. It is further noteworthy that the prosecution has not examined any independent witness to corroborate its version. Though the evidence of police officials cannot be discarded solely on the ground of their official status, yet, in cases under special penal statutes, the Court is required to scrutinize such evidence with greater caution. In the present case, the absence of independent corroboration, coupled with the formal nature of official testimony, renders the prosecution case doubtful.

20. Another significant circumstance is that several co-accused persons, who were alleged to be members of the same gang, have been acquitted. The impugned judgment does not indicate any distinguishing feature to justify the conviction of the present appellants. Such acquittals substantially weaken the State case regarding the existence of a gang itself, particularly in the absence of independent evidence against the appellants.

21. The trial court appears to have proceeded on the assumption that inclusion of the appellants in a gang chart and their alleged criminal history are sufficient to attract the provisions of the Act. Such an approach is legally unsustainable. The provisions of the Gangsters Act cannot be invoked on the basis of mere suspicion or general allegations; strict proof of the statutory ingredients is required.

22. In criminal jurisprudence, the burden lies upon the State to prove its case beyond reasonable doubt. Where the evidence falls short of establishing the essential ingredients of the offence, the benefit of doubt must necessarily be extended to the accused.

23. In view of the aforesaid discussion, this Court is of the considered opinion that the State has failed to establish the guilt of the appellants under Section 3(1) of the Gangsters Act beyond

reasonable doubt. The conviction recorded by the trial court, therefore, cannot be sustained.

ORDER

Accordingly, this appeal is **allowed**. The judgment and order dated 19.08.2013 passed by the Special Judge (Gangster Act) / Sessions Judge, Nainital in Special Sessions Trial No. 5A of 2007, insofar as it convicts and sentences the appellants under Sections 2/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, is hereby set aside.

Since both the appellants have been on bail throughout the pendency of this appeal pursuant to the order of the co-ordinate Bench dated 22.08.2013, their bail bonds stand discharged and sureties are released. If either appellant is in custody in any other case, they shall not be released solely on account of this order.

(Ashish Naithani, J.)

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