

(Judgment reserved on 19.07.2021)

(Judgment delivered on 02.02.2022)

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 3668 of 2021

Petitioner :- Anwar Shahzad

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Ajay Srivastava, Gopal Swarup Chaturvedi (Senior Adv.), Mohd. Farooq

Counsel for Respondent :- G.A., Gambhir Singh

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Piyush Agrawal, J.

1. Heard Sri Gopal Chaturvedi, learned Senior Advocate, assisted by Sri Ajay Srivastava, learned counsel for the petitioner and Sri Gambhir Singh, learned A.G.A. for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:

*“(i) Issue a writ or direction in the nature of certiorari quash the first information report dated 19.03.2021 lodged by Respondent no.2 as case crime no.55/2021 Under section 3(1) Gangster & Anti Social Activities Act 1986 Police Station Dakshintola District Mau (**Annexure No.1 to the writ petition**).*

“(ii) Issue a writ or direction in the nature of mandamus directing the respondent not to arrest the petitioner in as case crime no.55/2021 Under section 3(1) Gangster & Anti Social Activities Act, 1986 Police Station Dakshintola District Mau.”

3. In paragraph-11 of the writ petition, the petitioner has admitted that four criminal cases, namely, Case Crime No.724 of 2019 under Sections 379, 447, I.P.C. in P.S. Kotwali, District Ghazipur, Case Crime No.725 of 2019 under Sections 379, 447, I.P.C. in P.S. Kotwali, District Ghazipur, Case Crime No.594 of 2019 under Sections 181, 420, I.P.C. in P.S. Kotwali, District Ghazipur and Case Crime No.667 of 2020 under Section 3(1)(2) of U.P. Gangsters Act, P.S. Kotwali, District Ghazipur, are registered against him. As per impugned First Information Report, a Case Crime No.04 of 2020 under Sections 419, 420, 467, 468, 471, 120-B I.P.C. and Section 30 Arms Act is also registered in P.S. Daskshin Tola, District Mau. In paragraph-5 of the writ petition, the petitioner has stated that he is innocent and has been falsely implicated because he is real brother-in-law of Mukhtar Ansari and the present government has started a policy

to harass the political opponent who had fought and won MLA/ parliamentary election against the ruling party candidate. In paragraph-12 of the writ petition, the petitioner has stated that the provisions of the Gangsters Act have not been complied as there is nothing on record to show that the petitioner is gaining or has accumulated wealth because of the present cases and Section 17 of the Gangsters Act is also not applicable.

4. The contents of the impugned First Information Report No.0055 of 2021, P.S. Dakshin Tola, District Mau under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, are reproduced below:

“प्रधान लेखक थाना दक्षिणटोला जनपद मऊ आज दिनांक 19.03.2021 को मैं प्रभारी निरीक्षक डी०के० चौधरी मैं हमराही का० राजन कुमार व का० रामू सरोज के साथ मय सरकारी वाहन यू.पी. 54 जी 0181 मय हेड कांस्टेबल चालक रामसेवक यादव के देखभाल क्षेत्र चेकिंग संदिग्ध व्यक्ति, संदिग्ध वाहन, पेंडिंग विवेचना व शासन व उच्चाधिकारी के निर्देश की संगठित अपराध करने वाले अपराधियों का चिन्हीकरण कर कार्यवाही करने के निर्देश के क्रम में मामूर था दौरान भ्रमण यह संज्ञान में आया गैंग लीडर 1- मुख्तार अंसारी पुत्र स्वर्गीय सुबहान उल्लाह अंसारी निवासी दर्जी टोला यूसुफपुर थाना मोहम्मदाबाद जनपद गाजीपुर उम्र 58 वर्ष का एक सक्रिय गैंग है तथा मुख्तार अंसारी स्वयं गैंग लीडर है, जो स्वयं तथा अपने गैंग के सदस्य 2- इसराइल अंसारी पुत्र अल्लाफ अंसारी उर्फ हुसैन निवासी डोमनपुरा पोस्ट बालापुर थाना मोहम्मदाबाद जनपद गाजीपुर उ०प्र० उम्र 42 वर्ष 3- सलीम पुत्र स्वर्गीय बदरुद्दीन निवासी दर्जी मोहल्ला वार्ड नंबर 12/15 यूसुफपुर थाना मोहम्मदाबाद जनपद गाजीपुर उ०प्र० उम्र 40 वर्ष 4- अनवर शहजाद पुत्र जमशेद रजा निवासी सैयदवाड़ा थाना कोतवाली जनपद गाजीपुर उ०प्र० उम्र 43 वर्ष के साथ मिलकर गैंग बनाकर आधुनिक दूरभाष संचार माध्यमो व अन्य आधुनिक तरिको को अपना कर गैंग के सदस्यों से सम्पर्क कर आपराधिक षडयंत्र करना छल के प्रायोजन से धोखाधडी करने एवं कूट रचना करने के अपराधी है इसके द्वारा लगातार आपराधिक षडयंत्र करना छल के प्रायोजन से कूट रचना करना कूट रचित दस्तावेज तैयार कर यहां थाना क्षेत्र का मूल निवासी न होने के वावजूद छल के प्रायोजन से कूट रचना करने एवं लोक सेवक को डरा धमकाकर यहा के निवासी होने के संवन्ध में दस्तावेज तैयार कर एक से अधिक लाइसेन्सी शस्त्र प्राप्त करना एवं डरा धमकाकर स्वयं एवं उनके गैंग के सदस्यो द्वारा भौतिक आर्थिक दुनियाबी लाभ एवं अपराध कर धन अर्जित किया जाता है इसके विरुद्ध थाना दक्षिण टोला जनपद मऊ पर अपर पुलिस अधीक्षक मऊ के शस्त्र लाइसेन्स धारको के शस्त्र सत्यापन एवं पते सत्यापन प्रारम्भिक जाँच आख्या के आधार पर मुकदमा अपराध संख्या 04/2020 धारा 419/420/467/468/471/120 बी भा०द०वि० धारा 30 आयुध अधिनियम का अपराध पंजीकृत है विवेचना में ठोस साक्ष्य के आधार पर आरोप पत्र संख्या ए-01 एवं दिनांक 17-05-2020 व ए-02 दिनांक 17.02.2021 को न्यायालय प्रेषित किया गया है। जो माननीय न्यायालय में विचाराधीन है इनके द्वारा पूर्व में जनपद में एवं जनपद के वाहर भी आपराधिक गतिविधियों में संलिप्त रहते हुए अपराध कारित किये गये है इनका भय एवं

आतंक इतना व्याप्त है की जनता का कोई भी व्यक्ति इनके विरुद्ध गवाही देने एवं मुकदमा लिखाने का साहस नहीं करता है इसके अतिरिक्त लोक सेवक को डरा धमका कर मनचाहे रिपोर्ट लगवा कर कूट रचित दस्तावेज तैयार कर लेते है गैंग लीडर मुख्तार अँसारी अपने तथा अपने साथियों के साथ मिलकर अपने भौतिक आर्थिक एवं दुनियाबी लाभ हेतु गैंग बनाकर अपराधिक षडयंत्र करना छल करना छल करके दस्तावेज बनाकर अपराध कारित करने के अभ्यस्त अपराधी हैं अभियुक्त भारतीय दंड विधान के अध्याय 17 व 18 के अपराध करने के अभ्यस्त अपराधी हैं इनके विरुद्ध विभिन्न जनपद में अपराध पंजीकृत है अपराध के दृष्टिगत इनके तथा इनके गैंग के सदस्यों के आपराधिक क्रिया कलापों पर नियंत्रण हेतु उत्तर प्रदेश गिरोह बन्द एवं समाज विरोधी क्रिया कलाप निवारण अधिनियम 1986 के अंतर्गत कार्यवाही किया जाना नितांत आवश्यक है मुख्तार अँसारी एवं इनके गैंग के सदस्य के आपराधिक प्रवृत्ति के आधार पर नियमानुसार गैंग चार्ट तैयार करा कर तत्कालीन प्रभारी निरीक्षक द्वारा अनुमोदन हेतु दिनांक 02.03.2021 को भेजा गया था जिसे श्रीमान क्षेत्राधिकारी नगर जनपद मऊ द्वारा दिनांक 03.03.2021, श्रीमान अपर पुलिस अधीक्षक जनपद मऊ द्वारा दिनांक 11.03.2021, श्रीमान पुलिस अधीक्षक जनपद मऊ द्वारा दिनांक 12.03.2021 को श्रीमान जिला मजिस्ट्रेट महोदय मऊ द्वारा दिनांक 17.03.2021 को अनुमोदित किया गया है। अतः प्रधान लेखक थाना दक्षिण टोला जनपद मऊ अभियुक्तगण उपरोक्त के विरुद्ध अन्तर्गत धारा 3(1) उत्तर प्रदेश गिरोह बंद एवं समाज विरोधी क्रिया कलाप निवारण अधिनियम 1986 का अभियोग पंजीकृत करें, जिससे इनकी समाज विरोधी गतिविधियों पर प्रभावी अंकुश लगाया जा सके। धीरेन्द्र कुमार चौधरी प्रभारी निरीक्षक थाना दक्षिणटोला जनपद मऊ। नोट नै० हे० मु० बाबूलाल प्रमाणत करता हूँ कि नकल तहरीर अक्षरशः अंकित कराया गया। ”

5. Sri G.S. Chaturvedi, learned Senior Advocate has submitted as under:-

(i) On the basis of available material of First Information Report No.0667 of 2020, under Section 2/3 (1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, P.S.- Kotwali, District- Ghazipur was registered against the petitioner, against which he filed Criminal Misc. Writ Petition No.11479 of 2020 (Anwar Shahjad and another Vs. State of U.P. and 2 others), which was disposed of observing as under:-

"Be that as it may, as the allegations are in respect of constituting a gang for grabbing land and acquiring movable and immovable property through benami transactions, the matter would require investigation and therefore the prayer of the petitioners to quash the first information report cannot be accepted.

However, considering the fact that in the two cases cited against the petitioners, the petitioners were not named in the first information report and their name has been added through supplementary charge-sheet and the person who was charge sheeted earlier is not stated to be gang member in the impugned first information report and that the petitioners have been granted bail in those cases, we deem it appropriate to dispose off the petition by providing that the

investigation of the above case shall continue and brought to its logical conclusion but the petitioners shall not be arrested till submission of police report under Section 173 (2) CrPC, provided they co-operate in the investigation."

(ii) The fact of registration of First Information Report No.004 of 2020 dated 05.01.2020, under Section 419, 420, 467, 468, 471, 120-B I.P.C. and Section 30 of Arms Act 1971, P.S.-Dakshintola, District-Mau was well available at the time of registration of the aforesaid Case Crime No.0667 of 2020, under Section 2/3 (1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 and yet the impugned First Information Report No.0055 of 2021 dated 19.03.2021 under Section 3(1) of the Act, 1986, P.S.-Dakshintola, District-Mau has been registered against the petitioner which is nothing but abuse of process of law.

(iii) There is nothing in the impugned First Information Report No.0055 of 2021 which may show that the petitioner has committed any offence or was involved in any offence after registration of the earlier First Information Report No.0667 of 2020 under Section 2/3 (1) of the Act, 1986, P.S. Kotwali, District-Ghazipur dated 11.09.2020. Thus, the allegation made in the impugned First Information Report so as to bring the petitioner within the meaning of gang or gangster as defined under the Act, 1986 for the purposes of registration of the impugned First Information Report, is wholly arbitrary and illegal.

(iv) The order passed by the District Magistrate, Mau under Section 14(1) of Act 1986 with respect to one Mukhtar Ansari dated 07.06.2021, has nothing to do with the case of the petitioner or the FIR lodged against the petitioner under Section 3(1) of the Act, 1986 being FIR No. 0055 of 2021 dated 19.03.2021, Dakshintola, District Mau.

(v) The impugned FIR registered against the petitioner on the basis of Criminal Case No. 004 of 2020, under Sections 419, 420, 467, 468, 471, 120-B I.P.C. and Section 30 of the Arms Act, Police Station Dakshintola, District Mau, being single case as shown in the gang chart, cannot be made basis for registering the impugned FIR under Section 3(1) of the Act, particularly when the FIR No. 04 of 2020 was registered on the basis of an alleged incidence of the year 2001.

6. Sri Gambhir Singh, learned A.G.A. has submitted as under:-

(i) The charge-sheet in case crime no.0004 of 2020 has already been submitted. The petitioner has not challenged the charge-sheet, the basis of registration of impugned First Information Report No.0055 of 2021 is that the petitioner is the member of the gang, habitual of committing crimes as provided under Section 2(b) of the Act, 1986. Therefore, the registration of the impugned First Information Report on the basis of materials available with the police satisfies the ingredients of gangsters and the penal clause i.e. Section 3 (1) of the Act, 1986 and thus, fully justifies registration of the impugned First Information Report.

(ii) As per gang chart filed as Annexure-2 to the writ petition, there are four members including the petitioner in the gang which is led by one Mukhtar Ansari and the members are Israel Ansari, Salim Ansari and the petitioner i.e. Anwar Sahjad. The impugned First Information Report and the F.I.R. No.0667 of 2020 under the Gangster Act were registered in different police stations in different districts and the gangs were also different. Therefore, there being different composition of gangs, the impugned First Information Report cannot be challenged on the basis of another

First Information Report No.0667 of 2020.

(iii) The F.I.R. under Section 3(1) of the Act, 1986 can be registered even on the basis of the single case. Reliance has been placed upon a Division Bench judgment in the case of **Rinku Alias Hukku Versus State of U.P. and another**, 2002 (2) AWC 1446, 2000 CriLJ2834, (paras 7 & 8) and **Udham Singh Versus State of U.P. and others** 2008 (61) ACC 642, (paras 8 & 9), decided on 26.03.2008 in Criminal Writ Petition No.4555 of 2008.

7. We have carefully considered the submissions of the learned counsels for the parties and perused the record of the writ petition.

8. Perusal of the impugned first information report as afore-quoted *prima facie* discloses commission of cognizable offence. The question as to whether a first information report under the Act, 1986 can be lodged on the basis of involvement of an accused in single previous case, is no more *res integra*. In a recent judgment dated 05.08.2021 in Criminal Misc. Writ Petition No.3938 of 2021 (**Ritesh Kumar Alias Rikki vs. State of U.P. and another**), a coordinate bench of this Court has considered the following question:

"Whether a first information report under the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 [hereinafter referred to as the "Gangsters Act"] can be lodged and is maintainable on the basis of involvement of the petitioner(s) / accused in a single previous case".

9. The Division Bench answered the afore-quoted question in the aforesaid case of **Ritesh Kumar Alias Rikki** (supra), as under:

"As per the settled principles of law, the lodging of a first information report on the basis of a single case, is valid and permissible."

10. In the aforesaid case of **Ritesh Kumar Alias Rikki** (supra), the Division Bench after referring to the judgments of Hon'ble Supreme Court in the case

of **State of Telangana v. Habib Abdullah Jellani, (2017) 2 SCC 779** and **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (Criminal Appeal No. 330 of 2021 in its judgment dated 13.04.2021)** has observed that in a petition under Article 226 of the Constitution of India, the High Court cannot adjudicate the correctness of the allegations in the impugned first information report or the cases on the basis of which the impugned first information report has been lodged.

11. In the case of **M/s Neeharika Infrastructure Pvt. Ltd.** (supra), Hon'ble Supreme Court held that the Courts should not thwart any investigation into the cognizable offences. It is only in cases where no cognizable offence or offence of any kind is disclosed in the First Information Report that the Court will not permit an investigation to go on. The power of quashing should be exercised sparingly with circumspection, in the rarest of rare cases. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. Criminal proceedings ought not to be scuttled at the initial stage. Quashing of complaint/FIR should be an exception rather than an ordinary rule. Ordinarily, the Courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. The First Information Report is not an encyclopaedia which must disclose all facts and details regarding the offence reported. Therefore, when the investigation by the police is in progress, the Court should not go into merits of the allegations made in the FIR. Police must be permitted to complete the investigation.

12. In view of the law settled by Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd.** (supra) and also in view of the law settled by coordinate bench of this court in the case of **Ritesh Kumar @ Rikki** (supra), we do not find any good reason to interfere with the impugned first information report which *prima facie* discloses commission of a cognizable

offence.

13. For all the reasons afore-stated, we do not find any merit in this writ petition. Consequently, **the writ petition is dismissed.**

Order Date :- 02.02.2022

NLY