

(Judgment reserved on 19.02.2021)
(Judgment delivered on 12.08.2021)

Court No. - 46

1. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 642 of 2021

Petitioner :- Arjun
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Pintu Tiwari
Counsel for Respondent :- G.A.

2. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 798 of 2021

Petitioner :- Dharendra Pratap Singh @ Dheeru Singh
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Manish Tiwari,Alka Upadhyay
Counsel for Respondent :- G.A.

3. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17198 of 2020

Petitioner :- Nasim Akhtar
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Shashank Tripathi,Deepak Singh
Counsel for Respondent :- G.A.

4. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17194 of 2020

Petitioner :- Jyoti Yadav
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Ray Sahab Yadav
Counsel for Respondent :- G.A.

5. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 1243 of 2021

Petitioner :- Devendra Yadav
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Geetam Singh,Pintu Tiwari
Counsel for Respondent :- G.A.

6. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 1403 of 2021

Petitioner :- Jan Mohammad And 2 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Dhiresk Kumar
Counsel for Respondent :- G.A.

7. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 1306 of 2021

Petitioner :- Ramu Shakya
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Veer Bhagat Singh Kushwaha
Counsel for Respondent :- G.A.

8. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 1411 of 2021

Petitioner :- Dharmraj Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Suneel Kumar Mishra, Pramod Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Shamim Ahmed, J.

(Per: Surya Prakash Kesarwani, J.)

1. Heard learned counsel for the petitioners and the learned A.G.A.

2. This batch of writ petitions were finally heard at length with the consent of the learned counsels for the parties as noted in the order dated 19.02.2021.

3. Considering the facts and circumstances of the case, the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as 'the Act, 1986') and the submissions of the learned counsels for the parties, the following questions are framed for determination:-

“(i) Whether on a solitary criminal case registered against the petitioners, a case under Section 2/3 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Act, 1986") can be registered ?

(ii) If the answer to the question no.(i) is in affirmative, then whether the impugned First Information Report registered under Section 2/3 of the Act, 1986, deserves to be quashed ?”

Facts:-

4. The basis for registering first information reports against the petitioners are given in the impugned first information reports. Therefore, for

ready reference, the first information reports under challenge in each of the present writ petitions, are reproduced below:-

“(A) CRIMINAL MISC. WRIT PETITION No. - 642 of 2021

The First Information Report No.442/2020, dated 13.12.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Civil Lines, District Muzaffarnagar:-

“सूचना जुबानी वादी - प्रभारी निरीक्षक श्री डी० के० त्यागी- मै प्रभारी निरीक्षक डी० के० त्यागी मय हमराह का० 316 राहुल कुमार मय 01 जरब पम्प एक्शन गन मय 10 कारतूस 12 बोर मय 01 टीयर गैस गन मय 08 सैल टीयर गैस मय सरकारी बुलेरो UP-12 AG – 0415 मय चालक का० 590 यशपाल मय एक जरब पिस्टल मय 10 कारतूस के रवाना शुदा रफता रफट रो० आम तारीखी इमरोजा से वाद देखरेख शान्ति व्यवस्था गश्त, चैकिंग संदिग्ध व्यक्ति / वाहन व तालाश वांछित अभि० गण विवेचना मुकदमा मरजुआत व वाला- वाला श्रीमान जिला मजिस्ट्रेट मुजफ्फरनगर महोदय कार्यालय से अनुमोदित शुदा गैंगचार्ट गैंगलीडर जोनी उर् शुभम व अर्जुन आदि का प्राप्त कर वापस थाना आया। चार्ज थाना सुपुर्द खुद लिया कर्म०गण का हवाले शुदा अस्लाह बादस्तूर रहा। अंकित किया कि गैंग चार्ट में 1. जोनी उर् शुभम पुत्र राकेश निवासी सुनहेडी खडखडी चुडियाला कस्वा व थाना गागलहेडी जनपद सहारनपुर उम्र 25 वर्ष **आपराधिक इतिहास – मु०अ०सं० 247/2020** धारा 392,411 भादवि व चार्ज शीट नम्बर 221/2020 दिनांकित 13/9/2020 थाना सि० ला० मुजफ्फरनगर **मु०अ०सं० 249/2020** धारा 307 भादवि चार्ज सीट नम्बर 341/2020 दिनांकित 07/10/2020 थाना सि०ला० मु०नगर 2. अर्जुन पुत्र नोरतो सिंह निवासी हरिनगर थाना पुरकाजी जनपद – मु०नगर उम्र 23 वर्ष आपराधिक इतिहास – **मु०अ०सं० 247/2020** धारा 392,411 भादवि चार्ज सीट नम्बर 221/2020 दिनांकित 13/9/2020 थाना सि०ला० मुजफ्फरनगर **सक्रिय सदस्य** है अपने गैंग के साथ अपने **निजी आर्थिक एवं भौतिक लाभ के लिये उपरोक्त अपराध कारित करते है**, इनका यह कृत्य 2(1)3 उ०प्र० गिरोहबन्द अधि० एवं समाज विरोधी क्रियाकलाप 1986 के अंतर्गत परिभाषित है अभियुक्त गण का जनता मे इतना भय व आतंक व्याप्त है कि इनके विरुद्ध कोई भी व्यक्ति गवाही देने तथा रिपोर्ट लिखाने के लिए तैयार नहीं है। उपरोक्त अभि०गणों का समाज में स्वच्छन्द रहना जनहित में नहीं है अतः अभियुक्तगणों के विरुद्ध धारा 2(1)3 उ०प्र० गिरोहबन्द अधि० एवं समाज विरोधी क्रियाकलाप 1986 का अभियोग पंजीकृत कराता हूँ। नोट: बयान जुबानी जो बोला है का० 771 उमेश नायक द्वारा वही शब्द व शब्द टाईप किया गया है। हस्ताक्षर बनाता हूँ।”

(B) CRIMINAL MISC. WRIT PETITION No. - 798 of 2021

The First Information Report No.0728/2020, dated 07.11.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Robertsganj, District Sonbhadra:-

"नकल तहरीर हिन्दी वादी प्रधान लेखक थाना रावर्टसगंज सोनभद्र आज दिनांक 07.11.20 को मैं प्रभारी निरीक्षक मय हमराह का० रविकान्त सरोज , का० समेश यादव मय सरकारी वाहन UP64G 0389 चालक HM रविन्द्र नाथ मिश्र के रवाना शुदा देखभाल क्षेत्र शान्ति व्यवस्था डियूटी काम्बिंग थाना क्षेत्र से बाला बाला जिला मजिस्ट्रेट कार्यालय सोनभद्र से पूर्व में अनुमोदित शुदा गैंग चार्ट गैंग लीडर विरेन्द्र प्रताप सिंह उर्फ वीरू S/o सुनील सिंह निवासी नुनौटी थाना कोतवाली चुनार जनपद मिर्जापुर का प्राप्त कर बाद अवलोकन क्षेत्र में भ्रमणशील रहकर जानकारी कर तथा थाना स्थानीय के अभिलेखों के अवलोकन से ज्ञात हुआ कि गैंग लीडर विरेन्द्र प्रताप सिंह उर्फ वीरू S/o सुनील सिंह नि० नुनौटी पो० तेन्दुआ कला थाना कोतवाली चुनार मिर्जापुर का **एक संगठित गिरोह है।** इस गैंग के सदस्य प्रमोद सिंह S/o नरेन्द्र सिंह नि० पापी थाना करमा जनपद सोनभद्र ह० पता जनसोपर थाना शाहगंज जनपद सोनभद्र, धरेन्द्र प्रताप सिंह उर्फ धीरू सिंह S/o सुनील सिंह नि० नुनौटी थाना चुनार जनपद मिर्जापुर इस गैंग के सदस्यों द्वारा अपने आर्थिक एवं भौतिक लाभ हेतु भादवि के अध्याय 16 एवं 22 वर्णित अपराधों को कारित करके समाज में भय एवं आतंक पैदा करके अपने गिरोह के सदस्यों के लिए आर्थिक एवं भौतिक लाभ हेतु धनोपार्जन करते हुए इनके गैंग के भय से जनता के लोग इनके विरुद्ध अभियोग व गवाही कराने से डरते हैं। जिससे जनता में काफी भय व्याप्त है। यह गैंग काफी मनबढ़ व शातीर है। **उपरोक्त गैंग के सदस्यों के विरुद्ध कई अभियोग पंजीकृत हैं जिनमें आरोप पत्र मा० न्यायालय प्रेषित किये जा चुके हैं।** गैंग लीडर वीरेन्द्र प्रताप सिंह उर्फ वीरू व उसके गैंग के सदस्य प्रमोद सिंह, लकी सिंह उर्फ आलोक सिंह, धीरेन्द्र प्रताप सिंह उर्फ धीरू सिंह उपरोक्त का यह कार्य अन्तर्गत धारा 3(1) उ०प्र० गिरोह बन्द एवं समाज विरोधी रिया कलाप निवारण अधिनियम 1986 के तहत अभियोग पंजीकृत करें। ह० अंग्रेजी अपठनीय SHO 7.11.20 (अंजनी कुमार राय) प्रभारी निरीक्षक कोतवाली रावर्टसगंज जनपद सोनभद्र दिनांक 07.11.2020 नोट:- मैं का०मु० अनुप कुमार ठाकुर प्रमाणित करता हूँ कि चिक की तहरीर को अक्षरशः बोल बोल कर क० आप० सुशील कुमार से कम्प्यूटर पर कित्ता कराया गया। "

(C) CRIMINAL MISC. WRIT PETITION No. - 17198 of 2020

The First Information Report No.1260/2020, dated 18.08.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Kalyanpur, District Kanpur Nagar:-

"सूचना वादी जुबानी दिनांक 17/08/2020 को मैं प्रभारी निरीक्षक अजय सेठ मय हमराह व का० 1392 अभिषेक कुमार को व का० 2769 मनोज कुमार मय जीप सरकारी यूपी 70 एजी 3269 चालक हे० का० राजवीर के रवाना होकर चैकिंग संदिग्ध व्यक्ति /वाहन/ वस्तु तलाश वांछित अपराधी चैकिंग संदिग्ध व्यक्ति/ वाहन देखरेख क्षेत्र रोकथाम जुर्म जरायम बैंक चैकिंग, व पेण्डिंग विवेचना अहकामत व 14 नाका/बैरियर को चैक किया गया। तथा जनता के व्यक्तियों को कोरोना वायरस को दृष्टिगत रखते हुए अभियुक्तों की सुरागरसी पतारसी करते हुये बाला बाला एक किता अनुमोदित शुदा खाका गैंग चार्ट जिलाधिकारी महोदय कार्यालय से प्राप्त शुदा अन्तर्गत धारा 3(1) गैंगस्टर एक्ट व दीगर प्रपत्र दाखिल किया विवरण कार्य सरकार इस प्रकार है। कि मैं एसएचओ मय हमराही फोर्स के क्षेत्र मे मामूर/भ्रमण से ज्ञात हुआ कि गैंग लीडर (1) इसरत सज्जाद पुत्र स्व० सज्जाद अहमद उम्र 51 वर्ष नि० A-604 VI प्लोर शिलालिक मित्तल अट्टालिका विल्डिंग वितूर रोड कल्यानपुर कानपुर नगर हाल पता 88/15 चमनगंज कानपुर नगर सदस्य (2) मोहम्मद इसहाक पुत्र मासूफ अली उम्र 50 वर्ष नि० 101 कर्नलगंज थाना कर्नलगंज कानपुर नगर (3) मो० जफर पुत्र स्व० अब्दुल समद उम्र 52 वर्ष नि० H-301 चन्द्र नगर थाना चकेरी कानपुर नगर 4- हसीन पुत्र अयूब खान नि० 97/311 रेडीमेन्ट मार्केट वेकनगंज थाना वेकनगंज कानपुर नगर उम्र 38 वर्ष 5- रियाजुद्दीन पुत्र नशीरुद्दीन नि० 95/26 पेच वाग कर्साखाना लाला कम्पाउन्ड वेकनगंज कानपुर नगर उम्र 45 वर्ष 6- नशीम अख्तर पुत्र स्व० कजलू रहमान नि० 128 पोखर पुर जाजमऊ लाल वंगला थाना चकेरी कानपुर नगर उम्र 51 वर्ष 7- अकील अमहद पुत्र मुरसलीन अहमद नि० LIG 95 KDA कालोनी जाजमऊ थाना चकेरी कानपुर नगर उम्र 43 वर्ष 8- अब्दुल कादिर पुत्र अब्दुल सलाम नि० 452 मोती नगर जाजमऊ थाना चकेरी कानपुर नगर उम्र 36 वर्ष 9- निजामुल हसन पुत्र स्व० सिराजुल हसन नि० 98/176 ए नाजिर वाग थाना वेकनगंज कानपुर नगर उम्र 42 वर्ष एक शातिर किस्म के अपराधी है इनका एक संगठित गिरोह है अपने व अपने गैंग के साथी के साथ आर्थिक एवं भौतिक लाभ हेतु समाज विरोधी क्रिया कलाप करके क्षेत्र में भय व आतंक फैलाये हुए है। जिनके द्वारा **नाल लेकर तास के पत्तो से रूपयों की हार जीत की वाजी लगा कर मकान के अन्दर जुआ खिलवाना** उक्त कृत्य जैसे जघन्य अपराध कारित करना इनकी आम सौहरत है एवं जिसमें क्षेत्र की जनता में असुरक्षा का माहौल है। इनके द्वारा समाज मे इतना भय व आतंक व्याप्त है कि समाज का कोई भी व्यक्ति इनके विरुद्ध अभियोग पंजीकृत कराने व न्यायालय में साक्ष्य देने का साहस नही जुटाता इनका समाज में स्वछंद विचरण करना समाज के लिए हित में नही है गैंग लीडर व उसके साथी धारा सार्वजनिक धूत अधि० 1867 में वर्णित अपराधों को करने के अभयस्त अपराधी है। जो गैंगस्टर की धारा 2 (ख) में वर्णित अपराधों की श्रेणी में आता है इनके द्वारा (1) **मु०अ०सं० 154/2020 धारा जुंआ अधिनियम** गैंग के लीडर व सदस्य के अपराधों को दृष्टिगत रखते हुए इनके विरुद्ध उ०प्र० गिरोहबन्द एवं समाज विरोधी क्रियाकलाप निवारण अधिनियम के धारा 3(1) के अन्तर्गत कार्यवाही किया जाना नितांत आवश्यक है। इनका गैंगचार्ट तैयार कर पूर्व मे ही श्रीमान जिलाधिकारी महोदय द्वारा अनुमोदित किया जा चुका है। इनके कृत्यों पर प्रभावी नियन्त्रण हेतु इनके विरुद्ध उ०प्र० गिरोह बन्द एवं समाज विरोधी क्रिया कलाप निवारण अधिनियम 1986 की धारा 3(1) का अभियोग मुझ एसएचओ द्वारा बोल बोल कर कम्प्यूटर पर म०का० 922 रंजीता यादव से पंजीकृत कराया गया पढकर देखा जो बोला वही लिखा है , नोट मैं म०का० 922 रंजीता यादव प्रमाणित करती हूँ कि सूचना जुवानी मेरे द्वारा शब्द व शब्द टाइप की गयी। "

(D) CRIMINAL MISC. WRIT PETITION No. - 17194 of 2020

The First Information Report No.0293/2020, dated 25.07.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Civil Lines, District Etawah:-

“ नकल गैंग चार्ट लीडर राहुल यादव पुत्र राधा पुत्र राधाकिशन यादव निवासी चन्देपुरा थाना सैफई जनपद इटावा क्र०सं० , नाम पता गैंग लीडर व सदस्य, मु०अ०सं० 194/2020 धारा 394/411 भादवि थाना सिविल लाइन इटावा C.S. No- 205/2020 दिनांक 26.06.2020 मु०अ०सं० 198/2020 धारा 4/25 ए एक्ट थाना सिविल लाइन इटावा C.S.No.- 147/2020 दिनांक 02.05.2020 , वर्तमान स्थिति 1. राहुल यादव पुत्र राधाकृष्ण यादव उम्र करीब 25 वर्ष निवासी चन्देपुरा थाना सैफई, इटावा हाल पता 44 वैभव विहार कालोनी थाना फ्रैण्डस कालोनी इटावा - सही, निल, जेल 2. ज्योति यादव पत्नी अभिषेक यादव उम्र करीब 26 वर्ष निवासी बनी का नगला थाना बकेवर जिला इटावा- सही, निल, जेल 3. मुनीष कुमार यादव पुत्र विनोद कुमार उम्र करीब 22 वर्ष निवासी झिन्दुआ थाना भर्थना जिला इटावा- सही, सही, जेल, 4. पूनम पुत्री सुरेन्द्र सिंह उम्र करीब 25 वर्ष निवासी अटैया थाना कुर्रा जिला मैनपुरी हाल पता- अशोक नगर थाना फ्रैण्डस कालोनी इटावा - सही, निल, जेल। श्रीमान जी, निवेदन है कि राहुल यादव पुत्र राधाकृष्ण यादव उम्र करीब 25 वर्ष निवासी चन्देपुरा थाना सैफई इटावा हाल पता 44 वैभव विहार कालोनी थाना फ्रैण्डस कालोनी इटावा का एक गिरोह है जिसका वह स्वयं लीडर है, तथा ज्योति यादव पत्नी अभिषेक यादव उम्र करीब 26 वर्ष निवासी बनी का नगला थाना बकेवर जिला इटावा, मुनीष कुमार यादव पुत्र विनोद कुमार उम्र करीब 22 वर्ष निवासी झिन्दुआ थाना भर्थना जिला इटावा व पुनम पुत्री सुरेन्द्र सिंह उम्र करीब 25 वर्ष निवासी अटैया थाना कुर्रा जिला मैनपुरी हाल पता अशोक नगर थाना फ्रैण्डस कालोनी इटावा गिरोह के सदस्य है जिनके द्वारा मारपीट कर लूटपाट जैसे संगीन अपराध करने के अभ्यस्त अपराधी है। जिनके कब्जे से लूटी गयी सम्पत्ति क्रमशः राहुल यादव से बरामद एक लाख पचास हजार रुपये व एक अदद मोबाईल सैमसंग व ज्योति यादव से एक लाख चालीस हाजर रुपये व मुनीश कुमार से एक लाख तीस हजार रुपये व पूनम से एक लाख तीस हजार रुपये लूटी गयी सम्पत्ति दिनांक 12.04.2020 को बरामद की गयी तो अपने व अपने परिवार के आर्थिक एवं भौतिक एवं बुनियादी लाभ प्राप्त करने के उद्देश्य से धन अर्जित करते है। भादवि के अध्याय 16,17 व 22 में वर्णित अपराधो को कर समाज विरोधी क्रिया कलापो में संलिप्त है जिससे थाना क्षेत्र व समाज के व्यक्तियों में असंतोष है। गिरोह के समाज विरोधी क्रियाकलापो मे रोक जनहित में लगाया जाना आवश्यक है। अतः अनुरोध है कि गिरोह के विरुद्ध उ०प्र० गिरोह बन्द एवं समाज विरोधी क्रियाकलाप (निवारण) 1986 की धारा 3 के तहत कार्यवाही किये जाने हेतु प्रस्तुत गैंग चार्ट अनुमोदित करने की कृपा करें। SD Jitendra मय मोहर (जितेन्द्र प्रताप सिंह) थानाध्यक्ष सिविल लाइन इटावा , SD अपठनीय दिनांकित 06.07.20 मय मोहर एस०एन० वैभव पाण्डेय क्षेत्राधिकारी नगर महोदय इटावा,

SD अपठनीय दिनांकित 08/07/20 मय मोहर पुलिस अधीक्षक नगर इटावा, SD अपठनीय दिनांकित 11.07.20 मय मोहर वरिष्ठ पुलिस अधीक्षक इटावा, SD अपठनीय दिनांकित 22.07.20 मय मोहर मजिस्ट्रेट इटावा। नोट:- मै का० 1286 सतेन्द्र कुमार प्रमाणित करता हूँ कि गैंग चार्ट की नकल कम्प्यूटर पर शब्द व शब्द मुझ का० द्वारा अंकित की गयी। पी०एन०ओ० 152241102 ”

(E) CRIMINAL MISC. WRIT PETITION No. - 1243 of 2021:-

The First Information Report No.0008/2021, dated 07.01.2021 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Badalpur, District Gautam Buddh Nagar:-

“ब्यान जुबानी हिन्दी वादी.....ब्यान किया कि दिनांक 06.01.2021 को मै SO धर्मेन्द्र कुमार शर्मा मय हमराह है० का० 674 माइकल मय का० 587 बबलू सिवाच मय प्राइवेट वाहन के खानाशुदा रपता रपट सं० 26 समय 13.08 बजे खाना होकर बाद देखरेख क्षेत्र शान्ति व्यवस्था चैकिंग संदिग्ध व्यक्ति/ वाहन तलाश अपराधीगण आदि क्षेत्र थाना हाजा से मय अनुमोदित शुदा गैंग चार्ट श्रीमान पुलिस आयुक्त महोदय गौतमबुद्धनगर व अन्य उच्चाधिकारीगण गैंग लीडर गौरव गुप्ता पुत्र ओमप्रकाश गुप्ता निवासी 473 कमला वाटर जीटी रोड थाना सिहानीगेट जनपद गाजियाबाद के वापस आया। जाँच से पाया कि गैंग लीडर गौरव गुप्ता पुत्र ओमप्रकाश उपरोक्त का एक संगठित गिरोह है इसके गैंग सदस्य 1. सुनील कुमार पुत्र स्व० रामेश्वर निवासी घूघनामोड सुभाषनगर निकट दीपक डाक्टर की दुकान थाना सिहानीगेट गाजियाबाद 2. विपिन कुमार उर्फ सोनू गोयल पुत्र प्रमोद कुमार गोयल निवासी म०नं० 97 चन्द्रगिरी थाना सिहानीगेट जनपद गाजियाबाद 3. देवेन्द्र यादव पुत्र भूलेराम यादव निवासी बृहस्पति बाजार के सामने बिसरख रोड छपरौला थाना बादलपुर गौतमबुद्ध नगर के साथ मिलकर थाना क्षेत्र मे हरियाणा व अरुणाचल प्रदेश से गाजियों मे भरकर **अवैध शराब लाना एवं धोखाधडी कर शराब मिश्रित कर अवैध शराब तैयार कर** आदि जैसे जघन्य घटनाए करके अवैध रूप से धन अर्जित किया जा रहा है। जनता का कोई व्यक्ति इनके विरुद्ध गवाही देने या रिपोर्ट लिखाने का साहस नही करते है। इनके द्वारा किये जा रहे इस कृत्य से जनता मे भय व आतंक का माहौल पैदा हो रहा है। जिससे कानून एवं लोक व्यवस्था प्रभावित हुई है ये अपराधीगण समाज विरोधी क्रियाकलाप मे निरंतर लिप्त है इन लोगो का यह कृत्य भा०द०वि० के अध्याय 16,17 एवं 22 मे वर्णित अपराध है। गैंग लीडर एवं उसके सहयोगीयो का अपराधिक इतिहास मुताबिक गैंग चार्ट इस प्रकार है। गैंग लीडर गौरव गुप्ता पुत्र ओमप्रकाश उपरोक्त 1. **मु०अ०सं० 313/19** धारा 420,467,468,471,272,273 भा०द०वि० व 60/63/72 आबकारी अधिनियम थाना बादलपुर गौतमबुद्धनगर , सदस्य 1. सुनील कुमार पुत्र स्व० रामेश्वर सिंह उपरोक्त 1. **मु०अ०सं० 313/19** धारा 420,467,468,471,272,273 भादवि० व 60/63/72 आबकारी अधिनियम थाना बादलपुर गौतमबुद्ध नगर 3. **मु०अ०सं० 1368/18** धारा 60/63/72 आबकारी अधिनियम थाना सिहानी गेट जनपद गाजियाबाद व सदस्य 2. सोनू गोयल पुत्र प्रमोद गोयल उपरोक्त के विरुद्ध **मु०अ०सं० 313/19** धारा 420,467,468,471,272,273 भादवि० व 60/63/72 आबकारी अधिनियम थाना बादलपुर गौतमबुद्ध नगर व सदस्य 3. देवेन्द्र यादव पुत्र रामभूल यादव उपरोक्त के

विरुद्ध मु०अ०सं० 313/19 धारा 420,467,468,471,272,273 भादवि० व 60/63/72 आबकारी अधिनियम थाना बादलपुर गौतमबुद्ध नगर है , अभियुक्तगण का यह कृत्य उ०प्र० गिरोहबन्द एवम् समाज विरोधी क्रियाकलाप निवारण अधिनियम 1986 की धारा 2/3 का अपराध बनता है। अभियुक्तगण का जनता में स्वतन्त्र रहना जनहित में ठीक नहीं है। अभियुक्तों के विरुद्ध अभियोग पंजीकृत कर विवेचना किया जाना आवश्यक है। अपना लिखाया गया ब्यान कम्प्यूटर पर पढकर देखा जो बोला वही टाईप किया गया। नोट- मैं हूँ का० 976 कुशलपाल सिंह प्रमाणित करता हूँ कि ब्यान जुबानी नकल कम्प्यूटर पर मेरे द्वारा बोल बोल कर कम्प्यूटर पर का० 2684 संदीप कुमार से शब्द व शब्द टाईप कराई गई है। ”

(F) CRIMINAL MISC. WRIT PETITION No. - 1403 of 2021:-

The First Information Report No.0499/2020, dated 30.09.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Faridpur, District Bareilly:-

“सूचना जुबानी आज दिनांक 30.09.2020 को मैं SHO धनन्जय सिंह मय हमराहीयान का० 251 अनिपाल , का० 1689 मोहित कुमार , मय जीप सरकारी मय चालक का० रामकुमार के थाना हाजा से खाना हुआ बाद देखरेख शान्ति व्यवस्था क्षेत्र व अनुमोदित गैंग चार्ट मय दीगर कागजात के वापस आया , मेरे पूर्व अधिकारी द्वारा थाने पर उपलब्ध रिकार्ड के आधार पर 1. नन्हे खाँ पुत्र बुद्धा खाँ निवासी ग्राम रहपुरा थाना फरीदपुर बरेली 2. ऐजूब खाँ पुत्र सल्लु खाँ निवासी ग्राम रहपुरा थाना फरीदपुर बरेली 3. इकराम पुत्र ऐजूब खाँ निवासी ग्राम रहपुरा थाना फरीदपुर बरेली 4. जाहिद पुत्र मेहदी खाँ निवासी रहपुरा थाना फरीदपुर बरेली 5. बडे उर्फ बड्डू खाँ पुत्र मस्तजाब खाँ निवासी ग्राम खिमपुरा थाना फरीदपुर बरेली 6. आलम पुत्र अख्तर निवासी मेवासर्फापुर थाना फरीदपुर बरेली 7. नवी अहमद पुत्र नवीशेर निवासी ग्राम मेवासर्फापुर थाना फरीदपुर बरेली 8. छोटे पुत्र नवीशेर निवासी ग्राम मेवासर्फापुर थाना फरीदपुर बरेली 9. जान मोहम्मद पुत्र शेर मोहम्मद निवासी ग्राम मेवासर्फापुर थाना फरीदपुर बरेली के विरुद्ध उनके कृत्यों के आधार पर एक गैंग चार्ट दिनांक 28.09.2020 अनुमोदित शुदा को तैयार किया गया , जिसे उचित माध्यम से श्रीमान जिला मजिस्ट्रेट बरेली को प्रेषित किया गया था, मुझ प्रभारी निरीक्षक द्वारा थानाध्यक्ष फरीदपुर ने भी पुर्व आपराधिक रिकार्ड का अवलोकन किया तथा आसपास के लोगो से भी जानकारी एकत्रित की गयी तो गैंग लीडर नन्हे खाँ पुत्र बुद्धा खाँ निवासी ग्राम रहपुरा थाना फरीदपुर बरेली के विरुद्ध मु०अ०सं० 724/19 धारा 3/5 ए/8 सीएस एक्ट थाना फरीदपुर व मु०अ०सं० 187/20 धारा 3/5 ए/8 c.s.act व 429 भादवि थाना फरीदपुर जनपद बरेली पंजीकृत है। अभियुक्त ऐजूब खाँ पुत्र सल्लु खाँ उपरोक्त के विरुद्ध मु०अ०सं० 724/19 धारा 3/5 ए/8 सीएस एक्ट थाना फरीदपुर पंजीकृत हैं तथा अभियुक्त इकराम पुत्र ऐजूब उपरोक्त के विरुद्ध मु०अ०सं० 724/19 धारा 3/5 ए/8 सीएस एक्ट थाना फरीदपुर पंजीकृत है, तथा जाहिद पुत्र मेहदी खाँ उपरोक्त के विरुद्ध मु०अ०सं० 724/19 धारा 3/5 ए/8 सीएस एक्ट थाना फरीदपुर पंजीकृत

हैं, तथा अभियुक्त बड़े उर्फ बड्डू खाँ उपरोक्त के विरुद्ध मु०अ०सं० 724/19 धारा 3/5 ए/8 सीएस एक्ट थाना फरीदपुर पंजीकृत है तथा अभियुक्त आलम पुत्र अख्तर उपरोक्त के विरुद्ध मु०अ०सं० 187/20 धारा 3/5 ए/8 cs.ct व 429 भादवि थाना फरीदपुर पंजीकृत है, तथा अभियुक्त आलम पुत्र अख्तर उपरोक्त के विरुद्ध मु०अ०सं० 187/20 धारा 3/5 ए/8 cs.ct व 429 भादवि थाना फरीदपुर तथा अभियुक्त नवी अहमद उपरोक्त के विरुद्ध मु०अ०सं० 187/20 धारा 3/5 ए/8 cs.ct व 429 भादवि पंजीकृत है। , तथा अभियुक्त छोटे पुत्र नवी शेर उपरोक्त के विरुद्ध मु०अ०सं० 187/20 धारा 3/5 ए/8 cs.ct व 429 भादवि पंजीकृत है। , तथा अभियुक्त जान मोहम्मद पुत्र शेर मोहम्मद उपरोक्त के विरुद्ध मु०अ०सं० 187/20 धारा 3/5 ए/8 cs.ct व 429 भादवि पंजीकृत है। **उक्त अपराधीगण निहायत ही हिंसक व हेकड किस्म के अपराधी हैं**, इस गैंग का आम जनता में इतना भय व आतंक व्याप्त है कि इनके विरुद्ध कोई भी जनता का व्यक्ति कुछ भी कहने से डरता है, उक्त गैंग को अपराध करने से रोकने के लिए भरसक प्रयास किये गये हैं , लेकिन यह **गौकशी व इरादन हत्या जैसे विभत्स घटना, आदि प्रमुख अपराध किये हैं**, दिनांक 28.09.2020 को श्रीमान जिला मजिस्ट्रेट वरेली द्वारा अनुमोदित गैंग चार्ट मय दीगर कागजात के प्राप्त हुआ , यह अपराधीगण आर्थिक लाभ अर्जित करने के उद्देश्य से करते हैं अभियुक्त नन्हे खाँ गैंग लीडर हैं एवं ऐजूब, इकराम, जाहिद, बड़े उर्फ बड्डू खाँ, आलम , नवी अहमद, छोटे, जान मोहम्मद सक्रिय सदस्य हैं। यह लोग भा०द०वि० के आध्याय 16 व 17 में वर्णित अपराध करने के अभ्यस्त अपराधी हैं इन का क्षेत्र में खुले रूप से रहना समाज के हित में नहीं है इन लोगो का उक्त कृत्य समाज विरोधी क्रिया कलाप अधि० 1986 की धारा 2(17)/3 गैंगस्टर एक्ट के अन्तर्गत दण्डनीय अपराध है, अतः उपरोक्त अपराधियों के विरुद्ध अभियोग पंजीकृत किया जाता है। नोट में SHO धनन्जय सिंह प्रमाणित करता हूँ कि सूचना जुबानी मेरे द्वारा बोल बोलकर का० 2093 दानिश से करायी गयी है, तथा HC 574 यदुवीर सिंह प्रमाणित करता हूँ मुकदमा कायमी मेरे सूचना जुबानी के आधार पर की गयी है, तथा CCTNS पर फीडिंग का० 2093 दानिश द्वारा की गयी। ”

(G) CRIMINAL MISC. WRIT PETITION No. - 1306 of 2021

The First Information Report No.0201/2020, dated 22.05.2020 registered against the petitioner under Section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Saurikh, District Kannauj:-

“सूचना जुबानी वादी- मैं एस०ओ० राज कुमार सिंह मय हमराह का० 496 आदित्य तिवारी का० 697 अतुल कुमार व म०का० 1143 ज्योति मय जीप सरकारी यूपी 74 जी 0181 बतौर चालक हे० का० सुरेश सिंह के रवानाशुदा रफता रपट रो० आम तारीखी इमरोजा से वाद देखरेख क्षेत्र गस्त भ्रमण चौकिंग संदिग्ध व्यक्ति/वाहन रोकथान जुर्म जरायम, तलाश वांछित अभि०गण कोरोना वायरस महामारी के दृष्टिगत लाकडाउन आगरा लखनऊ एक्सप्रेस वे पर प्रवासी श्रमिको की निगरानी व सुरक्षा व्यवस्था व विवेचना मु०अ०सं० 500/19 धारा

302/201 भा०द०वि० व मु०अ०सं० 506/19 धारा 302/201 भा०द०वि० से सम्बन्धित से विहीन शव व अज्ञात शव की पतारसी सुरागरसी एवं वाला वाला मीटिंग शिरकत श्रीमान जिलाधिकारी महोदय एवं श्रीमान पुलिस अधीक्षक महोदय जनपद कन्नौज कलेक्ट्रेट सभागार कन्नौज से एवं जॉच अनुमोदित गैंगचार्ट गैंगलीडर सुनील कुमार पुत्र कौशल किशोर उम्र 24 वर्ष नि० जरिहापुर थाना सौरिख जनपद कन्नौज आदि 4 नफर अभि०गण जिस पर पृष्ठांकित आदेश सी०ओ० छिबरामऊ महोदय व अपर पुलिस अधीक्षक व श्रीमान पुलिस अधीक्षक महोदय व श्रीमान जिलाधिकारी महोदय क्रमशः दि० 11.5.2020, 12.5.2020, 15.5.2020, 15.5.2020, 119/ जेए एवं शासनादेश संख्या 12/06 – पु०, 2003 रिट 2003 दिनांक 02.01.2004 के क्रम में अनुमोदित श्रीमान जिलाधिकारी महोदय एसडी अंग्रेजी अपठनीय दि० 15.5.2020 बाबत अभियुक्तगण 1- सुनील कुमार पुत्र कौशल किशोर नि० जरिहापुर सौरिख कन्नौज उम्र 24 वर्ष 2- शिवा दूबे पुत्र विनीत कुमार दुबे नि० जरिहापुर सौरिख कन्नौज उम्र 22 वर्ष 3- राज कुमार पुत्र मेघनाथ नि० जरिहापुर सौरिख कन्नौज उम्र 23 4- रामू शाक्य पुत्र रामजीत नि० भटौरा विधूना औरैया का एक सुगंठित गिरोह है जिसका गैंग लीडर सुनील कुरार उपरोक्त स्वयं है तथा जिसके सक्रिय सदस्य शिवा दूबे, राज कुमार व रामू शाक्य उपरोक्त है। यह गैंग अपने व अपने परिवार के सदस्यों को भौतिक व आर्थिक लाभ करवाने के लिए अवैध असलहो से लैश होकर चोरी जैसे जघन्य अपराध कारित करने का पेशेवर अपराधी है इनका समाज में इतना अधिक भय व आतंक व्याप्त है कि इनके वियद्व समाज का कोई भी व्यक्ति न्यायालय में गावाही देने अथवा रिपोर्ट लिखाने का साहस नहीं कर पाता है। यह गैंग भा० द०वि० के अध्याय 17 में वर्णित अपराधो को कारित करने का अभ्यस्त अपराधी है समाज विरोधी क्रिया कलापो में पूरी तरह संलिप्त है इस गैंग का आम जनता के बीच स्वच्छन्द रहना जनहित न्यायहित में सीमकन नहीं है इनके कृत्यो पर अंकुश लगाया जाना अति आवश्यक है इस गैंग के विरुद्ध धारा 3(1) उत्तर प्रदेश गिरोह बन्द एवं समाज विरोधी क्रिया कलाप निवारण अधिनियम 1986 के अन्तर्गत कार्यवाही किये जाने का पर्याप्त आधार है। सूचना दर्ज की जावे। नोट मैं का० 112 सौरभ राठौर प्रमाणित करता हूँ कि एस ओ श्री राज कुमार सिंह द्वारा सूचना जुबानी अंकित करायी हैं कम्प्यूटर पर शब्द व शब्द अंकित की गयी है व रो०आम में खुलासा हे० का० 82 राम मोहन द्वारा कराया गया है।"

(H) CRIMINAL MISC. WRIT PETITION No. - 1411 of 2021

The First Information Report No.0483/2020, dated 23.08.2020 registered against the petitioner under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 at P.S. Ghoorpur, District Prayagraj:-

“नकल तहरीर हिन्दी वादी प्रधान लेखक/सहायक लेखक थाना घूरपुर प्रयागराज। मैं थानाध्यक्ष घूरपुर भुवनेश कुमार चौबे मय हमराह का० हरिकेश चौहान मय सरकारी वाहन UP 32 BG 7510 मय चालक का० दिनेश कुमार

सिंह के रवाना शुदा रो० आम तारीख द्विरोजा से बाद देखभाल क्षेत्र चेकिंग संदिग्ध व्यक्ति वाहन पेण्डिंग विवेचना व आगामी त्योहार गणेश चतुर्थी व मोहरम के दृष्टिगत क्षेत्र भ्रमण में मामूर था कि दौराने भ्रमण क्षेत्र के विश्वस्थ सूत्रो से ज्ञात हुआ कि 1- अभिषेक यादव पुत्र नेम कुमार यादव निवासी बसवार थाना घूरपुर जनपद प्रयागराज उम्र-29 वर्ष 2- कल्लू यादव उर्फ श्यामबाबू यादव पुत्र स्व० रामसजीवन यादव निवासी बसवार थाना घूरपुर प्रयागराज उम्र 27 वर्ष 3- गोकुल उर्फ राजकुमार निषाद पुत्र रामबाबू निषाद निवासी बसवार थाना घूरपुर प्रयागराज उम्र 24 वर्ष 4- धर्मराज यादव पुत्र स्व० रामबहादुर यादव उर्फ कडक निवासी बसवार थाना घूरपुर प्रयागराज उम्र 34 वर्ष का एक संगठित गिरोह है इस गैंग का लीडर अभिषेक यादव उपरोक्त है **इस गैंग के लीडर व सदस्यो द्वारा हत्या जैसा अपराध कारित करना पेशा है**, गैंग लीडर व इनके सदस्यो द्वारा समाज मे भय व आतंक का वातावरण उत्पन्न कर रखे है, आम जनता व क्षेत्र के आस पास इलाको मे इनका आतंक व दहशत व्याप्त है गैंग लीडर अभिषेक यादव उपरोक्त व इनके सदस्य भादवि० के अध्याय 16 व 22 मे वर्णित अपराध करने के अभ्यस्त अपराधी है शान्ति व कानून व्यवस्था के दृष्टिगत गैंग के आपराधिक कृत्यों की रोकथाम हेतु प्रभावी कार्यवाही की आवश्यकता है इनके विरुद्ध जनता का कोई भी व्यक्ति पुलिस मे शिकायत व अभियोग पंजीकृत कराने का साहस नही कर पाता है और न ही न्यायालय व पुलिस मे गवाही देने को तैयार होता है इस गैंग द्वारा कारित किये गये अपराधो का विवरण निम्न लिखित है -1- मु०अ०सं० 754/2018 धारा 302,201 भादवि थाना घूरपुर प्रयागराज आरोप पत्र सं० 597/18 दिनांक 27.12.18 2- मु०अ०सं० 379/17 धारा 323,504,506,308 भादवि थाना घूरपुर प्रयागराज आरोप पत्र सं० 189/17 दिनांक 17.09.17 देखते हुए गैंग चार्ट तैयार कराकर श्रीमान जिला मजिस्ट्रेट प्रयागराज से अनुमोदन के उपरान्त प्राप्त किया गया है , थाना क्षेत्र तथा आस पास के क्षेत्रो में शान्ति व्यवस्था स्थापित करने हेतु इन लोगो का समाज मे स्वतन्त्र रहना ठीक नही है इस गिरोह के गैंग लीडर व सदस्यगण उपरोक्त के विरुद्ध धारा 2/3 उ०प्र० गिरोह बन्द समाज विरोधी क्रिया कलाप निवारण अधिनियम 1986 के तहत अभियोग पंजीकृत करें। SD अंग्रेजी हस्ताक्षर 23/8/2020 , (भुवनेश कुमार चौबे) थानाध्यक्ष, थाना घूरपुर जनपद प्रयागराज नोट:- मै का० मु० 3110 मनोज कुमार यादव प्रमाणित करता हूँ कि तहरीर की नकल कम्प्यूटर पर बोलकर अक्षरशः अंकित कराया। "

5. The petitioners of respective writ petitions have prayed to quash the impugned first information reports registered against them under Sections 2/3 of the Act, 1986. Hence, they have filed the present writ petitions.

Submissions on behalf of the petitioners:-

6. Learned counsel for the petitioners submits that merely on the basis of solitary criminal case registered against the petitioners, a case under Section 2/3 of the Act, 1986 cannot be registered. In support of their submissions, the

petitioners have relied upon judgments of this court in **Subhash and others Vs. State of U.p. and others**, (paragraphs 7, 14, 17, 47, 48), dated 24.03.1997 in **Criminal Misc. Writ Petition No.835 of 1998**; Full Bench Judgment of this Court in **Ashok Kumar Dixit Vs. State of U.P. and another**, 1987, (24) ACC 164 (para 22) and another Division Bench judgment in the case of **Ajai Rai Vs. State of U.P.** 1995 (32) All Cri C 477.

Submissions on behalf of the State-Respondents:-

7. Learned A.G.A. submits that in view of the provisions of Sections 3 of the Act, 1986 even if a single criminal case is registered against the petitioners, then also the F.I.R. under Section 2/3 of the Act, 1986 can be registered provided the ingredients of Section 3 of the Act, 1986 are satisfied.

Relevant Statutory Provisions:-

8. Since controversy involved in this batch of writ petitions mainly relates to provisions of **Section 2(b), Section 2(c) and Section 3 of the Act, 1986**, therefore, these provisions are reproduced below:-

***“Preamble:-** An Act to make special provisions for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto.*

***Section 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 of 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;

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

Section 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;

Section 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."

Discussion and Findings:-

9. In **Kartar Singh vs. State of Punjab (1994) 3 SCC 569**, Hon'ble Supreme Court as per majority view, observed that "***the Legislation begins where Evil begins.***" The legislature being guided by its sacrosanct duty to protect individual members of the society to enjoy their rights without fear and see that some people do not become a menace to the society in singular or

collective manner as indicated. The Constitutional Validity of the Act, 1986 has been upheld by Hon'ble Supreme Court in the case of **Dharmendra Kirthal vs. State of U.P. and another, (2013) 8 SCC 368**. While upholding the constitutional validity, Hon'ble Supreme Court observed in Para-45 (SCC) that *the accused is tried by the Special Court as he is 'gangster' as defined under Section 2(c) of the Act, 1986 and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself*. It was further observed that apart from normal criminality, the accused is also involved in an organised crime for a different purpose and motive. The intention of legislature is to curb such type of crime, which has become epidemic in the society. It was further observed in para-47 (SCC) that *in the case at hand it can be stated with certitude that the legislature has felt that there should be curtailment of the activities of the gangsters and, accordingly, provided for stern delineation with such activities to establish stability in society where citizens can live in peace and enjoy a secured life. It has to be kept uppermost in mind that control of crime by making appropriate legislation is the most important duty of the legislature in a democratic polity, for it is necessary to scuttle serious threats to the safety of the citizens. Therefore, the legislature has, in actuality, responded to the actual feelings and requirements of the collective*. It was also observed vide paras 38-39 (SCC) of the aforesaid judgment that *in essence, liberty of an individual should not be allowed to be eroded but every individual has an obligation to see that he does not violate the laws of the land or affect others' lawful liberty to lose his own. The cry of liberty is not to be confused with or misunderstood as unconcerned senile shout for freedom. Protection of the collective is the bone marrow and that is why liberty in a civilized society cannot be absolute. It is the duty of the courts to uphold the dignity of personal liberty. It is also the duty of the court to see whether the individual crosses the "Lakshman Rekha" that is carved out by law is dealt with appropriately. No individual has any right to hazard others' liberty. The*

body polity governed by Rule of law does not permit anti-social acts that lead to a disorderly society.

10. The provisions of the Act, 1986/ other similar provisions have been interpreted by this Court and also by Hon'ble Supreme Court. Therefore, it would be appropriate to refer to the judgments so as to appropriately answer the questions framed above in this batch of writ petitions.

11. In **N. Sengodan vs. State of Teamil Nadu, (2013) 8 SCC 664 (paras-47-48)**, Hon'ble Supreme Court considered the provisions of **The Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982** and held as under:

*“47. In **State of Bihar vs. P.P. Sharma, 1992 SCC (Cri) 192**, this Court defined **mala fides** and held: (SCC p.260, paras 50-51)*

*“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. **The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.***

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

This Court in the same case of P.P. Sharma (supra) further held that: (SCC pp.261-62, para 55)

“55. the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party-respondent to the proceedings and given an opportunity to meet those allegations.”

In the present case the appellant has not only made assertion but demonstrated by placing either by admitted or proved facts and circumstances obtainable that even though the case has not made out but he was harassed.

48. Personal liberty is of the widest amplitude covering variety of rights. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of the Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by malafides, as held by this Court in P.P. Sharma.”

12. In the case of **State of Haryana and others vs. Bhajan Lal and others**, 1992 Supp. (1) SCC 335, Hon’ble Supreme Court has considered the scope of interference with the FIR in writ jurisdiction and has illustrated certain circumstances, in which FIR can be interfered with in exercise of powers under Article 226 of the Constitution of India. The said illustrations crystallized by Hon’ble Supreme Court in the case of **Bhajan Lal and others** (supra), are reproduced below:

“(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides and/or

where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. In **Ashok Rai and another vs. State of U.P. and others, 1995 (25) ALR 423 (Paras 6 & 8)**, a Division Bench of this court held as under:

*“6. To appreciate the submission as made by Sri Chaturvedi and his learned associate advocate, we must go through the **definition of "gang" as enunciated under Section 2(b)** of the Act. It states that "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 -----”.*

*8. The definition itself indicates that if a group of persons acting either singly or collectively indulged in any of the activities as elaborated in the section, by means of violence etc. with the objects as indicated therein, the group is to be termed a "gang". We may not put any words within the definition with a view to infer that a gang is to be formed first and then any of the anti-social activities, as detailed in the definition, is to be committed. **Under the definition the essentials required are (1) Existence of a group of persons, (2) commission by them, singly or collectively, any of the anti-social activities as detailed in the definition, (3) such commission should be associated with Violence or threat or show of violence, or intimidation etc. and (4) the object of such commission should be gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. We, therefore, cannot accept the contention of the learned counsel that the definition demands that the gang is first to be made and commission of the anti-social activities is to be followed.”***

14. In **Application U/S 482 No. - 3239 of 2005 (Tej Singh and others vs. State of U.P. and another)**, decided on 20.04.2019, a learned Single Judge of this Court held as under:

“A careful perusal of the definition of "Gangster" and "Gang" would not fail to indicate that if an offence punishable under Chapter XVI, Chapter XVII and Chapter XXII of Indian Penal Code is committed with the object of disturbing public order or with the object of gaining any undue temporal, pecuniary or material advantage, such activity on the part of accused can make him liable to face the imposition of Gangsters Act in question. He may commit such kind of act just once and may face a single F.I.R. or he may commit such kind of offences many times and may face more than one F.I.Rs. in that connection. It is not the number of F.I.Rs. which is relevant as it is significant to assess whether the crime committed by the accused was inspired and prompted with the motive of gaining any undue temporal,

pecuniary or material advantage or not. It is the object of the offence or the motive behind it which is of crucial significance in order to adjudge whether the provisions of Gangsters Act in question can be brought into application in a given case or not.

*After having perused the record, this Court finds itself in agreement with the submissions made by the learned counsel for the applicants that though the accused are facing the allegations of having committed murder but they cannot be said to have committed the crime because they were gangsters. There was no motive of making any wrongful economic gains. This Court also does not see any material on the basis of which it may be held that the prime object behind committing the crime in question was so as to disturb the public order. **Whenever some grave crime is committed it always leads to a consequential result of some kind of disturbance in society. Such normal disturbance in society and disturbing the public order or creating panic or terror are different species.** Ordinary law and order problems can not be clubbed with phenomenon of break of public order. The crime in question does not appear to have been committed with the object of gaining any undue temporal, pecuniary, material or other similar kind of advantage for itself or for any other person indulged in anti-social activities.*

*Here in this context it may also be seen that in the definition of 'gang' as provided under Section -2(b) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as Act) reference to the words 'gaining any undue temporal, pecuniary, material or other advantage' for himself or any other person has been given. One might argue that **the words 'other advantage'** is an all inclusive term and all kinds and categories of advantages will come under its title, and therefore, there is hardly any need to see the facts of the case with a fine class in order to find whether the object of the gang is or was of gaining undue temporal, pecuniary and material advantage or not. If the violence or offence committed was inspired to get any kind of advantage for himself or for any other person, the letter of definition as provided by the Act shall stand satisfied. But in the considered opinion of this Court such kind of approach will lead to complete misinterpretation of the Statute. If the Legislature in its wisdom has used a number of qualifying words with regard to Anti Social Activity as has been referred to and contemplated in the Act, then its whole purpose shall stand defeated by providing such an all sweeping meaning to the words 'other advantage' as has been used in the definition. If the term 'other advantage' was meant to include all advantages or was meant to include any kind of advantage whatsoever where was the need to use different other defining words like 'temporal, pecuniary and material' which immediately precede the words 'or other advantage' ! It is self evident that the use of the preceding words have a qualifying effect and must be seen lending its complexion to the subsequently used words 'other advantage'. **The words 'other advantage' has got to be seen in the context and perspective and with reference to the preceding aforesaid words and must be understood in the same light. Just as a man is often known by the company he keeps, the import of words in Statute also are often to be seen and understood by the company of the words in which they appear.** In this regard this Court deems it appropriate to keep in perspective the rule of 'Ejusdem Generis' in order to correctly appreciate the scope and the actual ambit of*

the general words which follow the aforesaid specific words used in the Statute. The Court is of the view that the aforesaid preceding words 'temporal, pecuniary and material' are constituting a genus and the words 'other advantage' has to be read as an species of the same. Though ordinarily the general words must be provided to bear their natural and larger meaning but they have to be confined Ejusdem generis to the class of things previously enumerated by certain specific words because it is not difficult to see clearly the intention of the Statute which it spells out by using a specific class and category of qualifying words. This Court sees reasons and therefore feels persuaded to limit the scope of the meaning of the general words 'other advantage' because if we provide to it a larger all embracing meaning it is likely to lead to absurd and unforeseen results. The general expression has to be read contemplating to imply the things of the same kind which have been referred to by the preceding specific class of things constituting a genus. If we do not adhere to this rule and do not impute specific complexion to the general words in the light of the preceding words the blatant misuse and plain absurdity to which it shall lead is that the administrative executives and the police would feel free to impose the provisions of this Act upon anybody and everybody who is facing the charge of committing any sort of offence or any breach of law howsoever trivial it be because hardly any violence or threat or show of violence or intimidation or coercion is done without having the object of gaining some kind of advantage himself or for any other person. The word 'advantage' has an all sweeping natural meaning and may include material and psychological both kinds of advantages. In that view of the matter the use of the words 'other advantage' will bring in its mischief everything under the sun. It is therefore very expediently needed to read these words in right perspective and read them Ejusdem generis with the things or words previously enumerated by the Statute."

(Emphasis supplied)

15. In the case of **Piyush Kanti Lal Mehta vs. Commissioner of Police, 1989 Supp.(1) SCC 322 (Paras 16 and 17)**, Hon'ble Supreme court considered the **distinction between "law and order" and "public order"** and after referring to the judgment in the case of **Pushkar Mukherjee & Ors vs The State Of West Bengal, (1969) 1 SCC 10 (Paras 14 and 15)**, observed as under:

"16. It is submitted by Dr Chitale that the allegations which have been made by the said five witnesses against the petitioner are also very general in character and do not involve the question of public order. Counsel submits that there is a distinction between 'law and order' and 'public order'. The allegations made against the petitioner may give rise to a question of law and order but, surely, they have nothing to do with the question of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order,

there must be materials to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

17. In this connection, we may refer to a decision of this Court in *Pushkar Mukherjee vs. State of West Bengal*, (1969) 1 SCC 10; where the **distinction between 'law and order' and 'public order'** has been clearly laid down. Ramaswami, J. speaking for the Court observed as follows: (SCC pp. 14-15)

"Does the expression 'public order' take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

16. A Division Bench of this Court in the case of **Subhash vs. State of U.P. and another**, 1998 All.L.J. 2092 (Paras-8, 9, 11,13 and 14) answered the question as to whether an FIR can be registered under Section 2/3 of the Act, 1986 on the basis of a single case and the meaning of the word "indulge" used in Section 2(b) of the Act and held as under:

"8. In paragraph 58 of the judgment the Full Bench Bench met the argument of the counsels that there would always be an apprehension that a person, though not physically present on the scene of occurrence, could be roped in under the provisions of the Act in relation to that occurrence on the facile ground that, he was a gangster. The Court observed that the apprehension was not very real, but it also uttered a word of caution that it could not be dismissed as altogether imaginary or absurd. The Court observed that "police is sometimes prone to be overzealous and in order to win laurels, books all and one within the range of its rod. Needless to say, the Act has to

be enforced in a reasonable manner. Care should be taken that no unnecessary inroad is made into the exercise of fundamental rights of the citizen or interference in the peaceful prosecution of their avocation." In paragraph 59 of the judgment the Court further observed, "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."

*9. The Full Bench further observed in paragraph 60 of the judgment that under the ordinary criminal law, it was sometime difficult to bring to book the overlords of crime and under world because they seldom operated in person or in public case. They indulged in clandestine operations which threaten to tear apart the very fabric of the society. **In the immediate next paragraph again a note of caution was sounded by the Full Bench observing "provisions of the Act cannot be used as a weapon to wreck vengeance or harass or intimidate innocent citizens or to settle scores on political or other fronts. The prosecution has to bear in mind that it has to bring home the guilt.***

*11. The Division Bench in the case of Ajai Rai (supra) considered the above aspect in paragraph 9 of its judgment and in the absence of any definition of the words in the Act looked for the Dictionary meaning thereof. The word "indulges", according to the Webster, meant "too yield to the desire of or to get pleasure in doing" etc. The word "indulge", according to Chamber, is a verb used as a transitive verb and also used as an intransitive verb. As a transitive verb, it meant "to yield to the wishes of", or "to favour or gratify", or "not to restrain". In an intransitive verb a meaning was given to the word "indulge" parallel to "permit oneself in action or expression". **The word used in the Act is not only "indulges" but also followed by another word "in" and the Division Bench was of the view that "indulges in", as used in the Act, meant "to permit oneself in action or expression" and with this meaning it was opined that the words carried the same connotation as "does" or "commits". The Division Bench was further of the view that these two common terms have been avoided by the legislature apparently for the reason that the words "indulges in" were followed by the words "anti-social activities" and the actions detailed in the 15 sub-clauses of Section 2 might not strictly come within the term "commits."***

13. We may come to point No.3, categorised by us in the earlier pages of this judgment. We are to see, if under the concept of the offence, created by the Act, there must be some allegation of any act or omission towards commission of the offence. While taking up the question of constitutional validity of the Act in the case of Ashok Kumar Dixit (supra), the Full Bench had made certain very important observations which are relevant for the present point. It was observed that a person was not liable to be punished under the Act merely because he happened to be a member of the group. The

*Court was, rather, of the view that a person could be accused of an offence only if he had chosen to join a group which indulges in anti-social activities, defined under the Act, with use of force for obtaining material or other advantages to himself or to any person. The Court was of the view "The element of actus reus is hence clearly present in the offence created under the statute." Whenever any act or omission covered by Sections 2 and 3 of the Act is reported an offence is made out and as a corollary it may be indicated without any fear of contradiction that **unless an allegation is there concerning an act or omission on the part of an accused, covered by the definition of the term "gang" or "gangster", no F.I.R. should be maintainable.** Whether the allegations are true or false will be a matter for investigation, but **unless the allegations of an offence under the Act are indicated, as F.I.R. may not be justifiable whatever large the number of past acts be alleged against him.***

*14. As a sequel to this decision when there are some allegations of any act or omission towards the commission of the offence under the Act to justify an F.I.R., it follows that such an FIR could lie even for a single incident as **habituality of the acts is not required for making out an offence.** The words used in Section 2 are no doubt in plural indicating "indulge in anti-/social activities" but the sentence does not stop with the words "anti-social activities". It goes on with the word, "viz." followed by 15 clauses of anti-social activities enumerated therein. The plural in "anti-social activities" referred to the large number of activities to be brought under the umbrella of this single offence and it would never mean that there must be plurality of actions before a person could be prosecuted or convicted for an offence under the Act. When a specific offence has been created, it is open to be punished even for a single act, if it is covered by the requirements of law. We, thus, answer point No.1 framed by us."*

(Emphasis supplied by us)

17. In a recent judgment dated 05.08.2021 in Criminal Misc. Writ Petition No.3938 of 2021 (Ritesh Kumar @ Rikki vs. State of U.P. and another and other connected writ petitions), a Division Bench of this Court framed 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."

18. The afore-noted question has been answered by the Division in the aforesaid judgment in the case of Ritesh Kumar @ Rikki (supra), as under:

“After having heard the learned counsels for the parties and perusing the records, it is apparent that barring Criminal Misc. Writ Petition No. 4149 of 2021, all the above writ petitions were argued on the common point for which the question as framed, is answered that 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. In a petition under Article 226 of the Constitution of India, this Court cannot adjudicate the correctness of the allegations in the impugned first information reports or the cases on the basis of which the impugned first information reports have been lodged. The writ petitions are thus dismissed.”

19. Thus, where a group of persons act 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 of himself or any other person, indulge in anti-social activities as described in sub-clauses (i) to (xxv) of Section 2(b), they shall be a ‘Gang’ as defined in Section 2(b) and thus, a ‘gangster’ under Section 2 who shall be liable for punishment under Section 3 of the Act, 1986.

20. The intention of the Act, 1986 is to curb such type of crime, which has become epidemic in the society. The legislature has felt that there should be curtailment of the activities of the gangsters and, accordingly, provided for stern delineation with such activities to establish stability in society where citizens can live in peace and enjoy a secured life. Control of crime by making appropriate legislation is the most important duty of the legislature in a democratic polity and for this reason it is necessary to scuttle serious threats to the safety of the citizens. Thus, the Act, 1986, in actuality, responded to the actual feelings and requirements of the collective. In view of the basic idea of protection of the society, liberty in a civilized society cannot be absolute. Therefore, it is the duty of the courts to uphold the dignity of personal liberty and to see if an individual crosses the limit carved out by law, he needs to be dealt with appropriately, inasmuch as no individual has any right to hazard others’ liberty. Rule of law does not permit anti-social acts that lead to a disorderly society.

21. The Scheme of the Act, 1986 nowhere prohibits lodging of first information report under the Act, 1986 on the basis of a single case. In a recent

judgment in the case of **Ritesh Kumar @ Rikki (supra)**, a Division Bench of this court held that lodging of a first information report on the basis of a single case is valid and permissible under the Act, 1986. Therefore, we have no difficulty to hold that a first information report may be lodged on the basis of a single case, provided the ingredients of the definition of 'Gang' under Section 2(b) of the Act, 1986 is *prima facie* satisfied.

22. For all the reasons aforestated, the question No.(i) as framed in para-3 above, is answered in affirmative. Consequently the question (ii) is answered in negative, inasmuch as no other point has been argued before us except quashing of the impugned FIRs on the ground that it has been registered on the basis of a solitary case. Accordingly, we hold that a first information report under Section 2/3 of the Act, 1986, can be registered against a person even if only one criminal case is registered against him, and on the ground of registration of merely one criminal case, an FIR registered under Section 2/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, cannot be quashed.

23. For all the reasons afore-stated, we do not find any merit in all these writ petitions and accordingly, **all the writ petitions** being CRIMINAL MISC. WRIT PETITION No. - **642 of 2021**, CRIMINAL MISC. WRIT PETITION No. - **798 of 2021** CRIMINAL MISC. WRIT PETITION No. - **17198 of 2020**, CRIMINAL MISC. WRIT PETITION No. - **17194 of 2020**, CRIMINAL MISC. WRIT PETITION No. - **1243 of 2021**, CRIMINAL MISC. WRIT PETITION No. - **1403 of 2021**, CRIMINAL MISC. WRIT PETITION No. - **1306 of 2021** and CRIMINAL MISC. WRIT PETITION No. - **1411 of 2021**, **are hereby dismissed.**

Order Date :- 12.08.2021

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