

A.F.R.

Judgment reserved on 21.11.2022

Judgment delivered on 13.12.2022

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46497 of 2022

Applicant :- Ramesh Rai @ Matru Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Ran Vijay Singh, Atharva Dixit, Praveen Kumar Singh

Counsel for Opposite Party :- G.A., Ajay Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Manish Tiwari Senior Advocate, assisted by Sri Praveen Kumar Singh Advocate, the learned counsel for the applicant, Sri Arun Kumar Pandey, the learned A.G.A. for the State and Sri Ajay Singh Advocate, the learned counsel for the informant / victim in Case Crime No. 74 of 2022.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 126 of 2022, under Section 3 (1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (which will hereinafter be referred to as 'the Gangsters Act'), Police Station Chetganj, District Varanasi. A copy of the Gang-chart accompanying the F.I.R. mentions involvement of the applicant in four cases, one of which is Case Crime No. 74 of 2022 under Sections 448, 386, 504, 506, 420, 120-B, 34 IPC and Sections 10 (i), 10 (ii), 22 and 23 of the Uttar Pradesh Regulation of Money-Lending Act, 1976, Police Station Chetganj, Commissionerate Varanasi.

3. Sri Ajay Singh, Advocate has put in appearance on behalf of the informant of Case Crime No. 74 of 2022 and he has sought to oppose the bail application.

4. Sri. Manish Tiwari Senior Advocate has opposed the intervention of the informant of Case Crime No. 74 of 2022 in the present case, i.e. Case Crime No. 126 of 2022 and he has submitted that the informant of Case Crime No. 74 of 2022 does not fall within

the definition of victim of the present case and, therefore, he has no right to oppose the prayer for grant of bail to the applicant in the present case. He has further submitted that the Gangsters Act is a special enactment having an overriding effect on any other law, as provided by Section 20 of the Act, which is as follows: -

“20. Overriding effect. - The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment.”

5. The provision for grant of bail to a person accused of an offence under the Gangsters is provided in Section 19 of the Act, the relevant portion whereof is as follows: -

“19. Modified application of certain provisions of the Code. –

** * **

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless :

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code.”

6. Section 19 (4) contains a provision for giving an opportunity to the public prosecutor to oppose the application for release of a person on bail but there is no provision giving such right to any person other than the Public Prosecutor.

7. Replying to the aforesaid objection, Sri Ajay Singh has stated that although the present case has been registered on the basis of an F.I.R. lodged by the Inspector In-charge, the F.I.R. mentions that the applicant is involved in commission of several offences, one of which being Case Crime No. 74 of 2022. He has further submitted that since Case Crime No. 74 of 2022 forms the basis for lodging of the present case, the victim of Case Crime No. 74 of 2022 is also a victim of the present case.

8. Sri Ajay Singh, Advocate has placed reliance on a decision of the Hon'ble Supreme Court in **Jagjeet Singh Vs. Ashish Mishra @ Monu** (2022) 9 SCC 321.

9. I have given a thoughtful consideration to the aforesaid submissions made on behalf of the parties.

10. The question whether a victim of a predicate offence can claim a right of hearing to oppose the bail application of a person accused under the Gangsters Act has been dealt with by a co-ordinate Bench of this Court in **Zeba Rizwan versus State of U.P.**, 2022 SCC OnLine All 352 : (2022) 4 All LJ 175. It would be appropriate to note the following submissions which raised in the aforesaid case: -

“8. Learned counsel has relied on the judgment of the Supreme Court passed in Jagjeet Singh v. Ashish Mishra @ Monu (2022) 9 SCC 321, wherein it has been stated that a ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings.

9. Learned counsel has further relied on the judgment of the Supreme Court passed in Sudha Singh v. State of Uttar Pradesh (2021) 4 SCC 781, wherein it has been opined that the accused person, who has been prosecuted in fifteen cases for serious offences including murder, attempt to murder and criminal conspiracy, should not have been granted bail under the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and the said bail was set aside by the Supreme Court.”

11. While dealing with the submissions, this Court held that: -

“15. If the said victims of the predicate offence are permitted to appear and oppose the bail applications in the matters of Gangsters Act, it shall open a Pandora's box and prove hurdle in proper disposal of the case.

* * *

22. Of late, the criminal jurisprudence has developed that the victim is being accorded proper opportunity of being heard not only at the various stages of trial and even at the stage of disposal of bail. But the story herein is a bit different. The matter in question is under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and not under the IPC or any other Special Act and the complainant of the said case is the S.H.O. of the police station. So the counsel for the victim of the predicate offence i.e. FIR No. 002 of 2022 does not come

within the category of “victim” pertaining to the present case. In spite of the provisions discussed above, the counsel for victim in the offence u/s 302 IPC has been heard at length.”

12. What appears from a reading of the aforesaid judgment, is that although Jagjeet Singh and Sudha Singh (Supra) were taken note of, the Court has held that the victim of a predicate offence cannot be treated to be a victim of an offence under the Gangsters Act and doing so will open a Pandora's box and it will create hurdles in disposal of cases.

13. In **Jagjeet Singh** (Supra), the Hon'ble Supreme Court has been pleased to hold as follows: -

*“19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. **The Committee recommended the rights of the victim or his/her legal representative “to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more”.***

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a 'victim' under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial.

*21. It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression 'victim' which **“means a person who has suffered any loss or injury***

caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir”.

22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.”

24. The abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

(Emphasis supplied)

14. In **Sudha Singh v. State of U.P.**, (2021) 4 SCC 781, the Hon'ble Supreme Court entertained and allowed an appeal filed by the wife of a person, who had been allegedly murdered by the accused, against an order of this Court granting bail to the accused in a case involving commission of offence punishable under Section 3(1) of the Gangsters Act.

15. From the aforesaid discussion, it naturally follows that the term "victim" cannot be taken to be a synonym of the terms "complainant" or "informant" and "victim" need not be the complainant or informant of an offence. If a victim of a predicate offence can file appeal challenging an order granting bail in an offence under the Gangsters Act, he certainly has the right to have an opportunity to oppose the application for grant of bail in an offence under the Act and for that purpose, he will have to be treated as a victim of the offence under the Gangsters Act. Where the victim of a predicate offence has come forward to participate in the proceeding by making submissions in opposition of a bail application, he must be given an opportunity of hearing.

16. It appears that although Jagjeet Singh and Sudha Singh (Supra) have been taken note of by the Bench deciding Zeba Rizwan (Supra), the true purport of the aforesaid judgments has somehow escaped attention of this Court and, therefore, with utmost respect to the coordinate bench which decided Zeba Rizwan, I find myself unable to follow the law laid down in it, as it runs contrary to the law laid down by the Hon'ble Supreme Court in the aforesaid cases.

17. Since the F.I.R. of the present case mentions Case Crime No. 74 of 2022 as one of the predicate offences forming basis of lodging of the present F.I.R., and the informant claims to be a victim of the aforesaid predicate offence, he has to be treated as a victim of the present offence and he has the right to make submissions in opposition of the bail application. It is interesting to note that even in Zeba Rizwan (Supra), after holding that the victim of a predicate offence was not the victim of the offence under the Gangsters Act, the Court provided him an opportunity of hearing before deciding the bail

application.

18. In view of the aforesaid discussion, the objection raised on behalf of the applicant is hereby rejected and the Court proceeds to decide the application on its merits after taking into consideration the submissions made by the learned Counsel for the informant in Case Crime No. 74 of 2022 in opposition of the bail application.

19. The allegation against the applicant is that he is a member of a gang, which is engaged in commission of several offences, and the gang-chart mentions involvement of the applicant in the following offence:

- (i)** Case Crime No. 72/2022 under Sections 386, 504, 506, 420, 120-B, 34 IPC and Sections 10 (i), 10 (ii), 22 and 23 of the Uttar Pradesh Regulation of Money-Lending Act, 1976, Police Station Chetganj, Commissionerate Varanasi
- (ii)** Case Crime No. 74 of 2022 under Sections 448, 386, 504, 506, 420, 120-B, 34 IPC and Sections 10 (i), 10 (ii), 22 and 23 of the Uttar Pradesh Regulation of Money-Lending Act, 1976, Police Station Chetganj, Commissionerate Varanasi
- (iii)** Case Crime No. 111 of 2021 under Sections 379, 506, 411 IPC, Police Station Chetganj, Commissionerate Varanasi
- (iv)** Case Crime No. 1099 of 2018 under Sections 504, 506 IPC, Police Station Cantt. Varanasi

20. Case Crime No. 74 of 2022 was lodged on the basis of F.I.R. alleging that the informant's father had started business of Sarees in the year 1982-83. For meeting his business requirements, he had taken a loan of Rs.25,00,000/- from the co-accused Kashi Singh and he had executed an agreement on 21.11.2006 surrendering one of his shops in favour of wife of Kashi Singh. It was alleged in the F.I.R. that after taking the loan, the informant's father came to know that the accused persons are members of a gang involved in earning interest and committing crimes and, therefore, he refunded the money, yet Kashi Singh and others continued to extract money from him and they got the informant's flat transferred in the name of wife of Kashi Singh and

in the year 2016, the accused person took possession of another shop belonging to the informant. The F.I.R. alleges that the informant and his father have paid about 70-80 lakhs Rupees and they have got written acknowledgment from Kashi Singh and the applicant in respect of some of the amount paid.

21. As per the F.I.R. allegations, the informant's father had taken a loan of Rs.25,00,000/- from the co-accused Kashi Singh and an agreement was executed on a stamp paper and the sale deed of the flat was executed in favour of wife of Kashi Nath. The informant claims that he and his father have repaid about 70-80 lakhs and they have written acknowledgment in respect of some of the amount paid, but the exact amount repaid by them and exact amount for which they have written acknowledgments has not been disclosed. Considering the facts of the case, the learned Session Judge, Varanasi has passed an order dated 14.09.2022 ordering the applicant's release on bail in Case Crime No. 74 of 2022.

22. In two of the three other cases mentioned in the gang-chart, namely Case Crime No. 72/2022 and Case Crime No. 1099 of 2018, the applicant has already been granted bail by the Session Judge Varanasi and in Case Crime No. 111 of 2021 the applicant has been granted bail by the Chief Judicial Magistrate, Varanasi.

23. A supplementary affidavit filed in support of the bail application mentions the criminal history of the applicant of eleven more cases, in four of which, the applicant has already been acquitted, a Complaint Case No. 93 of 2014 under Sections 420, 506 IPC has been rejected under Section 203 Cr.P.C., in two cases bearing Case Crime No. 208 of 2019 under Sections 341, 504, 506 IPC and Case Crime No. 990 of 2020 under Sections 420, 406, 504, 506 IPC, the Police has submitted final reports which have been accepted by the Trial Court.

24. In the remaining four cases, the applicant has been granted bail and copies of the bail orders have been annexed with the supplementary affidavit.

25. Co-accused Kashi Nath Singh has already been granted bail in the present case by means of an order dated 03-11-2022 passed by this Court in Criminal Misc. Bail Application No. 45869 of 2022. The other co-accused person Prem Shankar Singh @ Meethe has also been granted bail by means of an order dated 21-10-2022 passed by this Court in Criminal Misc. Bail Application No. 45765 of 2022.

26. Sri. Arun Kumar Pandey, the learned AGA and Sri. Ajay Singh Advocate, the learned Counsel for the victim have opposed the prayer for grant of bail and they have submitted that the allegations against the applicant are of serious nature. However, they could not dispute the aforesaid aspects of the matter and the fact that both the other co-accused persons have already been granted bail.

27. Case Crime No. 126 of 2022, under Section 3 (1) of the Gangsters Act, in which the applicant is seeking bail, has been registered by means of an F.I.R. dated 27.08.2022 lodged by the Inspector in-charge against three named accused persons, including the applicant, alleging that while the Inspector was involved in patrolling of the area in Government Vehicle No. UP 65 AG 0845 alongwith a Head Constable, three Constables and the Chauki In-charge Sub-Inspector Angad Kumar Singh, from the record available in the Police Station and verification of the information received, he found that all the accused persons have formed an organized gang which is led by the applicant and they are engaged in commission of offences like illegal interest earning, money lending, extortion etc. The FIR further alleges that because of the fear of the offences committed by the gang, no person dares to lodge a complaint or give evidence against it. It is further averred in the F.I.R. that a Gang-chart prepared for preventing the criminal activities of the members of the gang has already been approved by the Commissioner of Police, Varanasi.

28. A copy of the Gang-chart accompanying the F.I.R. indicates that it mentions three persons as the members of the gang – (i) Ramesh Rai - the applicant, (ii) Kashi Nath Singh and (iii) Premshankar Singh alias Meethe. The Gang-chart mentions involvement of the applicant

in four cases. The Gang-chart appears to have been prepared by the Inspector In-charge on 18-08-2022 and after having been forwarded by various officers, ultimately it was forwarded by the Deputy Commissioner of Police on 27-08-2022 and thereafter it was approved by the Commissioner of Police, Varanasi.

29. The Inspector-in-charge, who himself had prepared and forwarded the Gang-chart on 18-08-2022, states in the F.I.R. lodged by himself on 27-08-2022 that while he was involved in patrolling of the area in Government Vehicle No. UP 65 AG 0845 alongwith a Head Constable, three Constables and the Chauki In-charge Sub-Inspector Angad Kumar Singh, from the record available in the Police Station and verification of the information received, he found that all the accused persons have formed an organized gang which is led by the applicant and they are engaged into commission of offences like illegal interest earning, money lending, extortion etc., and a bare reading of this narration indicates that the F.I.R. has been lodged in a mechanical manner, on a stereotyped proforma, without application of mind to the facts of the individual case.

30. Sri. Manish Tiwari Senior Advocate has submitted that a perusal of the narration made in the F.I.R. indicates that the applicant has been implicated in the present case solely on the basis of perusal of records available with the police, and that too, during patrolling in a jeep, which prima facie indicates that the applicant has been implicated by the police without any material against him to establish that he is a gangster.

31. In **Ashok Kumar Dixit versus State of U. P.** AIR 1987 All 235, while upholding the constitutional validity of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, a Full Bench of this Court held that: -

*“73....If we advert to Section 2(b) of the Act, which defines the term ‘gangster’ we would find significant words. They are “acting”, ‘singly or collectively’, ‘violence or show of violence’, ‘intimidation’, ‘coercion’, or ‘unlawful means’. Thus, **for booking a person under the provisions of the Act, the authorities have to be prima facie satisfied that a person has acted. The authority***

has to be satisfied that there is a reasonable and proximate connection between the occurrence and the activity of the person sought to be apprehended and that such activities were to achieve undue temporal, physical, economic or other advantage. There need not be any overt or positive act of the person intended to be apprehended at the place. It is enough to prove active complicity which has a bearing on the crime.

74. While laying down so, we should not be oblivious of the avowed object of the Act. Under the ordinary criminal law, it is sometimes difficult to bring to book the overlords of crime and underworld because they seldom operate in person or in the public gaze. They indulge in clandestine operations which threaten to tear apart the very fabric of society. It is this purpose which the Act seeks to achieve.

75. But nevertheless we must sound a note of caution. **Provisions of the Act cannot be used as a weapon to wreak 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.**”

(Emphasis supplied)

32. In **Subhash versus State of U.P.**, 1998 All.L.J. 4870 : 1998 SCC OnLine All 973, a Division Bench of this Court held that: -

*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 [Ashok Kumar Dixit v. State of U.P., 1987 ACC 164 : (1987 All LJ 806)], 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.”

(Emphasis supplied)

33. Upon scrutinizing the facts of the case in light of the aforesaid law, what prima facie appears at this stage is that although the F.I.R. alleges because of the terror of the gang, of which the applicant is a member, no person comes forward to lodge a complaint against them, numerous F.I.Rs. have been filed against the applicant. The informant of Case Crime No. 174 of 2022 has not only filed an F.I.R. against the applicant, but he has even come to oppose the bail application of the applicant in the present case.

34. The accusation made by the Inspector is that while he was engaged in patrolling in a jeep, he found from the record available in the Police Station and verification of the information received, that all the accused persons have formed an organized gang, without any particulars of any act committed by the applicant as a member of the gang. Prima facie it appears that the applicant has been implicated in the present case merely because he has a criminal history and the applicant is languishing in jail since 26.08.2022.

35. In view of the aforesaid discussion, there appears to be no reasonable ground for prima facie believing that the applicant is guilty of the offence alleged.

36. The minimum punishment which can be imposed in case of the applicant's conviction is imprisonment for two years.

37. There is nothing on record which may give rise to a reasonable apprehension that the applicant may tamper with the evidence or influence the witnesses or that the applicant will abscond and will not face the trial or that he is likely to commit any other offence in case he is released on bail.

38. The applicant has already been granted bail in all the cases mentioned in the Gang-chart and in four other cases in which he is involved, he stands acquitted in four cases, the police has filed final reports in two cases and a complaint filed against him stands rejected

and there is no material indicate that the larger interest of the public or the State would be affected in case the applicant is enlarged on bail.

39. Both the other co-accused persons have already been granted bail in the present case and the allegations leveled in the F.I.R. against all the accused persons are the same and, therefore, the applicant is entitled to claim his release on bail on the ground of parity also.

40. In view of the aforesaid discussion, without expressing any opinion on the merits of the case, this Court is of the view that the applicant is entitled to be released on bail.

41. In view of the aforesaid discussion, the bail application is **allowed**.

42. Let the applicant **Ramesh Rai @ Matru Rai** be released on bail in Case Crime No. 126 of 2022, under Section 3 (1), Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station Chetganj, District Varanasi, on his furnishing a personal bond and two reliable sureties, each of the like amount, to the satisfaction of the court concerned subject to following conditions:—

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not influence any witness.
- (iii) The applicant will appear before the trial court on the dates fixed, unless personal presence is exempted.
- (iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

43. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of bail.

Order Date – 13.12.2022

Jaswant