

A.F.R.

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Court No. - 45**Case :-** CRIMINAL MISC. WRIT PETITION No. - 9930 of 2024**Petitioner :-** Abdul Lateef @ Mustak Khan**Respondent :-** State Of Up And 2 Others**Counsel for Petitioner :-** Pankaj Kumar Chaube,Rafeek Ahmad Khan**Counsel for Respondent :-** G.A.

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 10379 of 2024**Petitioner :-** Hetram Mittal**Respondent :-** State Of Up And 3 Others**Counsel for Petitioner :-** Ram Chandra Solanki**Counsel for Respondent :-** G.A.

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 10852 of 2024**Petitioner :-** Tasleem**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Atul Singh,Vaibhav Kumar Verma**Counsel for Respondent :-** G.A.

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 10916 of 2024**Petitioner :-** Ritik**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Akhilesh Kumar Mishra,Rishabh Tiwari**Counsel for Respondent :-** G.A.,Udisha Tripathi,Vaibhav Tripathi,Vinod Kumar Tripathi

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 10968 of 2024**Petitioner :-** Anoop @ Anuj**Respondent :-** State Of Up And 2 Others**Counsel for Petitioner :-** Sunil Kumar Srivastava**Counsel for Respondent :-** G.A.**Hon'ble Siddhartha Varma,J.****Hon'ble Arun Kumar Singh Deshwal,J.**

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. As a common question is involved in all the above five writ petitions, all the writ petitions are being disposed of by a common judgement.

2. Basic issue in all the above writ petitions is preparation of gang chart in accordance with the U.P. Gangsters and Anti Social Activities (Prevention) Rules, 2021 (hereinafter referred to as "Rules, 2021"). In all the above writ petitions first information reports, under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act"), have been challenged on the ground that while preparing the gang charts of the FIRs in question, the competent authorities have not applied their minds and prepared gang charts in violation of the Rules, 2021 as well as several directions issued by this Court in the cases of *Sanni Mishra @ Sanjayan Kumar Mishra vs. State of U.P. and others; 2024 (1) ADJ 231 (DB)* as well as other judgements.

3. The following contentions have been made by the learned counsel for the petitioner in **Criminal Misc. Writ Petition no. 9930 of 2024:-**

(i) That while recommending and approving the gang chart of the impugned FIR, the competent authorities instead of recording their satisfaction simply signed pre-typed satisfaction which is against the law laid down by the Division Bench of this Court in the case of *Sanni Mishra (supra)*.

(ii) That from perusal of the gang chart, it is clear that while signing the pre-typed satisfaction for approval, the District Magistrate has not mentioned the date of his signature. This fact clearly shows that there was no joint meeting of District Magistrate and Superintendent of Police as required by the Rule 5(3)(a) of the Rules, 2021.

(iii) That the impugned F.I.R. was registered under Section 3(1) of the Gangsters Act without describing the corresponding provision of Section 2(b) of the Gangsters Act, mentioning the anti social activities on the basis of which the petitioner was termed as gangster. Therefore, the F.I.R. itself is in violation of directions issued by the Division Bench of this Court in the case of *Asim @ Hassim vs. State of U.P. and another; 2024 (1) ADJ 125 (DB)*.

4. The following contentions have been made by the learned counsel for the petitioners in **Criminal Misc. Writ Petition Nos. 10379 of 2024 and 10852 of 2024:-**

(i) That while preparing the gang chart of the impugned F.I.R., the Senior Superintendent of Police, Etawah did not record any satisfaction as required by Rule 16(2) of the Rules, 2021, but he simply mentioned the word

“recommended”. While approving the gang chart, the District Magistrate has not recorded satisfaction as required by Section 16(3) of the Rules, 2021 which prescribes that before approving the gang chart, the District Magistrate should also mention that apart from the gang chart he has perused the attached forms/evidences enclosed with the gang chart but he simply mentioned that he has perused the gang chart and report annexed with the gang chart, though there was no report of the Senior Superintendent of Police with the gang chart. Therefore, while approving the gang chart there is complete non application of mind on the part of the District Magistrate, Etawah.

(ii) That before approving the gang charts, the District Magistrate and the Senior Superintendent of Police have not conducted due discussion in a joint meeting as required by the Rule 5(3) of the Rules, 2021.

5. The following contentions have been made by the learned counsel for the petitioner in **Criminal Misc. Writ Petition No. 10916 of 2024:-**

(i) That while approving the gang chart no date was mentioned by the Nodal Officer while signing his satisfaction on the gang chart.

(ii) From the perusal of the gang chart, it is clear that recommendation of the Superintendent of Police on the gang chart was made on 24.4.2024 but the approval was granted by the District Magistrate on 10.5.2024. Both the aforesaid dates show that there was no joint meeting between the Superintendent of Police and the District Magistrate and the gang chart has been approved without application of mind as required by Rule 17 of the Rules, 2021.

6. The following contentions have been made by the learned counsel for the petitioner in **Criminal Misc. Writ Petition no. 10968 of 2024:-**

(i) That while recommending and approving the gang chart of the impugned F.I.R. the competent authorities, instead of recording their satisfaction, simply signed pre-typed satisfaction which is against the law laid down by the Division Bench of this Court in the case of *Sanni Mishra (supra)*.

(ii) That before approving the gang chart the District Magistrate and the Senior Superintendent of Police have not conducted due discussion in a joint meeting as required by the Rule 5(3) of the Rules, 2021.

7. Sri Amit Sinha, learned A.G.A. on behalf of the State-respondents has submitted that there is no requirement to conduct joint meeting before approval of the gang chart. Learned A.G.A. submitted that though there is a technical fault in approving the gang chart on the part of the competent

authorities, that cannot be a ground to quash the impugned F.I.R. under the Gangsters Act. It is also submitted that in pursuance of the judgement of the Division Bench of this Court, Chief Secretary, Govt. of U.P. has also issued circular dated 21.4.2024 to all the District Magistrates as well as Superintendents of Police for strictly following the Rules, 2021 in the light of the guidelines issued by this Court while preparing the gang chart under the Gangsters Act. It is further submitted that the Director General of Police had also issued circular dated 19.4.2024 to all the Senior Superintendents of Police/Superintendents of Police/Commissioners of Police to strictly follow the guidelines, issued by this Hon'ble Court in the case of *Sanni Mishra (supra)* as well as in other judgements of this Hon'ble Court so as to prepare the gang chart in accordance with the Rules, 2021. However, some of the District Magistrates and District Police Chiefs, mistakenly, could not take into consideration those guidelines and because of that reason mistakes were committed while preparing and approving the gang charts under the Gangsters Act.

8. Before proceeding on the factual aspect as well as legal question, involved herein, it would be appropriate to discuss the basic object of the Gangsters Act. The Gangsters Act was enacted to deal with those criminals who commit crime by forming a gang or who assist or abet illegal activities of a gang which are mentioned in Section 2(b) of the Gangsters Act. The Gangsters Act can be invoked only against the persons who are termed as gangsters as per Section 2(c) of the Gangsters Act. Therefore, the Gangsters Act can be imposed only on those persons who are members of any gang and commit offence mentioned in Section 2(b)(i) to 2(b)(xxv) of the Gangsters Act or who assist such persons in any manner. Definition of the word 'gang' has been given in Section 2(b) of the Gangsters Act, providing group of persons either acting singly or collectively with the object of disturbing public order or gaining any undue temporal, pecuniary or material advantage for himself or any other person through violence, or threat, or intimidation, or coercion, or other similar activities by indulging in illegal activities mentioned in Section 2(b) of the Gangsters Act. Section 2(b), defining the word 'gang' is quoted as under:-

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

9. From the perusal of the definition of the word 'gang', it appears that if two or more persons group together for committing illegal activities, as mentioned in Section 2(b) of the Gangsters Act itself, then that group will be considered as a gang. But in the Gangsters Act, it was nowhere mentioned

whether the activity of the member of a group should be one or more than one to attract the liability under the Gangsters Act as mentioned in the Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015. As per the Maharashtra Control of Organized Crime Act as well as the Gujarat Control of Terrorism and Organized Crime Act, to attract the liability there must be a continuing unlawful activity which requires more than one charge sheet. However, in the U.P. Gangsters Act, it is nowhere mentioned that to attract the liability under the Gangsters Act there must be continuing unlawful activity which requires more than one charge sheet for the offences. For ready reference, Sections 2(1)(d), 2(1)(e) of the Maharashtra Control of Organized Crime Act as well as Sections 2(1)(c) and 2(1)(e) of the Gujarat Control of Terrorism and Organized Crime Act are quoted as under:-

“Maharashtra Control of Organized Crime Act

2(1)(d). “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

2(1)(e). “organised crime“ means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

Gujarat Control of Terrorism and Organized Crime Act

2(1)(c). "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment for a term of three years or more,'-- undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

2(1)(e). "organised crime" means continuing unlawful activity and terrorist act including extortion, land grabbing, contract killing, economic offences, cyber crimes having severe consequences, prostitution or ransom by an individual, singly or jointly, either as syndicate, by use of violence or at of violence or intimidation or coercion or other means.”

10. This issue was also considered by the Apex Court in the case of ***Shraddha Gupta v. State of Uttar Pradesh and Others; 2022 SCC OnLine SC 514***. While considering the issue whether the provision of the Gangsters

Act can be invoked if the member of a gang is involved in a single case, Hon'be the Apex Court observed that on perusal of the definition of 'gang' and 'gangster' in the U.P. Gangsters Act, continuation of illegal activities is not required as required in the the Maharastra Control of Organized Crime Act as well as the Gujarat Control of Terrorism and Organized Crime Act. Therefore, even if the member of a gang is involved in a single base case, the provisions of the Gangsters Act can be imposed against him. Paragraph No. 39 of *Shraddha Gupta (supra)* case is quoted as under:-

“39. On a fair reading of the definitions of ‘Gang’ contained in Section 2(b) and ‘Gangster’ contained in Section 2(c) of the Gangsters Act, a ‘Gangster’ means a member or leader or organiser of a gang including any person who abets or assists in the activities of a gang enumerated in clause (b) of Section 2, who either acting singly or collectively commits and indulges in any of the anti-social activities mentioned in Section 2(b) can be said to have committed the offence under the Gangsters Act and can be prosecuted and punished for the offence under the Gangsters Act. There is no specific provision under the Gangsters Act, 1986 like the specific provisions under the Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015 that while prosecuting an accused under the Gangsters Act, there shall be more than one offence or the FIR/charge sheet. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge sheet, if it is found that the accused is a member of a ‘Gang’ and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person and he/she can be termed as ‘Gangster’ within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act. Therefore, so far as the Gangsters Act, 1986 is concerned, there can be prosecution against a person even in case of a single offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Act provided such an anti-social activity is 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.”

11. The Apex Court in the case of *Shraddha Gupta (supra)* observed that on the basis of a single case, the Gangsters Act can be imposed against a person. This observation was widely misused by the police authorities for invoking the Gangsters Act only on the basis of a single case, ignoring the fact that the observation of the Apex Court in *Shraddha Gupta (supra)* is regarding commission of a single case by the member of a gang or by any person who assists or abets the gang in its illegal activities. Therefore, though the Gangsters Act can be imposed only on the basis of a single case against a criminal, the basic condition must be fulfilled that the criminal must be a

member of a gang and involved in illegal activities as mentioned in Section 2(b) of the Gangsters Act, only then the Gangsters Act can be imposed only on the basis of a single case. However, this Court came across a number of cases where the Gangsters Act has been imposed only on the basis of a single case against an accused without there being sufficient material to show that the person is a member of a gang and involved in illegal activities, mentioned in Section 2(b) of the Gangsters Act. This is nothing but misuse of the Gangsters Act by some of the the State Officers.

12. The State Government, just to prevent the misuse of the Gangsters Act, has framed the Rules, 2021. While framing these rules, the State Government also took into consideration several guidelines issued by the High Court as well as the Apex Court regarding invocation of the Gangsters Act. The basic purpose of issuance of the Rules, 2021 is that no innocent person be falsely implicated in the Gangsters Act by providing check and balance on the police as well as administrative officers who are competent authorities to recommend and approve the gang chart before registration of the F.I.R. under the Gangsters Act.

13. The majority of criminal Acts and Rules, enacted and framed by the State, are substantially based on societal norms which can be traced back to the religious teachings, found in the religious texts.

14. This Court is of the view that the object of procedural Rules, framed under the Gangsters Act as well as in other criminal laws, must be tested on the old saying that “**99 accused may be acquitted, but one innocent person should not be punished**”.

15. *Rigveda*, the ancient Indian *Vedic* texts contains several hymns and verses that prohibit harassment and oppression of innocent people. Several verses of *Rigveda* emphasize the importance of protecting the innocent and the weak and warn against oppressing or harassing them. The *Rigveda* teaches that Gods are on the side of the oppressed and will punish those who engage in harassment and oppression. The Mandal-1, Sukta-5th, Varg-10th (1.5.10) of the *Rigveda* (interpretation by Swami Dayanand Saraswati) is being quoted as under:-

“मा नो मर्ता अभि द्रुहन् तनूनामिन्द्र गिर्वणः। ईशानो यवया वधम् ॥ १०॥

(mā no martā abhi druhan tanūnām indra girvaṇaḥ | īśāno yavayā vadham)

Indra, who are the object of praises, let no men do injury to our persons; you are mighty, keep off violence."

16. The *Bible*, both old and new testaments, condemns harassment and oppression of an innocent person. The *Bible* teaches that protecting the

innocent and promoting justice is a fundamental aspect of faith and harassment and oppression are considered sinful behaviour. The relevant extract of the *Bible* is quoted as under:-

“*Exodus 23:7*

Have nothing to do with a false charge and do not put an innocent or honest person to death, for I will not acquit the guilty.”

17. *Quran*, the holy book of Islam, strictly condemns harassment and oppression of innocent people. The *Quran* teaches that protecting the innocent and promoting justice is a fundamental aspect of Islam and oppression and harassment are considered grave sins. The *Surah Al-Ma’edah* (*Surah-5*), *Ayat 32* of the *Quran* is quoted as under:-

مِنْ أَجْلِ ذَٰلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعْدَ ذَٰلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ ۝ ٣٢

(*Min Ajli thalika katabna ‘ala banee israeela annahu man qatala nafsan bighayri nafsin aw fasadin fee alardi fakaannama qatala alnnasa jamee’an waman ahyaha fakaannama ahyal alnnasa jamee’an walaqad jaa thum rusuluna bialbayyinati thumma inna katheeran minhum ba’da thalika fee alardi lamusrifoona*)

Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.”

18. The above verses of different religious texts clearly show that harassment of innocent persons is a great sin and our legal system also prescribes several procedures to protect the innocent persons and punish the guilty. Before the enforcement of the Constitution of India, Dr. B.R. Ambedkar Ji, while addressing the final constituent assembly, said “**However good the constitution may be, if those who are implementing it are not good it will prove to be bad**”. Therefore, providing law and procedure for its implementation may not result as desired if the persons who are implementing the same have *mala fide* intension or do not respect the law and its procedure.

19. Similar is the situation in the State of U.P. Here, though the policy of State Government for zero tolerance towards crime is appreciable but if some of its officials do not follow proper procedure and guidelines, prescribed by the State Government itself, then in such circumstances the object of the

Government to achieve good governance and zero tolerance towards crime was bound to be defeated.

20. This Court came across myriad cases where it was found that the competent authorities under the Gangsters Act were not following the procedure prescribed by the Rules, 2021 in preparation of gang chart which is the first stage of invoking the Gangsters Act upon criminal(s). Though all the State officers cannot be blamed, but certainly there is a considerable number of State officers who are invoking the Gangsters Act without following due procedure laid down by the Rules, 2021 itself. Considering the laxity on the part of some of the State officers in preparation of the gang chart against the well established procedure laid down by the State Government, several Benches of this Court had issued directions for preparation of the gang chart as well as for invocation of the Gangsters Act.

21. This Court in the case of *Anil Mishra vs. State of U.P. and others; 2024 (3) ADJ 285 (DB)* observed that satisfaction of the competent authorities should be the satisfaction in true sense and not the formality and a dishonest satisfaction will be no satisfaction at all. Paragraph No.32 of the aforesaid judgement is quoted as under:-

“32. Satisfaction of the competent authority only means that the competent authority must be in fact satisfy and not a dishonest satisfaction, which will be no satisfaction at all. The satisfaction contemplated by the Gangster Rule is satisfaction in point of fact on the materials placed before the competent authority. The satisfaction of the competent authority referred to under the Rule is not with respect to the allegations levelled against the gangster but the satisfaction is confined to those allegations that the accused can be prosecuted under the Gangster Act. Whatever may be the nature of charge against the accused, the satisfaction of the competent authority should be with regard to that the materials placed before him and the nature of the accused indulging in community antisocial activities. It is expedient to sanction prosecution under the Gangster Act.”

22. In the case of *Asim @ Hassim (supra)*, a Division Bench of this Court, just to prevent misuse of the Gangsters Act, observed that the Gangsters Act can be imposed on a person who is a member of a gang and who is also involved in the category of illegal activities mentioned in Section 2(b) of the Gangsters Act and, therefore, without mentioning the relevant provision which makes him gangster, the provision of the Gangsters Act cannot be invoked merely because that person has committed an offence. In that case the Division Bench of this Court directed that while registering an F.I.R. under the Gangsters Act, relevant provision of Section 2(b) regarding illegal activities in which the person is involved and on the basis whereof he was termed as gangster should also be mentioned in the F.I.R. Though this judgement was referred to the larger Bench by another Division Bench in the case of *Dharmendra @ Bheema vs. State of U.P. and another; Criminal*

Misc. Writ Petition No. 1049 of 2024, the reference is yet to be decided. Therefore, till the reference is decided, the law laid down in **Asim @ Hassim (supra)** is still hold good. Paragarphs No. 5 & 9 of the judgement in **Asim @ Hassim (supra)** are quoted as under:-

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

9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.”

23. This Court again considered the Rules, 2021 on finding that the gang chart is not being prepared as per the rules and issued several directions in the case of **Sanni Mishra (supra)**. Following guidelines were issued in paragraph No.22 of the aforesaid judgment:-

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

(i) Date of filing of chargesheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021.

(ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.

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

24. The above guidelines show that the Court has specifically directed the competent authorities that at the time of preparing gang chart, the date of filing of the charge sheet ought to be mentioned in column-6 of the gang chart and the competent authorities must record their required satisfaction by writing in clear words and not by signing a pre-typed satisfaction. It was also directed that before approving the gang chart, the District Magistrate/Commissioner of Police should conduct a joint meeting with the

District Police Chief to discuss material available for invocation of the Gangsters Act.

25. In pursuance of the judgements in *Asim @ Hassim (supra)* as well as *Sanni Mishra (supra)*, the Director General of Police, U.P., issued circular dated 19.1.2024 to all the District Police Chiefs. The circular dated 19.1.2024, issued by the Director General of Police, U.P. is quoted as under:-

“विजय कुमार,
आई०पी०एस

डीजी परिपत्र सं०-04/2024
पुलिस महानिदेशक, उत्तर प्रदेश।
पुलिस मुख्यालय, गोमती नगर विस्तार,
लखनऊ-226002
दिनांक: जनवरी 19, 2024

विषय: उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) नियमावली-2021 के प्राविधानों के अनुपालन के सम्बन्ध में दिशा निर्देश।

प्रिय महोदय/महोदया,

1. पत्र संख्या: डीजी-सात-एस-14 (15)/2023 दि० 02.01.2024
2. पत्र संख्या: डीजी-सात-एस-14 (09)/2021 दि० 01.06.22
3. पत्र संख्या: डीजी सात-एस-14(09)/2021 दि० 25.04.22
4. डीजी परिपत्र सं०-40/22 दि० 09.12.2022

उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986 के अन्तर्गत अभियुक्तों के विरुद्ध कार्यवाही के दौरान अभियुक्तों का सम्पूर्ण एवं त्रुटिहीन आपराधिक इतिहास अंकित किये जाने तथा इस सम्बन्ध में उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) नियमावली 2021 के प्राविधानों के अनुपालन के सम्बन्ध में इस मुख्यालय स्तर से पाश्र्वीकित वॉक्स में अंकित पत्र तथा डीजी परिपत्र पूर्व में निर्गत किये गये हैं किन्तु इन निर्देशों का कमिश्नर/जनपद स्तर पर कड़ाई से अनुपालन नहीं किया जा रहा है।

श्री आशुतोष कुमार सण्ड, शासकीय अधिवक्ता, मा० उच्च न्यायालय इलाहाबाद ने अपने पत्र दिनांकित 18.12.2023 (छायाप्रति संलग्न) द्वारा अवगत कराया है कि मा० उच्च न्यायालय में गिरोहबन्द अधिनियम के अभियुक्तों द्वारा प्रथम सूचना रिपोर्ट को चुनौती देते हुये रिट याचिकायें योजित की जा रही हैं, जिसमें गिरोहबन्द नियमावली में दी गयी विभिन्न व्यवस्थाओं का पालन न किये जाने को आधार बनाया जा रहा है। विद्वान शासकीय अधिवक्ता ने उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986 के अन्तर्गत की जा रही कार्यवाहियों में विवेचनाधिकारियों, प्रभारी निरीक्षकों, नोडल अधिकारियों, पुलिस अधीक्षकों तथा जिला मजिस्ट्रेटों द्वारा सामान्य रूप से की जा रही त्रुटियों का निम्नवत उल्लेख अपने पत्र में किया है-

a- Under Rule 5(3)a there must be a joint meeting of the District Magistrate/ Commissioner of Police with the District Police Chief.

b- Under Rule 8(3) the Status of each case on the date of the approval of the Gang chart should be strictly mentioned.

c- According to Rules the Addl. Superintendent of Police (Nodal Officer) must record his satisfaction in clear words as required under Rule 16(1) of the Rules.

d- Under Rule 16(2) Senior Superintendent of Police/ Superintendent of Police after going through the recommendation of the Addl. Superintendent of Police under Rule 16(1) shall record his satisfaction for approving the same and will forward the same to the District Magistrate or the Commissioner of Police.

e- Under Rule 17(2) clearly prohibits the use of the pre-printed rubber stamp for all gang chart for its approval as such, the satisfaction etc. should be seen after recorded due application of mind; and as such, the signature of the concerned authority on the printed form clearly shows of non application of mind.

f- According to Rule 20(3) before submitting the charge sheet before the concerned special court the Addl. Superintendent of Police shall obtained the opinion from the concerned prosecuting officer in order to ascertain that there is no illegality/irregularity either in conducting of the investigation or with regard to outcome of the document collected during course of investigation and after that approval the Addl. Superintendent of Police shall forward the same to Senior Superintendent of Police or Superintendent of Police for its approval as required under Rule 20(4).

g- Under Rule 26(1) the Commissioner of Police/Senior Superintendent of Police/Superintendent of Police as the case may be, will peruse the entire record whenever the aforesaid Charge sheet is forwarded before him for the grant of the approval as required under Rule 20.

h- Rule 5, the gang-chart which is prepared prosecuting the gang member shall only contained the number of the cases which are considered for invoking the provision but excluding the cases on the basis of which earlier any proceeding under the Gangster Act was initiated. However, the list of the aforesaid cases shall be annexed along with the gang chart as provided under Rule 5D in form prescribed under the Rule.

विद्वान शासकीय अधिवक्ता ने अपने पत्र में क्रिमिनल मिस . रिट पिटीशन संख्या-18729/2023 आसिम उर्फ हासिम बनाम उ०प्र० राज्य व अन्य सम्बन्धित मु.अ.सं. 307/2023 अन्तर्गत धारा-3(1) उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986, थाना-मुंडापांडे, जनपद-मुरादाबाद तथा क्रिमिनल मिस. रिट पिटीशन संख्या-16258/2023 सत्री मिश्रा उर्फ संजयन कुमार मिश्रा बनाम उ०प्र० राज्य व अन्य सम्बन्धित मु.अ.सं. 366/2023 अन्तर्गत धारा-3(1) उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) अधिनियम 1986, थाना-राजघाट, जनपद-गोरखपुर का उल्लेख किया है, इन रिट याचिकाओं में मा० उच्च न्यायालय इलाहाबाद द्वारा जनपद मुरादाबाद तथा गोरखपुर में पंजीकृत प्रथम सूचना रिपोर्टों को रद्द कर दिया गया है।

क्रिमिनल मिस. रिट पिटीशन संख्या-16258/2023 उपरोक्त में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांकित 13.12.2023 में गिरोहबन्द अधिनियम के अन्तर्गत की जा रही कार्यवाहियों में सामान्य रूप से इस प्रकार की तकनीकी त्रुटियों पर अप्रसन्नता व्यक्त करते हुये निम्नवत टिप्पणी की गयी है-

25. At last, this court feels it appropriate to express its displeasure about the manner of preparing the gang-charts in Gangster Act, 1986. This court finds in number of cases that the police authorities as well as District Magistrate forwarded/ approved the gang-chart without application of mind and contrary to Rules, 2021. This negligence on the part of police officials as well as of District Magistrate on the one hand fails to protect the innocent person and on the other hand, hardcore criminals and gangsters get benefit of such technical lacuna in Court.

26. Therefore, the Chief Secretary of U.P. is directed to issue necessary guidelines to all the District Magistrate/Commissioner of Police/SSP/SP Additional SP regarding the preparation, forwarding and approval of the

gangchart in accordance with the Gangster Rules, 2021 in light of observations made above.

मा० उच्च न्यायालय द्वारा की गयी उपरोक्त टिप्पणी से उ०प्र० पुलिस की व्यवसायिक दक्षता पर प्रश्नचिन्ह लगता है, यह स्थिति कदापि स्वीकार्य नहीं है। दुर्दांत अपराधियों के विरुद्ध की जा रही कार्यवाहियों में प्रारम्भिक स्तर पर लगातार की जा रही त्रुटियों के कारण मा० उच्च न्यायालय में राज्य का पक्ष प्रस्तुत करने वाले शासकीय अधिवक्ता/अपर शासकीय अधिवक्ता की स्थिति मा० न्यायालय में असहज होती है तथा उनके द्वारा राज्य का पक्ष सशक्त रूप से रखना सम्भव नहीं हो पाता, जिसका लाभ अंततः अभियुक्तों को ही मिलता है।

अतः आप सभी को निर्देशित किया जाता है कि शासकीय अधिवक्ता द्वारा उनके पत्र में इंगित की गयी त्रुटियों के सम्बन्ध में अपने अधीनस्थ अधिकारियों / विवेचकों को विस्तृत रूप से अवगत कराये तथा भविष्य में गिरोहबन्द अधिनियम के अन्तर्गत की जा रही कार्यवाहियों में उत्तर प्रदेश गिरोहबन्द तथा समाज विरोधी क्रियाकलाप (निवारण) नियमावली-2021 में दी गयी व्यवस्था का अक्षरशः अनुपालन सुनिश्चित किया जाए तथा इस मुख्यालय स्तर से पूर्व में निर्गत परिपत्रों एवं निर्देशों का कड़ाई से अनुपालन सुनिश्चित कराया जाये। यदि किसी अधिकारी या कर्मचारी द्वारा इन निर्देशों के अनुपालन में शिथिलता बरती जाती है तो उसके विरुद्ध नियमानुसार कठोर कार्यवाही की जायेगी तथा पर्यवेक्षण अधिकारियों का भी दायित्व निर्धारण किया जायेगा। संलग्नकः यथोपरि।

भवदीय,
(विजय कुमार)

1. समस्त पुलिस आयुक्त,
उत्तर प्रदेश।
2. समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
प्रभारी जनपद/रेलवेज, उत्तर प्रदेश।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

1. पुलिस महानिदेशक (कानून एवं व्यवस्था), उ०प्र० लखनऊ।
2. अपर पुलिस महानिदेशक, अभियोजन, उ०प्र० लखनऊ।
3. अपर पुलिस महानिदेशक, रेलवेज, उ०प्र० लखनऊ।
4. अपर पुलिस महानिदेशक, अपराध, उ०प्र० लखनऊ।
5. समस्त जोनल अपर पुलिस महानिदेशक, उ०प्र०।
6. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक / पुलिस उपमहानिरीक्षक, उ०प्र०।

26. Thereafter, the Chief Secretary, Govt. of U.P. issued circular dated 21.1.2024 to the Director General of Police, to all the District Magistrates/Commissioners of Police as well as District Police Chiefs to strictly follow the guidelines, issued by the Division Bench of this Court in *Asim @ Hassim (supra)* as well as *Sanni Mishra (supra)* while preparing the gang chart. The circular dated 21.1.2024, issued by the Chief Secretary, Govt. of U.P., is quoted as under:-

“महत्वपूर्ण/मा० उच्च न्यायालय प्रकरण
संख्या- 4705/छः-पु०-9-2023

- प्रेषक,
दुर्गा शंकर मिश्र,
मुख्य सचिव,
उत्तर प्रदेश शासन।
- सेवा में,
1. पुलिस महानिदेशक, उत्तर प्रदेश, लखनऊ।

2. अपर पुलिस महानिदेशक, अभियोजन, अभियोजन निदेशालय, लखनऊ।
3. समस्त मण्डलायुक्त, उत्तर प्रदेश।
4. समस्त जिला मजिस्ट्रेट, उत्तर प्रदेश।
5. समस्त पुलिस आयुक्त/जनपदीय वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, उत्तर प्रदेश

गृह (पुलिस) अनुभाग-9

लखनऊ दिनांक 21 जनवरी, 2024

विषय : उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के प्राविधानों के पूर्ण अनुपालन के संबंध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-1208/छ: पु०-9-22-31(43)/2013 टीसी दिनांक 18.04.2022 एवं शासनादेश संख्या-3421/छ :-पु०-9-22-31(43)/2013 टीसी दिनांक 24.07.2023 का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा उत्तर प्रदेश गिरोहबन्द और समाज विरोधी क्रिया कलाप (निवारण) अधिनियम, 1986 (उत्तर प्रदेश अधिनियम संख्या 7 सन् 1986) के प्रभावी प्रवर्तन तथा राज्य में गिरोहबन्दों की सम्पत्ति तथा उनके द्वारा अपराधों आदि के माध्यम से अर्जित प्रसुविधाओं के संबंध में दक्ष वसूली प्रणाली स्थापित करके गिरोहबन्दों को दण्डित करने की त्वरित एवं पारदर्शी प्रक्रिया का उपबन्ध करने के लिए उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 दिनांक 27.12.2021 को राज्य सरकार द्वारा अधिसूचित किये जाने के दृष्टिगत उक्त के प्राविधानों के अनुसार गैंग चार्ट तैयार करने में पूर्ण सावधानी बरतने तथा नियमावली के प्राविधानों का अक्षरशः अनुपालन सुनिश्चित करने के निर्देश दिये गये हैं।

2. उत्तर प्रदेश गिरोहबन्द और समाज विरोधी क्रिया कलाप (निवारण) अधिनियम, 1986 के प्राविधानों हेतु स्पष्ट नियमों का प्राविधान उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 में किये जाने तथा उक्त के अनुपालन के संबंध में मुखरित शासनादेशों के बावजूद शासन के संज्ञान में यह तथ्य आया है कि कतिपय मामलों में उक्त नियमावली द्वारा गैंग चार्ट बनाये जाने, गैंग चार्ट अनुमोदित किये जाने तथा आरोप पत्र प्रेषित किये जाने से पूर्व सम्बंधित अभियोजन अधिकारियों से परीक्षण कराये जाने संबंधी नियमों का अनुपालन नहीं किया जा रहा है, जिसके कारण जहाँ एक ओर संगठित अपराधियों को अनुचित लाभ प्राप्त हो रहा है, वहीं दूसरी ओर शासन को मा० उच्च न्यायालय के समक्ष असहज परिस्थिति का सामना करना पड़ रहा है, जो एक गम्भीर विषय है। मा० उच्च न्यायालय द्वारा रिट याचिका (क्रिमिनल) संख्या-14042/2023 दीपू यादव उर्फ दीपू सिंह बनाम उत्तर प्रदेश राज्य में पारित आदेश दिनांक 21.09.2023, रिट याचिका (क्रिमिनल) संख्या-18729/2023 असीम उर्फ हसीम बनाम उत्तर प्रदेश राज्य में पारित आदेश दिनांक 02.12.2023, रिट याचिका (क्रिमिनल) संख्या-16528/2023 सत्री मिश्रा उर्फ संजयन कुमार मिश्रा बनाम उत्तर प्रदेश राज्य में पारित आदेश दिनांक 13.12.2023 जैसे विभिन्न मामलों में इस संबंध में चिन्ता व्यक्त की गयी है।

3. अतः उपर्युक्त दृष्टिगत मुझे यह कहने का निदेश हुआ है कि उत्तर प्रदेश गिरोहबन्द और समाज विरोधी क्रिया कलाप (निवारण) अधिनियम, 1986 (उत्तर प्रदेश अधिनियम संख्या 7 सन् 1986) के अन्तर्गत गैंग चार्ट तैयार करने तथा उक्त के अनुमोदित किये जाने एवं विवेचनोपरान्त विधिक संवीक्षा तथा अन्य सुसंगत कार्यवाहियों के संबंध में निम्नलिखित निर्देशों का तत्परता एवं प्रभावी ढंग से अनुपालन सुनिश्चित की जाए :

1. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 5(3) क के अनुसार गैंग चार्ट संक्षिप्त रूप से नहीं बल्कि जिला मजिस्ट्रेट/ पुलिस आयुक्त / वरिष्ठ पुलिस अधीक्षक /पुलिस अधीक्षक की संयुक्त बैठक में सम्यक रूप से विचार विमर्श करने के पश्चात अनुमोदित किया जायेगा, अतः यह सुनिश्चित किया जाय कि गैंग चार्ट के अनुमोदन हेतु जिला मजिस्ट्रेट/पुलिस आयुक्त की जिला पुलिस प्रमुख के साथ एक संयुक्त बैठक अपरिहार्य रूप से आहूत की जाय ।

2. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 8(3) के अनुसार गैंग चार्ट में दर्शाये गये गिरोह के विरुद्ध मामलों और दोषसिद्धियों या न्यायालय में स्थित तत्संबंधी प्रक्रम की नवीनतम प्रास्थिति (स्टेटस) का स्पष्ट रूप से उल्लेख किया जाना आवश्यक है। अतः तदुसार गैंग चार्ट के अनुमोदन की तिथि पर प्रत्येक मामले की अद्यतन स्थिति के उल्लेख संबंधी उक्त नियम का कड़ाई से अनुपालन किया जाए ।

3. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 16 (1) में अपर पुलिस अधीक्षक द्वारा गैंग चार्ट के अग्रसारण संबंधी नियम उल्लिखित है। अतः

नियमानुसार अपर पुलिस अधीक्षक (नोडल अधिकारी) को नियमों के नियम 16 (1) के अन्तर्गत गैंग चार्ट के संबंध में अपनी संतुष्टि स्पष्ट शब्दों में अभिलिखित की जाए।

4. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 16(2) के अन्तर्गत जनपदीय पुलिस प्रभारी, वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक द्वारा नियम 16 (1) में प्रदत्त अपर पुलिस अधीक्षक की संस्तुति का अध्ययन करने के पश्चात् गैंग चार्ट को अनुमोदन दिये जाने हेतु अपनी संतुष्टि दर्ज करते हुए इसे जिला मजिस्ट्रेट या पुलिस आयुक्त को प्रेषित किया जाए।

5. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 17 (2) के अन्तर्गत पूर्व मुद्रित रबर की मोहर पर अंकित गिरोह चार्ट पर हस्ताक्षर प्रतिषिद्ध किये गये हैं। तद्वसार गैंग चार्ट पर स्वतंत्र मस्तिष्क के उचित उपयोग के बाद ही सक्षम अधिकारी द्वारा गैंग चार्ट पर अनुमोदन दर्ज किया जाएगा और पूर्व मुद्रित रबर की मोहर कदापि प्रयोग में नहीं लायी जायेगी।

6. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 20 (3) के अनुसार गिरोहबन्द से संबंधित विवेचना पूर्ण होने परन्तु आरोप पत्र या अंतिम रिपोर्ट न्यायालय को प्रेषित किये जाने से पूर्व, उक्त अन्वेषण संबंधी दस्तावेज, अपर पुलिस अधीक्षक द्वारा संबंधित अभियोजक को प्रेषित किये जाएंगे। अतः यह सुनिश्चित किया जाए कि गिरोहबन्द की समस्त विवेचनाओं संबंधी अभिलेखों का परीक्षण संबंधित अभियोजन अधिकारी से करा लिया जाए। यदि अभियोजन अधिकारी द्वारा विवेचना के संचालन में या विवेचना के दौरान एकत्र किए गए दस्तावेज के परिणाम के संबंध में कोई अवैधता/अनियमितता इंगित की जाती है तो उक्त का निराकरण कराने के पश्चात् जब अभियोजन अधिकारी द्वारा यह सुनिश्चित कर दिया जाए कि कोई अवैधता/अनियमितता शेष नहीं है, तब ही अपर पुलिस अधीक्षक उक्त अभिलेखों को वरिष्ठ पुलिस अधीक्षक या पुलिस अधीक्षक को नियमावली, 2021 के नियम 20 (4) के अन्तर्गत अनुमोदनार्थ अग्रसारित करेंगे।

7. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 26 (1) के अन्तर्गत, यथास्थिति पुलिस आयुक्त/वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, नियम 20 के अधीन आवश्यक अनुमोदन के अनुदान के लिए जब भी उपरोक्त आरोप पत्र उनके समक्ष भेजा जाएगा, तो उनके द्वारा समस्त अभिलेखों का अपरिहार्य रूप से पुनः अनुशीलन किया जाए।

8. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 5, के प्राविधानों का पूर्ण अनुपालन किया जाए। गैंग चार्ट जो गिरोह के सदस्य पर मुकदमा चलाने के लिए तैयार किया जाता है, उसमें केवल उन मामलों को शामिल किया जाएगा जिनके आधार पर अधिनियम के अन्तर्गत कार्यवाही हेतु विचार किया गया है, लेकिन गैंग चार्ट में उन मामलों का उल्लेख नहीं किया जाएगा जिनके आधार पर पहले भी गैंगस्टर अधिनियम के तहत कोई कार्यवाही शुरू की गई थी। हालाँकि, उपरोक्त मामलों की सूची नियम 5 डी के अन्तर्गत निर्धारित प्रपत्र में दिए गए गैंग चार्ट के साथ संलग्न की जाएगी।

9. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम 36 में यह प्रावधान है कि गिरोहबंद की चल एवं अचल सम्पत्तियों और उनके अर्जित किये जाने के स्रोत का सम्यक अन्वेषण किया जाय। उक्त अन्वेषण में उक्त नियमावली के नियम -64 के अधीन जिला स्तरीय, मण्डल स्तरीय तथा राज्य स्तरीय समितियों से भी सूचनाओं का आदान-प्रदान किये जाने का प्रावधान किया गया। अतः गिरोहबंद अधिनियम की धारा 14 के अधीन अधिहरण हेतु सम्पूर्ण सम्पत्ति के विवरणों और दस्तावेजी साक्ष्य सहित रिपोर्ट अनिवार्य रूप से पुलिस आयुक्त /जिला मजिस्ट्रेट के समक्ष प्रस्तुत की जायेगी और पुलिस आयुक्त /जिला मजिस्ट्रेट द्वारा पारित गिरोहबंद की सम्पत्ति अधिहरण के आदेश की प्रति भी अन्वेषण में सम्मिलित की जाय।

10. उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम-64 के अधीन गिरोहबन्द अधिनियम के अंतर्गत कार्यवाहियों के पर्यवेक्षण तथा पुनरीक्षण और उनसे आनुषंगिक मामलों के निस्तारण एवं प्रबंधन के सम्बन्ध में जिला स्तरीय, मण्डल स्तरीय एवं राज्य स्तरीय समितियों का गठन किया गया है। जिला मजिस्ट्रेट/पुलिस आयुक्त की अध्यक्षता वाली जिला स्तरीय पर्यवेक्षण समिति की प्रत्येक त्रैमास बैठक सुनिश्चित की जाय। इसी प्रकार मण्डलायुक्त की अध्यक्षता में गठित मण्डल स्तरीय पर्यवेक्षण समिति की बैठक प्रत्येक छः माह में अपरिहार्य रूप से आहूत की जाये।

11 . उत्तर प्रदेश गिरोह बंद और समाज विरोधी क्रिया कलाप (निवारण) नियमावली, 2021 के नियम-64 के अधीन गठित जिला स्तरीय एवं मण्डल स्तरीय एवं राज्य स्तरीय पर्यवेक्षण समिति को ऐसे समस्त आदेश जारी करने का प्राधिकार प्राप्त है, जिसके द्वारा गिरोह या अपराधी द्वारा किन्हीं सरकारी सेवाओं कारोबारों, संविदाओं, पट्टों, राजकीय योजनाओं आदि की प्रसुविधा को निवारित किया जा सके और यदि उनके द्वारा ऐसी प्रसुविधा प्राप्त की गयी है, तो उनकी वसूली की जाय। तदनुसार यह सुनिश्चित किया जाय कि किसी भी गिरोहबंद को किसी भी दशा में किसी राजकीय सेवाओं, कारोबारों, पट्टों एवं राजकीय योजनाओं का कोई लाभ प्राप्त न हो तथा उक्त की कुर्की, प्रशासक की नियुक्ति, जब्ती, अनुज्ञप्तियों का निलंबन एवं निरस्तीकरण एवं प्रत्युद्धरण आदि माध्यमों का प्रयोग यथावश्यकता किया जाय।

4. उक्त के अतिरिक्त मुझे यह भी कहने का निदेश हुआ है कि उक्त निर्देशों के अनुपालन में किसी भी प्रकार की शिथिलता क्षम्य नहीं होगी तथा उक्त में उपेक्षानान तथा दोषी पाये जाने वाले अधिकारियों/कर्मचारियों का उत्तरदायित्व निर्धारित किया जाएगा।
संलग्नक : यथोक्त।

भवनिष्ठ,
Digitally Signed by दुर्गा
शंकर मिश्र
Date: 21-01-2024 12:24:53
मुख्य सचिव

संख्या एवं दिनांक तदैव

प्रतिलिपित निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:

- 1-विशेष पुलिस महानिदेशक, कानून एवं व्यवस्था, उत्तर प्रदेश।
- 2-अपर पुलिस महानिदेशक, अपराध, उत्तर प्रदेश लखनऊ।
- 3-श्री आशुतोष कुमार सण्ड, शासकीय अधिवक्ता, मा० उच्च न्यायालय, इलाहाबाद को उनके पत्र संख्या-क्रिम 0/19316/इलाहाबाद दिनांकित 18.12.2023 के क्रम में।
- 4-समस्त जोनल अपर पुलिस महानिदेशक, उत्तर प्रदेश।
- 5-समस्त परिक्षेत्रीय पुलिस महानिरीक्षक, उत्तर प्रदेश।
- 6-समस्त परिक्षेत्रीय अपर निदेशक अभियोजन, उत्तर प्रदेश।
- 7-समस्त जनपदीय संयुक्त निदेशक अभियोजन /वरिष्ठ अभियोजन अधिकारी, उत्तर प्रदेश।
- 8-गार्ड फाईल।

आज्ञा से,
(राजेश कुमार राय)

विशेष सचिव।”

27. From a perusal of the above mentioned circulars of the Director General of Police, U.P. as well as Chief Secretary, Govt. of U.P., it is clear that there were specific directions to all the District Magistrates as well as District Police Chiefs to record their required satisfaction in the gang chart instead of signing a pre-typed satisfaction and it was also provided that there must be a joint meeting to conduct due discussion between the District Magistrate and the District Police Chief before approving the gang chart. It was also directed by those circulars that the competent authorities must peruse all the documents annexed with the gang chart before forwarding and approving the same.

28. However, despite issuance of circulars by the Chief Secretary, Govt. of U.P. as well as the Director General of Police to all the District Magistrates as well as other police officers, this Court found that some of the officers were still not following the procedure while preparing the gang chart and defective gang charts were being prepared without application of mind on the part of the competent authorities. Therefore, the Division Bench of this Court in the case of ***Rajeev Kumar @ Raju vs. State of U.P. and others; Criminal Misc. Writ Petition No. 9428 of 2024***, specifically directed the Principal Secretary (Home), Govt. of U.P. to issue appropriate direction to all the District Police Chiefs as well the District Magistrates to maintain a register for recording the minutes/resolutions of the joint meet held as per Rule 5(3)(a) of the Rules, 2021 and further direction was issued to all the District Police Chiefs, District Magistrates as well as Nodal Officers that while signing the gang chart they should mention the date just below their signatures. The judgement passed in ***Rajeev Kumar @ Raju (supra)*** is quoted as under:-

“Heard learned Counsel for the petitioner and learned AGA on behalf of the State.

This Court by order dated 04.06.2024 directed the learned AGA to produce the register relating to joint meeting held in accordance with the U.P. Gangsters and Anti Social Activities (Prevention) Rules, 2021 (in short Gangster Rules, 2021) in original but today learned AGA has produced a copy of Resolution signed by the District Magistrate and S.P. concerned. It was also informed by the learned AGA that there is no provision for maintaining a register for the purpose of recording the Resolution of the joint meeting as required by Section 5 (3)(a) of the Gangster Rules, 2021.

Upon a perusal of the gang chart it appears that the District Magistrate, while approving the same, did not mention any date just below his signature and, therefore, this fact also causes doubt about the joint meeting. However, from a perusal of the entire gang chart, this Court is of the view that the required satisfaction was recorded by the Superintendent of Police as well as by the District Magistrate. Therefore, this Court does not find any illegality in the impugned FIR or the gang chart annexed.

*It would be appropriate to refer to our holding in *Sanni Mishra @ Sanjayan Kumar Mishra v. State Of U.P. and Other: Neutral Citation No. - 2023:AHC:235826-DB*, where this Court observed that the material must be produced before the Court regarding the joint meeting. However, in the present case only a Resolution signed by the Superintendent of Police and the District Magistrate was produced before the Court, which could be prepared even after approving the gang chart.*

In this circumstances, this Court directs the Principal Secretary (Home), Government of U.P., Lucknow to issue an appropriate direction to all the SPs, SSPs, Commissioners of Police as well as District Magistrates that a register should be maintained for recording Resolutions of joint meetings held as per Rule 5 (3)(a) of the Gangsters Rules, 2021. It is further directed that all the SPs, SSPs, Commissioners of Police and also the District Magistrates as well as the Nodal Officers while signing a gang chart, shall mention the date below their signatures.

In this view of the matter, this petition fails and is dismissed.

Let this order be communicated to the Principal Secretary (Home), Government of U.P., Lucknow through the Chief Judicial Magistrate, Lucknow by the Registrar (Compliance) today.”

29. This Court again found that several police officers/District Magistrates are still not following the guidelines issued by different judgements of this Court, though same were duly circulated by the State Government by circular dated 21.1.2024. Thereafter, this Court in the case of ***Mohd. Arif @ Guddu v. State of U.P. and others; Criminal Misc. Writ Petition No. 10980 of 2024***, observed that several Nodal Officers/District Police Chiefs were not following the directions issued by the State Government by the circular dated 21.1.2024 and directed the Chief Secretary as well as Additional Chief Secretary (Home), Govt. of U.P. to look into this matter and take appropriate action against the negligent State officers. Paragraph Nos. 11 & 12 of the aforesaid judgement are quoted as under:-

“11. It is very surprising that Nodal Officer as well as Superintendent of Police, Jaunpur has prepared and recommended the gang chart in the month of March, 2024 by signing the pre-typed satisfaction and District Magistrate-Jaunpur, has approved the same on 30.04.2024 again by signing the pre-typed satisfaction despite issuance of circular dated 19.01.2024 by the Director General of Police, U.P. and also the circular dated 21.01.2024 by the Chief Secretary, Government of U.P. regarding compliance of the direction issued in Sanni Mishra (supra) and Asim @ Hassim (supra) case for recommending and approving the gang chart. This fact shows the sheer negligence on the part of these officers.

12. Therefore, this court is of the view that Chief Secretary, U.P. as well as Additional Chief Secretary (Home), U.P. should look into this matter and take appropriate action.”

30. This Court again found in the present cases that the gang charts of the impugned FIRs have been prepared in utter violation of the Rules, 2021 as well as directions issued by this Court in ***Sanni Mishra (supra)***, ***Asim @ Hassim (supra)***, ***Rajeev Kumar @ Raju (supra)***, ***Anil Mishra (supra)*** and also in violation of circular dated 19.1.2024 issued by the Director General of Police as well as circular dated 21.1.2024 issued by the Chief Secretary, Govt. U.P.

31. Therefore, this Court feels it appropriate to direct the State Government to send the District Police Chiefs, District Magistrates/Police Commissioners as well as Nodal Officers, who are the competent authorities under the Gangsters Act, for training or crash course so that they could learn how to prepare a gang chart, strictly in accordance with the Rules, 2021 as well as several directions issued by

this Court and also to apprise them about appropriate cases where the Gangsters Act can be invoked. This training on the one hand will reduce the scope of getting away of the gangsters from the clutches of the Gangsters Act and on the other it will save innocent persons who are merely involved in petty, one or two cases, though they would not come within the definition of the gangsters as per Section 2(b) of the Gangsters Act, from getting booked under the Gangsters Act. Such training or crash course can be conducted in a phased manner in the Judicial Training and Research Institute, Lucknow (J.T.R.I.) which can be arranged by the Principal Secretary Law/LR, Govt. of U.P. or at any other place where the State govt. may feel it appropriate.

32. For ready reference, guidelines, issued by this Court in several judgements regarding preparation of gang chart as well as for invocation of Gangsters Act, are being summarised as under:-

“(i). While forwarding or approving the gang chart, the competent authorities must record their satisfaction as required by Rule 16 of the Rules, 2021 by writing in clear words and not by simply signing printed/pre-typed satisfaction.

(ii). Satisfaction of the competent authorities should reflect that they have applied their minds not only on the gang chart but also the documents/forms annexed with the gang chart.

(iii). Date of filing the charge sheet under the base case must be mentioned in Column-6 of the gang chart except in cases under Rule 22(ii) of the Rules, 2021 where Gangsters Act can be imposed during investigation.

(iv). Before approving the gang chart, the District Magistrate should conduct due discussion for invocation of the Gangsters Act in a joint meeting with the District Police Chief as per Rule 5(3)(a) of the Rules, 2021 and minutes/resolutions of the meeting must be recorded in a register maintained for that purpose. That register should be made available to the court for its perusal if it so requires.

(v). While signing their satisfaction competent authorities (District Police Chiefs, District Magistrates and Nodal Officers) should mention the date just below their signatures.

(vi). While approving the gang chart, the District Magistrate/Commissioner of Police should also verify whether the Nodal Officer and District Police Chief have properly recorded their satisfaction as per the Rules, 2021 as well as the guidelines issued by the State Government in pursuance of the directions issued in several judgements by the High Court.

(vii). Before invocation of the Gangsters Act, competent authorities should also record satisfaction that offence of base case/cases has/have been committed by a person who comes within the definition of "Gangster" as per Section 2(c) of the Gangsters Act and there must be material for such satisfaction. This satisfaction must be mentioned in the minutes of the joint meeting conducted as per Rule 5(3)(a) of the Rules, 2021."

33. On perusal of the gang chart of the impugned F.I.R. in **Criminal Misc. Writ Petition no. 9930 of 2024** and also considering the submission of learned counsel for the parties, this Court finds that there is no proper satisfaction recorded by the competent authorities because they simply signed pre-typed satisfaction which is against the guidelines issued in ***Sanni Mishra (supra)*** as well as Circular dated 21.01.2024 of the State government. It is also clear that while recording the satisfaction for approval, the District Magistrate, Mahoba has not mentioned the date below his signature which is against the guidelines issued by the Division Bench of this Court in the case of ***Rajeev Kumar @ Raju (supra)***.

34. Apart from this, it also appears from the impugned FIR that only the section, provided for the penalty, has been mentioned without mentioning the corresponding provision of Section 2(b) of the Gangsters Act, regarding his anti social activities on the basis of which the petitioner was termed as gangster, which is against the direction issued by the Division Bench of this Court in the case of ***Asim @ Hassim (supra)***. Therefore, the impugned F.I.R. dated 2.5.2024, registered as Case Crime No. 236 of 2024, under Section 3(1) of the Gangsters Act, P.S. Kotwali Nagar Mahoba, District Mahoba along with its gang chart is hereby quashed.

35. On perusal of the gang chart of the impugned F.I.R. in **Criminal Misc. Writ Petition Nos. 10379 of 2024 and 10852 of 2024** as well as after considering the submission of learned counsel for the parties, it appears that the Senior Superintendent of Police, Etawah did not record any satisfaction while forwarding the gang chart to the District Magistrate and thereafter the District Magistrate again did not record his proper satisfaction as required by the Rule 16(3) of the Rules, 2021 and there is also no material showing that any joint meeting was conducted between the District Magistrate as well as the District Police Chief, Etawah, who were approving the gang chart. Therefore, the impugned F.I.R. dated 31.5.2024, registered as Case Crime No. 116 of 2024, under Sections 2 & 3 of the Gangsters Act, P.S. Friends Colony, District Etawah along with its gang chart is hereby quashed.

36. On perusal of the gang chart of the impugned F.I.R. in the **Criminal Misc. Writ Petition No. 10916 of 2024**, it is clear that the Nodal Officer while signing his satisfaction did not mention any date below his signature

which is against the decision of *Rajeev Kumar @ Raju (supra)*. The gang chart in the present case also shows that while recording his satisfaction, the Superintendent of Police, Bijnor did not mention that he had perused forms / enclosures annexed with the gang chart and he simply relied upon the facts mentioned in the gang chart and recommended the gang chart to the District Magistrate but the District Magistrate, Bijnor also did not look into this aspect and approved the gang chart. Therefore, the impugned F.I.R. dated 2.6.2024, registered as Case Crime No. 274 of 2024, under Sections 2(b)(i) and 3(1) of the Gangsters Act, P.S. Chandpur, District Bijnor along with its gang chart is hereby quashed.

37. On perusal of the gang chart of the impugned F.I.R. in the **Criminal Misc. Writ Petition No. 10968 of 2024**, it is clear that the satisfaction was not recorded by the competent authorities in the gang chart but they simply signed pre-typed satisfaction which is against the Rules, 2021 as well as the directions issued by this Court in *Sanni Mishra (supra)*. Therefore, the impugned F.I.R. dated 14.5.2024, registered as Case Crime No. 108 of 2024, under Sections 2/3 of the Gangsters Act, P.S. Alau, District Mainpuri along with its gang chart is hereby quashed.

38. It is relevant to mention here that in view of the judgement of the Apex Court in the case of *State of Punjab vs. Davinder Pal Singh Bhullar and others; 2011 (14) SCC 770*, all the consequential proceedings of the impugned FIRs in all the above five writ petitions are also quashed.

39. With the aforesaid observation, all the above five writ petitions are **allowed**.

40. However the competent authorities are at liberty to proceed against the petitioners afresh in accordance with the Rules, 2021 as well as the guidelines issued by this Court.

41. Registrar (Compliance) is directed to send a copy of this judgement to the Chief Secretary, Govt. of U.P. and the Principal Secretary (Home), Govt. of U.P. for compliance within 24 hours.

42. Registrar (Compliance) will also send a copy of this judgement to the Principal Secretary Law/L.R., U.P. for placing the same before the Chief Minister, Uttar Pradesh for his perusal.

Order Date :- 26.07.2024

Vandana

(Arun Kumar Singh Deshwal,J.) (Siddhartha Varma,J.)