

Court No. - 74

Case :- APPLICATION U/S 482 No. - 18761 of 2020

**Applicant :-** Gajendra Singh Negi And Another

**Opposite Party :-** State of U.P. and Another

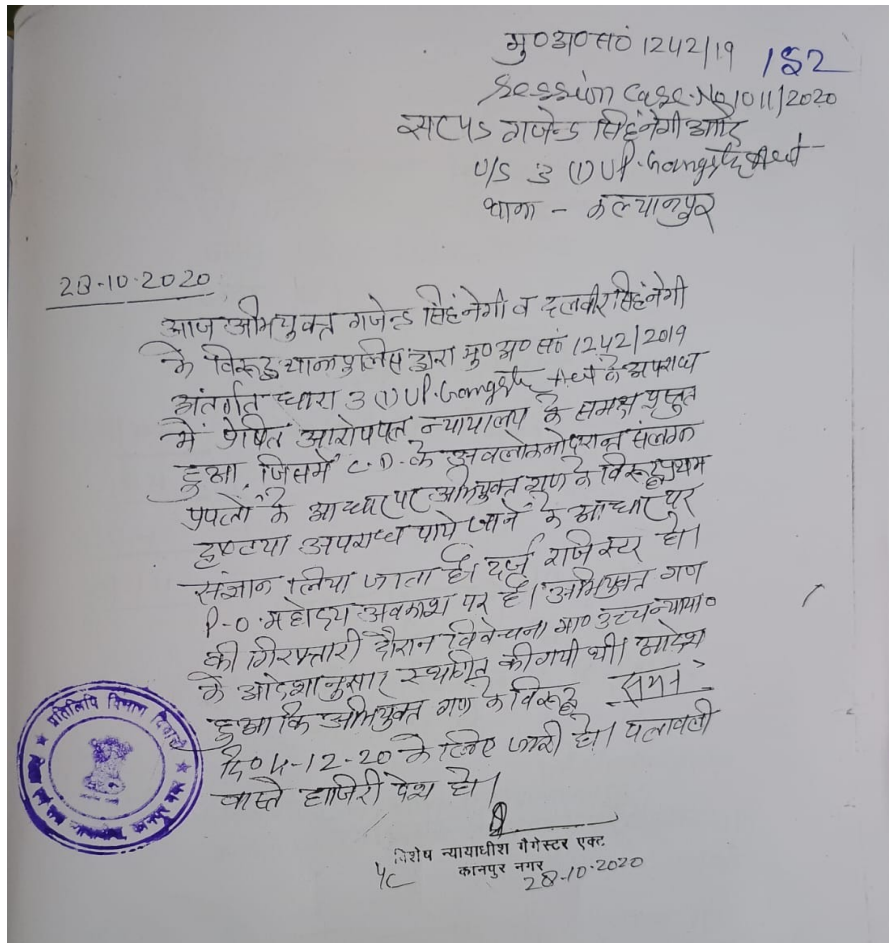
**Counsel for Applicant :-** Ashutosh Mishra, Aushim Luthra, Jitendra Kumar Chakraborty, Pranav Tiwary, Syed Abid Ali Naqvi, Ved Prakash Mishra

**Counsel for Opposite Party :-** Ashutosh Mishra, G.A., Suresh Kumar Gupta, Syed Abid Ali Naqvi

**Hon'ble Saurabh Shyam Shamsbery, J.**

1. Supplementary affidavit filed on behalf of applicants in the Court today is taken on record.
2. Heard Sri Manish Tiwary, learned Senior Advocate assisted by Sri Aushim Luthra, learned counsel for the applicants, Sri Suresh Gupta, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.
3. The impugned order dated 28.10.2020 is purportedly an order of summoning, whereby the applicants are being summoned to face trial for the offence under Section 3(1) U.P. Gangsters Act. This order is purportedly passed and signed by the then Special Judge, Gangsters Act, Kanpur Nagar. For reference a scan copy of it is pasted hereinafter:-

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4. Sri Manish Tiwary, learned counsel for the applicants by referring above order submits that, it is being specifically noted that the Presiding Officer was on leave on that date. Even thereafter not only summons were issued but it was signed by the then Special Judge, Gangsters Act. He also refers the word 'समन' which appears to be put on a blank gap in a different hand writing. He further submits that there are arguments on merits also but the impugned order could not be survived in present form, rather it requires an inquiry.

5. Learned A.G.A. has not been able to support the impugned order, since on the face of it the impugned order does not appear to be passed by the concerned Judge and it was signed later on.

6. I have considered the above arguments as well as took note of seriousness and ambiguity shown by learned counsel for the parties, therefore, the impugned order dated 28.10.2020 passed by Special Judge, Gangsters Act in Case Crime No. 1242 of 2019, under Section 3(1) Gangsters Act is **set aside** and present application is hereby **allowed**.

7. Concerned District Judge is directed to initiate an inquiry that under which circumstances, above referred order was passed and if necessary an explanation be called from the then Presiding Officer.

8. A report thereof be placed on records of present case as well as send to concerned Hon'ble Administrative Judge of Judgeship, Kanpur Nagar.

9. Let a copy of this order be send to Registrar (Compliance) to take steps.

**Order Date :- 13.8.2024**

Faridul