
(2011) 11 AHC CK 0434

In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Application No. 26805 of 2011

Akbar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 2, 3

Citation : (2011) 11 AHC CK 0434

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—This bail application was heard on 9.11.2011 and again on 21.11.2011, and the court having found the Gang Chart in question to be prima facie deficient on account of incomplete information about the accused, called upon the signatories of the gang chart to explain as to why information relating to earlier antecedents of the applicant including another case under the U.P. Gangsters Act, 1986 had not been indicated which stands reflected from a perusal of the bail rejection order as also from the supplementary-affidavit filed on behalf of the applicant on 1st November, 2011. Sri A.K. Sand, Additional Government Advocate filed an affidavit on behalf of the then Station House Officer Mr. Mohd. Hasim giving his explanation about the reasons for not mentioning the criminal antecedents of the applicant in the gang chart. Sri Sand submits that in case there is any such deficiency as understood by this Court, the same shall be taken care of in future. Sri Surendra Bahadur Singh learned A.G.A. has placed the case diary and also other relevant material to indicate that the Investigating Officer has maintained the police diary by appropriately mentioning the antecedents of the accused and was shown to the court below.

2. Learned Counsel for the applicant Sri Pradeep Kumar Tiwari made a statement on 24.11.2011 that he does not want to press this bail application and the same

be dismissed.

3. The Court wanted to know the reasons as to how such gang charts are prepared and under which provisions and, the sudden "U" turn taken by the applicant to get his application not pressed impelled this Court to express its opinion in order to ensure that any lapse on the part of the investigation or the prosecution may not result in any miscarriage or failure of justice, particularly in the present existing criminal justice system. The observations made hereinafter are, therefore, necessary which should be taken care of by the prosecution itself and not wait for the Court to make enquiries or a desperate search with regard to antecedents which in the opinion of the Court is necessary for consideration at least at the stage of bail.

4. The State Legislature brought into force the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 with a view to curb the menace of organised crime. The Act is exhaustive and defines gangsterism and gangsters therein. The State Government has also secured powers therein for itself to frame rules. Learned Counsel for the parties were not at variance that no rules have been framed so far.

5. What transpired during the hearing of Writ Petition No. 6249 of 2003 was that in order to ensure that no cases of false implication recur either by any malpractice or motivated prosecution, the High Court expressed its prima facie opinion with a direction to the Principal Secretary, Home and the Director General of Police to take up appropriate measures for the preparation of gang charts and streamlining of investigation so that no accused is unnecessarily harassed. These orders dated 14.10.2003 and 12th November, 2003 in the case of Amar Nath Dubey v. State of U.P. and others, was noticed by the State Government and the Director General of Police on 24th October, 2003 wrote the following letter quoted herein-below:

This was followed by another letter of the Director General of Police on 20.11.2003 quoted hereinunder:

6. Noticing the aforesaid two letters and the directions contained in the order of the Division Bench the Principal Secretary Home issued instructions on 2nd January, 2004 clearly entailing therein the manner in which gang chart in relation to offences under the Gangsters Act was to be prepared and Clause 2 of the said instructions would indicate the details of information that has to be contained therein. The said instructions issued by the Principal Secretary Home which is in the shape of a Government order is extracted hereinunder:

7.A perusal of the said instructions would, therefore, demonstrate that the gang chart has not to be based on any previous offences that have been made subject-matter of earlier proceedings so as to save the prosecution from being struck down on the vice of double jeopardy. Nonetheless, Clause 2 aforesaid indicates that not only the information of the offences on the basis whereof the Act was being imposed but also additional information should be tendered

relating to the activities of the accused. In the opinion of the Court this obligates on the authority to put on record all relevant information in relation to the antecedents and activities of the accused. This is necessary as the decision of this Court in the case of Subhash v. State of U.P. and another, 1998 JIC 405 (All) : 1998 (2) ACR 1362, was rendered where a solitary case in the gang chart was sought to be justified by the prosecution to be sufficient to impose the Gangsters Act. The law was discussed therein and later on this issue was further explained in the case of Kishan Pal v. State of U.P., 2006 (2) ACR 1254; Writ Petition No. 10500 of 2005, decided on 23rd January, 2006 laying down certain general guidelines for the disposal of criminal trials.

8. In the present case also only a solitary case in the gang chart has been shown whereas in the supplementary-affidavit filed on behalf of the applicant, he has disclosed all his criminal antecedents including Case Crime No. 419 of 2007 u/s 2/3 of the U.P. Gangsters Act.

9. this Court finds that the gang chart in the present case nowhere reflects any such mention when the same has been signed by the District Magistrate, the S.P. City, the Dy. Inspector General of Police Allahabad, the Circle Officer and the Station House Officer of the Police Station concerned. What is peculiar is that all the other cases about which disclosure has been made by the applicant himself in the supplementary-affidavit relating to the same police station, there is not even a whisper about such antecedents in the gang chart or the note appended thereto.

10. The aforesaid background, therefore, leads to the conclusion that there is a casual approach in the framing of a gang chart as in the opinion of the Court, even if an accused cannot be prosecuted for a previous crime contained in another gang chart, then too even a note should be appended with a brief report relating to the previous antecedents of the accused. This is all the more necessary where the previous antecedents are of the same police station. The administration has to take care that the Act has been imposed in order to curb organized crime and, therefore, the activities and movements of such criminals should be monitored more efficiently and carefully and not through careless gang charts prepared which for the time being result in an easy access to bails. This usually happens where there are solitary cases on the basis whereof the Gangsters Act has been imposed and the accused succeeds in getting bail on such a pretext.

11. The instant case is, therefore, a glaring example where this non-compliance of the instructions dated 2nd January, 2004 might have resulted in a miscarriage of justice. Learned A.G.A. justified his submissions on behalf of the State that these facts had been noticed by the court below while rejecting the bail. The issue is not that Court succeeded in its archaeological attempt to find out facts but what is important is the clear depiction about the overall activities of an accused under the Gangsters Act. The gang chart in the present bail application at first flush gives an impression of a solitary case against the applicant.

Nonetheless the learned A.G.A. had pointed out on a query by the Court about the antecedents of the applicant. According to him the applicant was shown to be a member of an earlier gang in the case registered against him in the year 2007 whereas now the applicant is gang leader himself in the present case. The absence of full and complete information, therefore, not only creates an uncomfortable situation but also consumes the valuable time of the Court for nothing.

12. There is one aspect which deserves to be noticed by the Police Authorities, and that is, that even prior to the enforcement of the Gangsters Act there were certain crimes involving gangs about which records were to be prepared in every district under Chapter-20 of the U.P. Police Regulations. Paragraphs 253 and 254 of the Regulations are quoted hereinunder:

253. Whenever an organized gang of dacoits, cattle thieves or railway goods wagon thieves comes to light, particulars of the whole gang should be entered in the gang register (Form No. 45) at every police station and at the headquarters of every district in which any member of the gang resides. For burglar gangs the gang sheet prescribed in circular No. I/VI-23-25, dated the 14th September, 1929, will be used instead of the gang register. It is not necessary that all members of a registered gang should have history-sheets. Any particulars which it may be necessary to have on record regarding any individual member whose history-sheet has not been prepared should be entered against his name in column 6 of the register. Should the space available in column 6 be insufficient to contain all the facts of importance which require to be recorded about any member of a gang necessary for a history-sheet will be indicated. In column 7 will be entered the reasons for registration, the previous history and modus operandi of the gang and narrative of all facts subsequently ascertained regarding it. Whenever inquiries are made about a gang the notes of the circle inspector or other inquiry officer or if nothing of importance is ascertained, his initial and the date of inquiry will be entered in the column. Gangs will be entered in the gang register under the orders of the Superintendent. The gang register will be a permanent record and gangs will never be expunged from it. But on its being established that a gang has been broken up, inquiries and entries in the register regarding it may be discontinued by the orders of the Superintendent : in which case an entry to this effect will be made in column 6 and below it a line will be drawn in red ink across the page.

254. On the conclusion of every dacoity case the headquarters gang register must be examined by the public prosecutor who should consider and report to the Superintendent of Police what entries should be made in the register, at the same time as he considers and reports what further clues remain to be followed up in the case. Should a gang be found to have ramifications in more than one district, the Superintendents of the district in which it first comes to light will be responsible for proposing its registration to the Superintendents of all the other districts concerned. Superintendents of all districts in which a gang is registered

must be informed of all matters of importance ascertained about it in any district and all questions regarding the addition of names or the discontinuance of entries and inquiries should be decided among the Superintendents concerned, if possible by personal discussion, once a year. Any difference of opinion as to the necessity for the registration of a gang operating in more than one district or for the continuance or discontinuance of inquiries and entries regarding it should be referred to the Deputy Inspector-General for orders.

13. A perusal thereof would leave no room for doubt that even under the Indian Penal Code, offences that were founded on conspiracy or premeditation or committed with an organised approach, required the Superintendent of Police of the district to maintain a register enlisting therein the details of such crimes and the name of the accused. Paragraph 254 is more exhaustive where an obligation has been cast on the Superintendent of Police to share inter-district information in relation to such gangsters. The aforesaid paragraphs are an illustration that such an instruction did exist earlier.

14. In the opinion of the Court under the 1986 Act such information should also be exchanged inter-district, and with the facilities of Internet and Computers, this information should be uploaded so that it is available in order to rule out any possibility of lack of information. It does usually happen when under the Gangsters Act information with regard to the police stations of the district only are reflected and information with regard to police stations of other districts are either missed or are otherwise lacking. This lapse should, therefore, be plucked at the earliest for which the matter may be brought to the notice of the Principal Secretary Home and the Director General of Police to ensure a more efficient exhaustive form of preparation of a gang chart containing a comprehensive information other than the offences on the basis whereof the Gangsters Act has been imposed. This is necessary, particularly, when matters of bail are being heard by Courts so that the Courts may at a glance have an overall picture of the accused before proceeding to either grant or refuse bail. This will avoid any possibility of lack of information about the criminal activities of an accused or even otherwise eliminate any prejudice to the prosecution. This would be in larger public interest to ensure that miscreants are not let loose on account of any lapse in paper work. Let a copy of this order be dispatched by the learned Government Advocate to the Principal Secretary, Home and the Director General of Police with a request to the State Government to earnestly take up this matter and if necessary to exercise its powers for framing of appropriate rules containing guidelines which may ensure the elimination of any such lapse or any prejudice to the accused.

The bail application is dismissed as not pressed in view of the prayer made by the Learned Counsel for the applicant.

The request made by Sri Sand for exempting the affidavits of the other officials needs no further orders as the application stands disposed of.