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## Arrest and Bail Provisions under Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Act 1986

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### Abstract

"A group of persons may act collectively or anyone of the members of the group may also act singly, with the object of disturbing public order indulging in anti-social activities mentioned in Section 2(b) of the Gangsters Act, who can be termed as 'Gangster'. A member of a 'Gang' acting either singly or collectively may be termed as a member of the 'Gang' and comes within the definition of 'Gang', provided he/she is found to have indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act,".

The Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act was come into force on 15 January 1986. And the full bench of the Hon'ble High Court of Allahabad in the case of Ashok Kumar Dixit v/s State of U.P.<sup>1</sup> has declared the Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Act 1986 and its various provisions is constitutional.

The Gangster Act is complete in it self and punishment can be given only for the offence of ganging . It was held in **Rinku alias Hukku vs State of U.P**<sup>2</sup> the a case of a Gangster Act directly based on criminal history and a criminal act which comes within the purview of gangster , can be proceeded against under this Act. **Farhan ullah us State of U.P**<sup>3</sup> held that "First Information Report is not a per-condition for proceeding under this Act. The person is not only liable for the original offence but also a liable to punishment for gangster". Such a provision of punishment is also not considered under Article 20(2) of the Indian constitution . Not only

<sup>1</sup> AIR 1987 All. 235 : 1987 (34) ACC 164

<sup>2</sup> 2001 (1) JIC 19

<sup>3</sup> 2010 (69) ACC 256 HC.D.B.

this Hon'ble Allahabad High court is **Badri prasad Tripathi vs Uttar pradesh**<sup>4</sup> has determined that where a criminal case is pending in any other special court, such as special court constituted under the SC/ST Act are also included against him, then that case will be tried only by the special court constituted under the Uttar pradesh Gangster and Anti-Social Activities prevention Act 1986.

In **Dharmendra kaithal vs U.P All.HC**<sup>5</sup> considered that The trial before the Gangster court will be given priority over the trial before other court. Till the disposal of the case under the Gangster Act, the case will be pending before another court.

Before discussing about arrest and bail under this act, it very important to know the meaning of gang and gangster.

"Gang"<sup>6</sup> 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 to object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in ante-social activities, which is described in sub-rules I to XXV of Section 2(b). One person alone cannot come under the purview of gangster because the word group of person has been used in the act. Only then the group of persons will come under the purview of the Gangster Act When commits any of the offences referred to in Section 2(b). The Gangster Act should be applied very carefully because we are bringing such an act of a person under the purview of punishment for which action has been taken once. There for in order not to be obstructed by Article 20(2) of the constitution and Section 300 of Criminal Procured Code, it is necessary that the matter should be something other element of Gangster then the first.

"Gangster" means a member or leader of organizer of a gang and includes any person who abets or assists in the activities of a gang enumerated in Clause (b) whether before or after the commission of such activities or harbours any person who has indulged in such activities.<sup>7</sup>

The objective of the Gangster Act is to severely punish the persons who are involved in organized criminal acts for disrupting public order or for a economic, material gains: And also confiscate the property acquired by the said criminal act in favor of the State. Ultimately, doing all this is to defeat the purposes of the gang to commit a criminal act.

### **Provisions relating to arrest remand and bail**

As per section 19(1) Notwithstanding anything contained in the code every offence punishable under this Act or any rule made thereunder shall be deemed to be cognizable offence within the meaning of Clause (c) of section 2 of the code (code means code of Criminal Procedure) and cognizable case as defined in that clause shall be construed accordingly.

No provision has been made in the Gangster Act, other than the code of Criminal Procedure, for arrest.

That is, the police will arrest the accused without warrant and present him before the special court (Gangster Court) After arrest, the same procedure shall be followed as provided in the code of Criminal Procedure and the same safeguards are available to the arrested person as are normally provided to in the Code of Criminal

<sup>4</sup> 2008 (A)JIC 917 HC.S.B

<sup>5</sup> 2013 ACC (83)111

<sup>6</sup> Section 2(b) Uttar pradesh Gangster and Anti-Social Activities Prevention Act 1986

<sup>7</sup> Section 2(c) of U.P. Gangster Act

Procedure. The accused has to appear in the gangster court within 24 hours of arrest. Further detention will be only by the order of the Special Court, otherwise not. In addition to the Code of Criminal Procedure, the Gangster Act has also given guidelines regarding demand after arrest. According to Section 19(2)<sup>8</sup> - Section 167 of the code shall apply in relation to case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that-

- (a) the reference in Sub-Section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive magistrate".
- (b) the references in Sub-Section (2) thereof to "fifteen days", "ninety days" and "Sixty days", wherever they occur, shall be construed as references to "sixty days" "one years" and "one year" respectively;
- (c) Sub-Section (2A) thereof shall be deemed to have been omitted.

Section 10 declares that the cognizance of an offence triable under this Act can be taken directly by the Special Court (gangster Court), therefore the accused must be produced directly in the Gangster Court itself.<sup>9</sup>

If the accused is in Judicial custody, his judicial remand can be obtained for 60 days at a time, and if police custody is required within these 60 days, then police custody can also be obtained. Under Code of Criminal Procedure, only 15 days of remand is obtained at a time and after the first 15 days have elapsed in no case can police custody be obtained. In cases punishable under this Act, the time limit for the accused to conclude the investigation while in custody is one year in addition to the normal provision.

The definition of gang and gangster given under this Act is very broad. No formula or procedure has been given for whether a person has formed a gang or is a gangster. So the police officer can misuse his powers while accusing the accused as gangster. Although the police have been guided by the government and courts from time to time before imposing gangster on the accused. According to the definition, virtually anybody can be framed under this Act and charged as a gangster.

For instance, in the matter of **Kapil Raidas v/s State of Uttar Pradesh**<sup>10</sup> Hon'ble Justice Dinesh Kumar observed that police is prima facie misusing the Gangster and Anti-social Activities (Prevention) Act 1986 thoroughly as it has become a general practice that police file several cases against the accused on the basis of the false, fake or bogus charges to just implicate him under this Act as this was not the only case in which such scenario came up.

In another case of **Smt. Aalia v/s State of Uttar Pradesh**<sup>11</sup> Hon'ble Justice Vivek Kumar held that it was unusual to frame the lady under the U.P. Gangsters Act as only two cases were pending against her in this case. The court even ordered that the District Magistrate should submit a personal affidavit stating the reasons why the lady was remarked as Criminal under this Act as only two cases were pending against her.

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<sup>8</sup> Uttar prades Gangster and Anti-Social Activities Prevention Act 1986

<sup>9</sup> Uttar prades Gangster and Anti-Social Activities Prevention Act 1986

<sup>10</sup> Bail Application No. 6671 of 2020

<sup>11</sup> Bail Application No. 23691 of 2021

## Bail Provisions Under Gangster Act

The general principle of criminal jurisprudence is that bail should be a rule while jail an exception. This rule has not been followed in the Gangster Act in this act bail is exception and jail is rule. The Act provides protection to the society against organized criminal act, therefore (aside from the general principle of bail) a person committing a criminal act is expected to assure to the Special court (Gangster Act) that he is not involved in organized crime or is he innocent. The provisions for bail are given in the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act under section 19(4)(b) and Section 19 (5).

Notwithstanding anything contained in the code, no person accused of an offence punishable under this Act or any rule made there under 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 an offence while on bail.<sup>12</sup>

5. The limitations on granting of bail specified in Sub-Section (4) are in addition to the limitations under the code.

That is the conditions and guidelines provided in Section 19(4) of this Act will be in addition to the guidelines imposed on the courts while granting bail under Section 437 and 439 of the Code of Criminal Procedure 1973, And the conditions which the court may impose in Section 437,439 of the code while granting bail, the conditions of this section shall be in addition to that. Bail are mentioned Section 19(4)(b) of gangster Act the court should consider these aspects - Prima facie case against the accused, gravity and nature of the offences, Nature of the charge and Background of the accused. When the court is satisfied that after released on bail accused will not participate in any anti-social activities and will not endanger the peace of the society, then the accused can be granted bail. A specific provision has been made in this section with respect to bail that no order on bail will be passed without giving an opportunity of being heard to the Public Prosecutor and where the bail of the accused is opposed by the Public Prosecutor, the accused shall not be granted bail unless the court has come to the conclusion that there is a reasonable ground to believe that he is not guilty of such offence, and also that after the accused is released on bail, he is not likely to commit any offence again. Unless the court is positively satisfied on both the above findings, the accused will not be granted bail in the case.

**Anil Singh v/s State of U.P.**<sup>13</sup> Bail offence under Section 3(1) of U.P. Gangster Act. Bail should be granted only when there are reasonable grounds for believing that the accused is not guilty. Bail should, therefore, be granted only where there are reasonable grounds for believing that he is not guilty of such offence. The arguments from the side of the accused was that in other cases which have proceeded against the accused, he has been enlarged on bail and that he is in detention for the last six months, that alone will not provide reasonable grounds for believing that he is not guilty of such offence.

It is thus clear that keeping in view the provisions of Sub-Section (4) and (5) of Section 19 and the above legal system, bail can be granted to the accused of gangster Act only when prima facie it will be based on that reasoned

<sup>12</sup> section 19(4)(b) and Section 19 (5) of Uttar Pradesh Gangster and Anti-Social Activities Prevention Act 1986

<sup>13</sup> 2008 (61) ACC 920

evidence is available on the basis of the record of the crime. The accused cannot be granted bail merely on the ground that he is out on bail in the criminal cases mentioned in the gang-chart.

In **Anuj v/s State of U.P.**<sup>14</sup> Accused application on bail in four cases in gang chart- Bail allowed. The High Court held that it has been contended by the learned counsel for the applicant that applicant is on bail in four cases shown in the gang chart. He has been falsely implicated in those cases. He has no criminal history. There is no likelihood of his committing any crime, if he is released on bail. The applicant is in jail since 03.09.2008.

Accused applicant in custody for about a year, investigation still pending. Accused contended that he was entitled to bail under default clause under Section 167(2) Cr.P.C. but prosecution taking unnecessary adjournments and bail petition not disposed of High Court directed the Sessions Judge to dispose of bail petition within a period of Seven days.<sup>15</sup>

If the main accused those who are alleged to have organized the hole act, has been released on bail, then the other accused can also be released on bail. Considering the facts and circumstances of the case, the bail application was allowed on the condition that the application would not tamper with the prosecution evidence, would not pressurize the prosecution mates and would appear on the date fixed by the trial court.<sup>16</sup>

In a case<sup>17</sup> the question was whether detailed reasons are necessary for the purpose of considering the application for grant of bail? It is held that detailed reasons are not necessary for the purpose of considering the application for grant of bail, but the order granting bail should show the exercise of mind as to why the applicant was granted or denied bail.

In **Amit Yadav a/s Monu a/s Bebo v/s State of U.P.**<sup>18</sup> Allahabad High Court held that. The gravity of the offence is not a ground to deny bail to the juvenile accused. In the present case, the application made by the mother of the Juvenile for his custody was rejected on the ground that if the juvenile is given in the custody of his mother, then he will be in the company of unknown criminals and for him moral physical and psychological danger. The appeal filed against the order passed by the Juvenile Justice Bond was also dismissed. The Revision Court allowed the bail and said that the order has been passed by the subordinate court on the basis of mere presumption without any substance.

Under Section – of the Gangster Act, a provision has been made for the formation of a Special Court gangster to hear bail applications. But application rejected by the Special Judge thereafter, bail application before the High Court maintainable.<sup>19</sup> Special Judge directed to deposit Rs. 50,000/- a penalty-Legal question was arise. Whether condition to deposit the amount of earlier executed personal bond can be imposed at the time of granting fresh bail. In the present case the impugned order shows that although notices were issued to the sureties but no notice was issued to the applicant-Application under Section 439(1)(b), Cr.P.C. allowed-condition imposed held illegal-Direction issued to release the applicant at liberty.<sup>20</sup>

<sup>14</sup> 2009 (64) ACC 732 (All.)

<sup>15</sup> Suresh Yadav v/s State of U.P. 2002 (45) ACC 669 (All.)

<sup>16</sup> Prem Sagar Pandey v/s State of U.P. 2016 (2) DNR 660 (All.)

<sup>17</sup> Kripa Shankar Pandey @Kripanand Pandey v/s State of U.P. 2015 (1) D.N.R. 29 All

<sup>18</sup> 2016 (1) D.N.R. 363 (Allahabad)

<sup>19</sup> Akhilesh Singh v/s State of U.P. 1987 (24) ACC 500 (All.)

<sup>20</sup> Pappu v/s State of U.P. 2009 (66) ACC 525 (All.)

In **Shankar v/s State of U.P.**<sup>21</sup> Allahabad High Court grant bail while accused juvenile. Copies order passed by juvenile courts on record showed that the accused applicant is juvenile still below 16 years of age at the time of consideration of bail application. Designated court without considering the minority of the accused applicant rejected bail application. Held, accused was entitled to bail. Accused released on bail.

Applicant made accused without obtaining approval of District Magistrate, approval obtained after about ten months of incident-Applicant was on bail in all cases shown in gang-chart-Bail allowed.<sup>22</sup>

High Court directed the Session Judge to dispose of bail petition within a period of seven days. Accused applicant in custody for about a year, investigation still pending under Section 19(2), 3(1) U.P. Gangsters Act 1986 and Section 302, 504, 506, 307, 147 and 148 I.P.C.

Accused contended that he was entitled to bail under default clause under Section 167(2) Cr.P.C. but prosecution taking unnecessary adjournments and bail petition not disposed of. High Court directed the Session Judge to dispose of bail petition within a period of seven days.<sup>23</sup>

The power of the High Court in the matter of grant of bail under Section 439 has not been in any way effected, curbed or curtailed by Section 19 of the U.P. Gangsters and Anti-social Activities (Prevention) Act.<sup>24</sup>

## Conclusion

The person committing a crime has belief that no other person is aware the crime committed by him, So he commits the crime only by hiding it. Such an offence is relatively minor and committed alone. On the contrary, When a person planned a big crime, he needs others people, So he forms gangs conspire and commits crime to fulfill common intension or common objects. Such persons are the troublemakers for both the society and the country. These people are professional criminal and commit crimes though gangs. Such criminal are not only liable to punishment for committing crime but are also guilty of forming gangs. Therefore, to punish the person involved in this gang making yagya, The UP government implemented Utter Pradesh Gangsters and Anti-Social Activities (Prevention Act-1986). Although this act has been misused by the Police. If the court and State government monitor the matter related to the making of gang chart by the Police and to prevent misuse, the significance of this act will increase further.

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<sup>21</sup> 2011 (72) ACC 50 (51)

<sup>22</sup> Shankar v/s State of U.P. 2011 (72) ACC 50 (All.)

<sup>23</sup> Suresh Yadav v/s State of U.P. 2002 (45) ACC 669 (All.)

<sup>24</sup> Rajesh Rai v/s State of U.P. 1997 (35) ACC 772 (All.)