

**Lal Mohd. & Anr.**  
v.  
**State of U.P. & Ors.**

(Criminal Appeal No. 2593 of 2025)

14 May 2025

**[Vikram Nath and Sandeep Mehta,\* JJ.]**

**Issue for Consideration**

Whether the prosecution of the appellants under the UP Gangsters Act satisfies the statutory thresholds prescribed under the Act, when it is based entirely on a single FIR, in which the appellants were already arrested and released on bail, and where no new act or omission had occurred between the date of registration of the First FIR i.e., 11.10.2022, and the preparation of the gang chart on 29.04.2023.

**Headnotes<sup>†</sup>**

**Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986 – s.2(b), (c) – First FIR was registered against the appellants and others on 11.10.2022 for alleged involvement in violence and vandalism following a social media post allegedly hurting their religious sentiments – Gang Chart was prepared on 29.04.2023, impugned FIR u/s.3(1), UP Gangsters Act was filed on 30.04.2023 – Appellants sought quashing thereof, refused by High Court – Interference with:**

**Held:** The procedural and substantive thresholds prescribed u/s.2(b) and 2(c), UP Gangsters Act have not been adequately met in the present case – The incident occurred on 10.10.2022, first FIR was filed on 11.10.2022 and the appellants were granted bail in January, 2023 – No new act or omission occurred between the registration of the foundational FIR on 11.10.2022 and the preparation of the gang chart on 29.04.2023 – Thus, gang chart was prepared on 29.04.2023 and the impugned FIR was filed on 30.04.2023, sans any fresh or intervening conduct – Mere listing of multiple accused persons without demonstrating their organizational roles, command structure, or evidence of prior or continued coordinated criminal activities fails to meet the stringent requirements for establishing gang membership – Thus, mere involvement of the accused appellants in a demonstration pursuant to a communal flare-up,

\* Author

## Supreme Court Reports

however serious, does not *ipso facto* transform the participants into a ‘gang’ without evidence of organised and continuous criminal activity – Gang chart was a post-facto construction aimed at recharacterizing an already investigated and prosecuted communal altercation as an act of organised crime, without any new evidence to warrant such a serious escalation – Impugned judgment set aside – Impugned FIR and all consequential proceedings quashed – Quashing. [Paras 17, 19, 20, 29, 30]

**Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986 – s.2(b), (c) – “Gang” and “gangster” – Determination.** [Paras 12-14]

**Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986 – Constitution of India – Art.21 – Extraordinary legislation with stringent penal provisions – Invocation of – Standard of evidence – Exercise of power by State – Power conferred upon the State not an instrument of harassment or intimidation, particularly where political motivations may be at play.** [Paras 23-26]

### Case Law Cited

*Shraddha Gupta v. State of Uttar Pradesh and Others* [2022] 17 SCR 622 : 2022 SCC OnLine SC 514; *State of Haryana v. Bhajan Lal* [1991] Supp. 1 SCR 387 : (1992) Supp. 1 SCC 335; *Vinod Bihari Lal v. State of Uttar Pradesh*, 2025 INSC 767; *Gorakh Nath Mishra v. The State of Uttar Pradesh*, Criminal Appeal No. 2589 of 2025 – referred to.

*Ashok Kumar Dixit v. State of U.P.* 1987 SCC OnLine All 203 – referred to.

### List of Acts

Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986; Penal Code, 1860; Criminal Law Amendment Act, 2013; Prevention of Damage to Public Property Act, 1984; UP Gangsters and Anti-Social Activities (Prevention) Rules, 2021; Constitution of India.

### List of Keywords

Sections 2(b), (c) of the Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986; Gang; Gangster; FIR under UP

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

Gangsters Act; Gang chart; Quashing of FIR; Social media post; Incendiary social media post; Religious sentiments hurt; Communal protest; Communal flare-up; Protest against social media post; Language defamatory towards a particular religion; Disparaging comments about a particular religious belief; Vandalism of shop; Gang membership; Violence; Two different religious groups; Foundational FIR; Anti-social activities; Organised and continuous criminal activity; Prior or continued coordinated criminal activities; Afterthought application of the UP Gangsters Act; Colourable exercise of power; Extraneous considerations; Members of a political party; Political motivations; Chairman of the Nagar Panchayat; Stringent law; Organised gang; Absence of pattern of organized criminal behaviour; Organised crime; Serious fetters on personal liberty; Abuse of the legal process; Gross miscarriage of justice; Article 21 of Constitution of India; Impugned FIR quashed.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2593 of 2025

From the Judgment and Order dated 03.05.2023 of the High Court of Judicature at Allahabad, Lucknow Bench in CRMWP No. 3494 of 2023

**Appearances for Parties***Advs. for the Appellants:*

Mohammad Aslam , Shahid Azad, Mohd Shoaib, Mohd Asif Rander, Manoharan Vv, Ashraf Yusuf Khan, Ms. Nazish Fatima, Mateen Ahmad.

*Advs. for the Respondents:*

Namit Saxena, Ajay Singh.

**Judgment / Order of the Supreme Court****Judgment****Mehta, J.**

1. Heard.
2. Leave granted.

**Supreme Court Reports**

3. The present appeal by special leave, arises out of the final judgment and order dated 3<sup>rd</sup> May, 2023<sup>1</sup>, passed by the learned Division Bench of the High Court of Judicature at Allahabad<sup>2</sup>, in Criminal Miscellaneous Writ Petition No. 3494 of 2023, whereby the High Court dismissed the Writ Petition filed by the appellants seeking quashing of First Information Report<sup>3</sup>, in CC No. 132 of 2023<sup>4</sup> dated 30<sup>th</sup> April, 2023, under Section 3(1) of the Uttar Pradesh Gangsters & Anti-Social Activities (Prevention) Act, 1986<sup>5</sup>, lodged at Police Station Khargupur, District-Gonda, Uttar Pradesh.
4. The factual background, essential for the disposal of the instant appeal, is as follows:
  - 4.1 The appellants herein claim to be members of a political party in the State of Uttar Pradesh. Appellant No. 1 is a former two-time elected Chairman of the Nagar Panchayat, and appellant No. 2 is the son of appellant No. 1.
  - 4.2 On 10<sup>th</sup> October, 2022, one Rikki Modanwal made a post on a social media platform in which he allegedly used language perceived as defamatory towards a particular religion. In response, several believers of that religion (including the appellants herein) assembled outside the shop owned by Rikki Modanwal raising vociferous protests against the said social media post. The protests escalated into violence and acts of vandalism between two different religious groups. Multiple FIR(s) were registered on 11<sup>th</sup> October 2022, against the people involved in the aforesaid incidents. An FIR, bearing CC No. 294 of 2022<sup>6</sup>, was registered by Sonu Modanwal nominating 41 accused persons, which included the appellants herein, for offences punishable under Sections 147, 148, 149, 427, 307, 323, 504, and 506 of Indian Penal Code, 1860<sup>7</sup> and Section 7 of the Criminal Law Amendment Act, 2013<sup>8</sup>, at Police Station

1 Hereinafter referred to as the "impugned order".

2 Hereinafter referred to as the "High Court".

3 For short 'FIR'.

4 Hereinafter referred to as 'impugned FIR'

5 Hereinafter referred to as the 'UP Gangsters Act'.

6 Hereinafter referred to as the 'First FIR.'

7 Hereinafter referred to as 'IPC'.

8 Hereinafter referred to as 'Act 2013'.

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

Khargupur, District Gonda, Uttar Pradesh. Subsequently, a second FIR, bearing CC No. 296 of 2022<sup>9</sup>, was registered by Sub-Inspector Bhole Shankar on the same date, against members of both religious groups (including the appellants and Rikki Modanwal) under Sections 147, 148, 149, 332, 336, 353, and 427 of the IPC and Section 7 of the Act 2013, and Sections 2 and 3 of the Prevention of Damage to Public Property Act, 1984, at Police Station Khargupur, District Gonda, Uttar Pradesh. As a sequel to the investigation into the FIRs registered in relation to the aforesaid incident, the appellants herein were arrested and then released on bail.

- 4.3 On 30<sup>th</sup> April, 2023, Arun Kumar Dwivedi, Inspector-in-charge, filed the impugned FIR against the appellants herein and 39 other accused, under Section 3(1) of the UP Gangsters Act alleging *inter alia*, that on 10<sup>th</sup> October, 2022, at around 8:00 P.M., a group of assailants, led by appellant No. 1, gathered at Rikki Modanwal's shop in Subzi Mandi, Khargupur, armed with lathis and glass bottles. They reportedly hurled abuses, issued death threats, and vandalised the shop while protesting against the social media post that targeted a specific religious group. The incident led to fear in public, and disruption of law and order. A Gang Chart was prepared under the UP Gangsters Act and approval for registration of an FIR against the accused persons was granted by the District Magistrate *vide* sanction letter dated 29<sup>th</sup> April, 2023.
- 4.4 Aggrieved by the registration of impugned FIR invoking the provisions of the UP Gangsters Act, the appellants approached the High Court of Judicature at Allahabad, by way of a criminal writ petition, seeking quashing of the said FIR and a direction to the concerned authorities to produce the gang chart, if any, prepared by them, on the basis of which Arun Kumar Dwivedi, Inspector-in-Charge, had lodged the impugned FIR. The High Court, *vide* judgment dated 3<sup>rd</sup> May, 2023, dismissed the said writ petition, which is assailed by the appellants herein in this appeal by special leave.

9 Hereinafter referred to as the 'Second FIR.'

**Supreme Court Reports****Submissions on behalf of the appellants: -**

5. Learned counsel for the appellants, vehemently and fervently contended that the High Court seriously erred in rejecting the prayer seeking quashing of the impugned FIR. In this regard, he advanced the following submissions:
  - 5.1 That, in the present case, the two earlier FIRs, bearing CC No. 294 and CC No. 296 of 2022, were registered on 11<sup>th</sup> October, 2022, for the same incident, involving identical allegations and the same set of accused persons. The contents of both FIRs relate to the events that unfolded on 10<sup>th</sup> October, 2022 in Khargupur, Uttar Pradesh, leading to the arrest of the appellants and their subsequent release on bail upon the order of the competent court. However, nearly six months subsequent to the two earlier FIRs being registered, the impugned FIR came to be registered on 30<sup>th</sup> April, 2023, under the UP Gangsters Act, which is based entirely on the same allegations set out in the above two FIRs. This highly belated invocation of stringent law, in the absence of any intervening act or omission, gives rise to a strong inference of severe bias and a persecutory approach on the part of the prosecuting agency.
  - 5.2 That the allegations as set out against the appellants in the impugned FIR do not meet the threshold justifying invocation of the UP Gangsters Act, as there is no material indicating that they form part of a "gang" as defined under the UP Gangsters Act. There is no evidence/allegation against the appellants of repeated criminal activity, habitual behaviour, or any intent to gain undue pecuniary advantage. The appellants are not involved in any organised crime. They were simply a part of the spontaneous protest against the incendiary social media post made by Rikki Modanwal intended to hurt religious sentiments. They have not formed any unlawful syndicate. Their alleged involvement in the protest being a singular act is already being dealt with under regular criminal law and for which bail has already been granted to the appellants.
  - 5.3 That following their release on bail, no fresh material was available to the prosecuting agency indicating continuing criminal activity, breach of public order, or prejudicial conduct on the part of the appellants. The authorities are not seized

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

of any fresh material or credible evidence to indicate that the appellants have subsequently committed any offence or participated in any gangster-like activity. The impugned FIR does not attribute any specific role or leadership to the appellants, nor does it mention any act that disturbed the peace after their arrest and release on bail in the previous FIRs. For invoking the UP Gangsters Act, there must be a demonstrable link that connects the accused's actions with the disruption of public order through anti-social conduct, yet there is neither a clear nexus between the appellants and the alleged unlawful assembly that turned violent, nor any sustained course of conduct that can be concluded as intimidating or coercive to the general public. The UP Gangsters Act was introduced to target habitual offenders and organised crime syndicates, and not to penalise isolated acts of protest-related transgressions. Furthermore, the impugned FIR and gang chart only refer to one of the FIRs, i.e., CC No. 294 of 2022, thus demonstrating the lack of credible material to show any persistent or systemic activity that could justify the invocation of the UP Gangsters Act under these facts.

- 5.4 That the impugned FIR under the Gangsters Act was registered on 30<sup>th</sup> April, 2023, with *mala fide* intention. The timing of the FIR creates a grave doubt on its *bona fides* as it came to be registered only 13 days after appellant No. 1's daughter-in-law filed her nomination for Chairmanship of Nagar Panchayat Khargupur on 17<sup>th</sup> April, 2023. The appellants had already anticipated this false case and filed a representation on 25<sup>th</sup> April, 2023, to the UP State Election Commission and Party President raising a concern about misuse of the UP Gangsters Act. This representation was filed 5 days before the FIR was actually registered. The proximity between the political nomination and the criminal case, along with the appellants' anticipated expression of concern to authorities, clearly shows that the UP Gangsters Act is being used as a political vendetta rather than a genuine *bona fide* criminal prosecution. Therefore, the FIR should be quashed as it tantamounts to gross abuse of the process of law.

On these grounds, learned counsel for the appellants implored this Court to allow the present appeal, set aside the judgment passed by the High Court, and quash the impugned FIR.

**Supreme Court Reports****Submissions on behalf of the Respondents:**

6. *Per Contra*, learned counsel appearing for the State, vehemently and fervently opposed the submissions advanced on behalf of the appellants, and urged that the High Court has rightly rejected the writ petition seeking the quashing of the impugned FIR. In this regard, he has advanced the following submissions:
  - 6.1 The facts disclosed in the first and second FIRs clearly show that the appellants led a large unlawful assembly equipped with weapons like *lathis* and glass bottles and actively participated in violent acts targeting civilians and police personnel alike. The group, acting violently, vandalised the property of Sonu Modanwal, created panic among local shopkeepers, and over and above that, caused severe disruption to public peace, law & order. Such coordinated violence, especially in a communally sensitive context, squarely falls within the ambit of 'anti-social activity' and 'disturbance of public order' as defined under the UP Gangsters Act, which is specifically designed to address situations where individual offences under the IPC prove inadequate to prevent the operation of criminal gangs that seek to intimidate, threaten, or gain undue advantage through violence.
  - 6.2 That the two earlier FIRs, namely, CC No. 294 of 2022 and CC No. 296 of 2022 addressed specific incidents of violence, while the impugned FIR relates to the appellants' continued involvement in organised crime and their status as habitual offenders threatening public order. The UP Gangsters Act permits prosecution based on a pattern of conduct that demonstrates the existence of a gang involved in criminal activities and its operation over a period of time. The appellant's conduct before and after bail, coupled with witness accounts and local reports, justifies their classification as gang members. The law does not require a fresh incident for invoking the UP Gangsters Act if existing material establishes continued unlawful activity intending to create fear or extract undue benefit.
  - 6.3 The contention raised by the appellants, that the UP Gangsters Act cannot be invoked merely because it refers to only one FIR, is misplaced and legally unsustainable. The UP Gangsters Act does not prescribe a numerical threshold of offences/FIRs for its applicability. Rather, it focuses on the nature and

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

intent of the act, whether it amounts to an anti-social activity intended to disturb public order or to gain undue advantage. Learned counsel placed reliance on the judgment of this Court in ***Shraddha Gupta v. State of Uttar Pradesh and Others***<sup>10</sup>, wherein it was held that even a single offence or charge sheet can form the basis for prosecution under the UP Gangsters Act, provided it falls within the scope of anti-social activities enumerated under Section 2(b) of the Act. Thus, even if the prosecution is based on one or two offences, if the prejudicial acts involve organised crime, intimidation, or threat to public order, the invocation of Sections 2 and 3 of the UP Gangsters Act remains entirely valid and enforceable.

- 6.4 The appellant's conduct in orchestrating a violent riot on 11<sup>th</sup> October, 2022, which disrupted communal harmony and public peace, satisfies the essential requirements of the statutory provisions making the prosecution legally tenable.

On these grounds, learned counsel for the respondents implored this Court to reject the present appeal and uphold the judgment of the High Court.

### **Analysis & Discussion**

7. We have given our thoughtful consideration to the submissions advanced at the bar and perused the material available on record.
8. Before delving into the submissions advanced by both the parties, it is essential to first examine the foundational principles that govern the quashing of complaints and criminal proceedings at the threshold. This Court in ***State of Haryana v. Bhajan Lal***<sup>11</sup>, has laid down parameters for the quashing of an FIR and the proceedings subsequent thereto. The relevant paragraphs are reproduced herein below:

**“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section**

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10 2022 SCC OnLine SC 514.

11 (1992) Supp. 1 SCC 335.

**Supreme Court Reports**

482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

**(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

**(3) Where the uncontested allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

**(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”**

(emphasis supplied)

9. The core issue, which is posed for the consideration of this Court in the present appeal is, whether the prosecution of the appellants under the UP Gangsters Act satisfies the statutory thresholds prescribed under the Act, when it is based entirely on a single FIR (Case Crime No. 294 of 2022), in which the appellants were already arrested and released on bail, and where no new act or omission has occurred between the date of registration of the First FIR i.e., 11<sup>th</sup> October, 2022, and the preparation of the gang chart on 29<sup>th</sup> April, 2023.
10. The statutory definitions provided in Sections 2(b) and 2(c) of the UP Gangsters Act establish the framework for determining who qualifies as “gang” or “gangster” under the law.
11. Gainful reference in this regard may be made to Sections 2(b) and (c) of the UP Gangsters Act, which are being reproduced hereinbelow :

**“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 (Act No. 2 of 1974), namely—**

- (i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or
- (ii) distilling or manufacturing or storing or transporting or importing or exporting or selling

**Supreme Court Reports**

or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910) or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force, or

(iii) occupying or talking possession of immovable property otherwise than in accordance with law, or setting up false claims for title or possession of immovable property whether in himself or any other person, or (Act No. 61 of 1985)

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 104 of 1956), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any government department, local body or public or private undertaking for any lease or right or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-E of the Indian Penal Code, or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

- (x) inciting others to resort to violence to disturb communal harmony, or
- (xi) creating panic, alarm or terror in public, or
- (xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or
- (xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or
- (xiv) kidnapping or abducting any person with intent to extort ransom, or
- (xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

**(c) “gangster” means a member or leader or organiser 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.”**

(emphasis supplied)

12. This Court in ***Shraddha Gupta*** (supra), held that an accused can be termed as ‘gangster’ when he as a member of a ‘gang’, has indulged in any of the enumerated anti-social activities, whether by means expressly stated 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. The relevant paragraph from the aforesaid judgment is reproduced hereinbelow:

“25. A group of persons may act collectively or any one 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”

**Supreme Court Reports**

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.

xx

27. 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/ chargesheet, 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.”
13. While adjudicating upon the constitutionality of the UP Gangsters Act, a Division Bench of High Court of Allahabad in **Ashok Kumar Dixit v. State of U.P.**<sup>12</sup>, held that the term ‘gang’ means a group of persons who by violence, or threat, or show of violence, or intimidation, or coercion, or otherwise indulge in anti-social activities with the object of disturbing public order or gaining any undue or pecuniary material or other advantage for himself. The relevant paragraph is reproduced below:

“12. Section 2(b) defines the term “Gang” to mean a group of persons who by violence, or threat, or show of violence or intimidation or coercion etc. indulge in anti-social activities with the object of disturbing public order of gaining any undue temporal or pecuniary material or other advantage for himself. S. 2(b) read as a whole necessarily brings in the concept of violence or intimidation or coercion etc.

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

which is resorted to for gaining material advantage. Then we have cl. (c) of S. 2 which defines the word "Gangster". It means a member or leader or organiser of a group which indulges in the kind of activities set out under the various sub-clauses of cl. (b) of S. 2, by use of violence or threat or show of violence or intimidation etc. S. 3(i) lays down the penalty for being the member or leader or organiser of a group which engages or indulges in the kind of unsocial activities enumerated under S. 2(b) by use of violence etc."

14. From the above statutory provisions and judicial precedents, the legal position concerning the determination of "gang" and "gangster" under the UP Gangsters Act, has been well-defined. The statutory scheme delineates that a "gang" constitutes a group of persons who, whether acting singularly or in concert, perpetrate the enumerated anti-social activities through the instrumentality of violence, threat, intimidation, or coercion with the manifest object of either disturbing public order or procuring undue temporal, pecuniary, material or other advantages. From the above exposition of law, a group of persons may be said to constitute a gang only when they, either singly or collectively, indulge in any of the anti-social activities enumerated in Clauses (i) to (xv) of Section 2(b), by means specified therein, or otherwise, and most importantly, with the object of disturbing public order, or securing any undue temporal, pecuniary, material or other advantage for himself or any other person.
15. The impugned FIR dated 30<sup>th</sup> April, 2023, lodged by Inspector Arun Kumar Dwivedi, narrates that the appellants led an organised gang whose members, armed with *lathis* and glass bottles, attacked the shop owned by Vipin Modanwal and others over a social media post disparaging a specific religion, which created chaos, terror and disrupted public order. The impugned FIR reads thus:

"Copy of application/complaint in Hindi written by Head Constable (HM), Police station Kharagpur, District Gonda.....

I, Inspector, Incharge, Arun Kumar Dwivedi alongwith S.I. Akhilesh Yadav, S.I. Diwakar Mishra, Head Constable Munawar Ali, Head Constable Raj Kishore, Constable Satyajit Morya, constable Ritesh Gupta, W/Ct. Shilpa

**Supreme Court Reports**

Yadav, W/Ct. Satakshi Shukla in government vehicle UP 43 G 0352 with its driver Constable Umender Yadav was on the patrolling of the area for controlling the crimes. Meanwhile I came to know that accused persons Lal Mohd. son of Munir Ahmed resident of Pure Harwahanpurwa, Kharagpur town District Gonda has an organized gang. He alongwith his accomplices Ramzan son of Usman Gani resident of Pure Harwahanpurwa, Kharagpur town, police station Kharagpur District Gonda, Rehman son of Usman Gani resident of Rastogi Mohalla, Kharagpur town, police station Kharagpur District Gonda, Lukman son of Usman Gani resident of Mohalla Rastogi, Kharagpur town, police station Kharagpur District Gonda, Shamsher Ali son of Mohd. Vaki resident of Thakurganj, Kharagpur town, police station Kharagpur District Gonda, Mohd. Yusuf son of Ali Raza resident of Old Bazar, Kharagpur town, police station Kharagpur District Gonda, Tanvir Ali son of Shamsher Ali resident of Thakurganj, Kharagpur town, District Gonda, Taukir Ali son of Shamsher Ali resident of Thakurganj, Kharagpur town, District Gonda, Mohd. Waris son of Wali Mohd. resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Yasin son of Sabir resident of Chikwa Badhiya, Kharagpur town, District, Gonda, Sakir son of Idu resident Kharagpur town, District Gonda, Nakane son of Usman Ali resident of Rastogi Mohalla, Kharagpur town, District Gonda, Mohd. Akram son of Wali Mohd. resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Aslam son of Wali Mohd. resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Liyakat son of Aliraza resident of Old Bazar, Kharagpur town, District Gonda, Siraz Ali son of Hamid Ali resident of Darzi, Kharagpur town West, District Gonda, Meraz son of Salim resident of Kharagpur town West, District Gonda, Rehmat Ali son of Hamid Ali resident of Kathariya Mohalla, Kharagpur town, District Gonda, Noor Alam son of Nazir resident of Darzi, Kharagpur town East, District Gonda, Nazir son of Badal resident of Kharagpur town East, District Gonda, Rizwan son of Ramzan Ali resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Ramzan Ali son of Munir

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

Ahmed resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Jahir alias Jahiruddin son of Lal Mohd. resident of Pure Harwahan Purwa, Kharagpur town, District Gonda, Asif son of Shabir resident of Kharagpur town, District Gonda, Arif son of Shabir resident of Kharagpur town, District Gonda, Mohd. Shamim alias Nibaru son of Shafi resident of Kharagpur town, District Gonda, Danish son of Ali Mohd, resident of Kharagpur town, District Gonda, Sonu son of Lallu resident of Kharagpur town, District Gonda, Banthe son of Shyam Mohd. resident of Kharagpur town, District Gonda, Zuber son of Teni resident of Kharagpur town, District Gonda, Sakil son of Sabbir resident of Kharagpur town, District Gonda, Sameer son of Sabbir resident of Kharagpur town, District Gonda, Arbaz son of Mobin resident of Kharagpur town, District Gonda, Imran son of Chhotu alias Shafikurrehman resident of Kharagpur town, District Gonda, Azad alias Aizaz son of Irfan resident of Kharagpur town, District Gonda, Saif son of Manuddin resident of Kathariya town, Kharagpur, District Gonda, Azmat Ali son of Tinai resident of Old Bazar Kharagpur town, District Gonda, Rizwan son of Abdul Hamid resident of Darzi East, Kharagpur town, District Gonda, Jokhu son of Tinai resident of Old Bazar Kharagpur town, District Gonda, Asif alias Raj son of Raju resident of Old Bazar Kharagpur town, District Gonda, Mohd. Imran son of Rafique resident of Pure Harwahan Purwa Kharagpur town, District Gonda, Gulam Haider son of Bakridi resident of Old Bazar Kharagpur town, District Gonda **organized with their common intention, on the comments made on Mohd. Prophet on 10.10.2022 at 8.00 PM** at the shop of Vipin Modanwal situated at Subji Mandi, Kharagpur town having lathis and glass bottles in their hands, hurled abuses and by extending threat to kill, they started vandalizing the shop. When they were forbade to do so, then they started attacking at Vipin, Sonu, Durgesh, Sarvesh at their heads with lathis, wooden sticks and glass bottles with intention to kill them. **Due to this there was a chaotic situation in the market and shopkeepers started running away by closing their**

**Supreme Court Reports**

**shops. Consequently it created an atmosphere of fear and terror in entire area and disturbed the law and order. This organized gang/group was being led by Lal Mohd. son of Munir Ahmed. Due to criminal acts committed by aforementioned gang and its members, general public has suffered with heavy financial loss and law and order remained disturbed for many days in the area due to disturbance of social and religious harmony.** Crime case under sections 147/148/149/427/307/323/504/506 of Indian Penal Code and section 7 of C.L.A. Act was registered against accused persons and after completion of investigation, charge sheet has been forwarded to the Hon'ble Court, which is under consideration of Hon'ble Court. Act committed by accused persons falls under the category of offence mentioned in Chapters 16 and 22 of the Indian Penal Code. It is not interest in the general public that they set scot free in the society. Offence committed by the accused persons falls under the purview of section 2(Kha) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. In order to curb these criminal acts of these accused persons and in order to control the crime, a Gang Chart has got prepared under section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 and in reference to approval accorded by the District Magistrate, Gonda on 29.04.2023, gangster case be registered against Gang Leader Lal Mohd. above named and his above named members. Note - I, Inspector Incharge has got written this complaint through S.I. Diwakar on my dictation on the spot. Sd/- in English Illegible (Arun Kumar Dwivedi), Inspector Incharge, police station Kharagpur District Gonda. Dated: 30.04.2023. Note - I, Nitish Mani Tripathi do certify that contents of written complaint have been mentioned by me in verbatim in CCTNS except typographical errors.”

(emphasis supplied)

16. A careful scrutiny of the impugned FIR reveals crucial deficiencies and fundamental flaws. The impugned FIR merely refers to an isolated

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

incident that occurred on 10<sup>th</sup> October 2022, involving allegations of vandalism at Vipin Modanwal's shop following disparaging comments made about a particular religious belief by Rikki Modanwal which the appellants follow. The absence of any subsequent criminal acts or pattern of organized criminal behavior between the foundational FIR (Case Crime No. 294 of 2022) registered on 11<sup>th</sup> October, 2022 and the preparation of the gang chart on 29<sup>th</sup> April, 2023 demonstrates that this single criminal incident dated 10<sup>th</sup> October, 2022, regardless of its severity, does not constitute a sustained pattern of activities.

17. While the FIR alleges that, appellant No. 1, lead an 'organized gang' with numerous co-accused, it provides no substantive evidence of hierarchical structure, systematic planning, or coordinated criminal activities that would distinguish this group from a group of individuals involved in a spontaneous communal protest. The impugned FIR contains a mere conjectural statement, neither corroborated nor substantiated by the facts available on record. The impugned FIR's narrative suggests a reactive response to instigation caused by an inflammatory religious post rather than premeditated gang activity. The mere listing of multiple accused persons without demonstrating their organizational roles, command structure, or evidence of prior or continued coordinated criminal activities fails to meet the stringent requirements for establishing gang membership.
18. The whole incident appears to have been triggered by the incendiary social media post made by Rikki Mondalwal tending to defile the religious sentiments of the appellants and other co-accused rather than by calculated gang objectives of securing material advantages or establishing territorial control. Furthermore, the FIR does not demonstrate any pattern of the offending group engaging in the enumerated anti-social activities beyond this single incident, thereby failing to establish the sustained criminal enterprise that the UP Gangsters Act is designed to address.
19. It is an undisputed fact that no new act or omission occurred between the registration of the first FIR on 11<sup>th</sup> October, 2022 and the preparation of the gang chart on 29<sup>th</sup> April, 2023. This temporal gap, devoid of any additional criminal activity, undermines the prosecution's endeavour to demonstrate ongoing gang operations or escalating criminal behaviour that would justify the invocation of the UP Gangsters Act. Mere involvement of the accused appellants in a

**Supreme Court Reports**

demonstration pursuant to a communal flare-up, however serious, does not *ipso facto* transform the participants into a 'gang' without evidence of organised and continuous criminal activity. Moreover, the impugned FIR fails to distinguish adequately between the roles of the nominated accused persons.

20. In the present case, the incident occurred on 10<sup>th</sup> October, 2022, and the appellants were granted bail in January, 2023, after the competent courts found no criminal history and only simple injuries resulting from the altercation. The gang chart was prepared and approved on 29<sup>th</sup> April, 2023, and the impugned FIR was registered on 30<sup>th</sup> April, 2023, *sans* any fresh or intervening conduct. This sequence indicates that the gang chart was manifestly a *post-facto* construction aimed at recharacterizing an already investigated and prosecuted communal altercation as an act of organised crime, without any new evidence to warrant such a serious escalation.
21. Furthermore, the impugned FIR was registered coincidentally just 13 days after appellant No. 1's daughter-in-law filed her nomination for the Chairmanship of Nagar Panchayat Khargupur on 17<sup>th</sup> April, 2023. The appellants' representation dated 25<sup>th</sup> April, 2023 addressed to the UP-State Election Commission and the Party President, regarding the possibility of false implication under the UP Gangsters Act, preceded the actual registration of the FIR. This timing lends credence to their contention that the Act may have been weaponised for extraneous considerations.
22. When juxtaposed with the object and intent of the UP Gangsters Act, which was enacted to combat organised gang-based crime and dismantle criminal syndicates that pose a persistent threat to public order, the application of the Act to the appellants based on a single incident of communal violence flaring up from an incendiary post made by one against a particular religion represents a significant departure from its legislative purpose. The afterthought application of the UP Gangsters Act in the present case, in absence of any subsequent criminal conduct of the appellant, bears the hallmark of colourable exercise of power for purposes extraneous to the Act's legitimate objectives.
23. It is trite law that any procedure prescribed by law must be fair, just, and reasonable, not arbitrary, presumption, or oppressive. This principle, firmly embedded in our constitutional jurisprudence,

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

forms the cornerstone of Article 21 of the Constitution of India, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.

24. The constitutional guarantee of personal liberty acquires even greater significance when extraordinary legislation with stringent provisions, such as the UP Gangsters Act, is invoked. While the State has broad discretion in criminal prosecution, this discretion must be exercised judiciously, based on relevant considerations, and in conformity with the statutory purpose. The power conferred upon the State cannot be wielded as an instrument of harassment or intimidation, particularly where political motivations may be at play.
25. It is a cardinal principle of criminal jurisprudence that extraordinary penal provisions, particularly those that substantially abridge regular procedural safeguards, must be invoked based on evidence that meets a threshold of credibility and substantiality. The materials relied upon must establish a reasonable nexus between the accused and the alleged criminal activity, demonstrating actual probability of involvement rather than mere theoretical possibility. When a statute creates serious fetters on personal liberty, the evidentiary foundation for its invocation must be commensurately strong, supported by concrete, verifiable facts rather than vague assertions.
26. In the present case, the impugned FIR and the gang chart fail to meet this essential threshold, as they rest largely on presumptive theories rather than presenting tangible material to establish the probability that the appellants were engaged in organised criminal activity as contemplated by the Act. With the trial in the previous FIR remaining inconclusive, compelling the appellants to undergo another prosecution under the UP Gangsters Act for the same set of allegations, would constitute a manifest abuse of the legal process and result in a gross miscarriage of justice.
27. Before concluding, we would like to make a reference to a recent Order passed by a Coordinate Bench of this Court in **Gorakh Nath Mishra v. The State of Uttar Pradesh**<sup>13</sup>, whereby the State of Uttar Pradesh was directed to consider framing guidelines-cum-parameters which are to be followed before invoking provisions of the UP

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13 Criminal Appeal No. 2589 of 2025.

**Supreme Court Reports**

Gangsters Act. In compliance with that directive, the Uttar Pradesh State Government *vide* Office Memorandum Office Memorandum-Circular No. 4619, framed guidelines for invoking the provisions of the UP Gangsters Act, directing strict compliance with those guidelines, read with the UP Gangsters and Anti-Social Activities (Prevention) Rules, 2021 framed under the UP Gangsters Act, regarding the preparation of the gang chart. The said guidelines have also been made part of a judgment in the case of ***Vinod Bihari Lal v. State of Uttar Pradesh***.<sup>14</sup>

28. These guidelines were not placed on record by the appellants in the present case (as they were issued subsequent to the filing of this petition), however, upon a *prima facie* examination, it appears to us that the invocation of the UP Gangsters Act in the present matter would not withstand scrutiny even under these guidelines which emphasise the need for rigorous assessment of the gravity of underlying offences, established patterns of criminal activity, and proper verification of criminal antecedents before invoking the Act. The allegations in the present case fail to meet this rigour. However, we clarify that this observation is based purely on the facts of this case and not a definitive finding on the application of the guidelines, which were not subject to adversarial scrutiny in the present appeal.
29. Considering the foregoing facts and circumstances, we are of the view that the procedural and substantive thresholds prescribed under Sections 2(b) and 2(c) of the UP Gangsters Act have not been adequately met in the present case. Hence, the impugned FIR dated 30<sup>th</sup> April, 2023, namely CC No. 132 of 2023, does not stand to scrutiny. The impugned judgment dated 3<sup>rd</sup> May, 2023, rendered by a learned Division Bench of the High Court of Judicature at Allahabad, in Criminal Miscellaneous Writ Petition No. 3494 of 2023, stands set aside.
30. The impugned FIR CC No. 132 of 2023 and all proceedings consequential thereto stand quashed. However, we deem it proper to clarify that our observations and analysis on the foundational FIRs are strictly circumscribed to the limited purpose of evaluating the impugned FIR under the UP Gangsters Act and will not have any

**Lal Mohd. & Anr. v. State of U.P. & Ors.**

bearing on the two pending FIRs, namely, CC No. 294 of 2022 and CC No. 296 of 2022, which shall be dealt with on their own merits by the Courts concerned.

31. The appeal stands allowed in the aforesaid terms.
32. Pending applications, if any, shall stand disposed of.

*Result of the case:* Appeal allowed.

<sup>†</sup>*Headnotes prepared by:* Divya Pandey