Court No. - 87 **AFR**

Case :- APPLICATION U/S 482 No. - 903 of 2023

Applicant :- State of U.P.
Opposite Party :- Mukhtar Ansari S/O Subhan Ullah Ansari
Counsel for Applicant :- Ratnendu Kumar Singh

Hon'ble Dinesh Kumar Singh,J.

1. The present petition under Section 482 Cr.P.C. has been filed by the State impugning the order dated 15.3.2022 passed by the First Additional Sessions Judge/Special Judge, MP/MLA, Ghazipur in Session Trial No10-A of 2010, arising out of Case Crime No.1182 of 2009, under Sections 307, 506 and 120-B IPC, Police Station Mohammadabad, District Ghazipur.

2. The learned trial court vide impugned order has directed the Senior Superintendent of District Jail, Banda to grant superior class to accused-Mukhtar Ansari. The learned trial court has taken into consideration the provision of Section 287 of the Uttar Pradesh Jail Manual. However, the said Jail Manual is replaced now by the Uttar Pradesh Jail Manual, 2022 and the corresponding provisions are incorporated in Chapter-14 of the Uttar Pradesh Jail Manual, 2022.

3. Under the Uttar Pradesh Jail Manual, criminal prisoners are categorised in two classes; (1) Superior; and (2) Ordinary. Paragraph 257 of the Uttar Pradesh Jail Manual, 2022 provides for recommendation for superior class as was under Paragraph 279 of the Old Manual by the Courts.

4. For the sake of convenience, Paragraph 257 of the Uttar Pradesh Jail Manual, 2022 reads as under:-

"***257.*** *(a) In respect of criminal prisoner who is an accused before it, whether in trial, enquiry, appeal or revision and keeping in view the provisions of rule 259, the High Court may recommend to the State Government, and a Court of Session to the District Magistrate for his admission to superior class.*

(b) The High Court may, pending receipt of the order of the State

Government direct the Superintendent of the jail concerned to admit the prisoner provisionally to the superior class and the Superintendent of jail shall comply with such direction."

5. Paragraph 258, corresponding Paragraph 280 of the Old Manual prescribes conditions for grant of superior class to a prisoner, which would read as under:-

"***258.*** *(1) Superior class shall not ordinarily be given to a prisoner who has been ordered to be detained under chapter VIII of the Code of Criminal Procedure, 1973, or who has been convicted of any of the following offences-*

(a) offences under Chapter V-A, VI, VII and VIII. Section 161 ; Chapters XII, XV, XVI, XVII and XVIII of the Indian Penal Code;

(b) offences under Sections 25 and 27 of the Arms Act, 1959 :

(c) offences under the Prevention of Corruption Act, 1947 ;

(d) offences under the Unlawful Activities (Prevention) Act, 1967 ;

(e) offences under the Control of Goonda Act, 1970;

(f) offences under the Prevention of Food Adulteration Act, 1954

(g) offences of abetment of any of the offences mentioned above ;

(h) offences under Section 14 of the Foreigners Act, 1946

(i) any other offences involving violence or moral turpitude.

(j) offences against women and children.

(k) The Uttar Pradesh Gangster Act, Anti Social Activities Prevention Act, 1986.

(l) any special act dealing with terror, subversive activities or organized crime.

(2) If the District Magistrate is satisfied that the prisoners, education, character and antecedent, the nature of the offence committed and the motives thereof justifies superior class treatment to the prisoner, may, either on his own motion or as a recommendation made by the Court of Session or Magistrate under clause (a) of accord superior class –

(a) to a prisoner not covered by sub-rule (1) and

(b) to a prisoner covered by rule (1) but in very exceptional cases.

(3) A brief note setting forth the grounds on which the superior class is accorded by the District Magistrate shall be furnished to the State Government.

(4) The State Government either on its own motion or as recommendation made by the High Court may, for reasons to be recorded in writing likewise accord superior class to a prisoner if it is satisfied that his education, character and antecedents, the nature of offence committed and the motives therefor justify the same."

6. From perusal of Paragraph 257, it is evident that in respect of a criminal prisoner, who is an accused before the court whether

in trial, enquiry, appeal or revision, the High Court may recommend to the State Government and the Court of Sessions to the District Magistrate for admission of such prisoner to a superior class. The conditions for admission of prisoner as stated above are prescribed in Paragraph 258, which specifically says that the superior class shall not be recommended ordinarily to a prisoner, who is accused of serious offences mentioned in Chapter V-A, VI, VII and VIII. Section 161 ; Chapters XII, XV, XVI, XVII and XVIII of the Indian Penal Code besides under other enactments which are mentioned in the said Section.

7. It may also be taken note of that while considering the recommendation for providing superior class to a criminal prisoner, the State Government has to take into consideration the following facts:-

(a) Education of the criminal prisoner ;

(b) Character ;

(c) Criminal antecedents ;

(d) Nature of offence(s) committed ; and

(e) Motive for committing the offence(s).

8. Sri Ratnendu Kumar Singh, learned AGA for the petitioner-State has advanced two fold submissions in support of the preset petition. Firstly, he submits that the order passed by the learned trial court is without jurisdiction inasmuch as the Court has only recommendatory power for grant of superior class to a prisoner and the final authority to grant or refuse the superior class is vested in the State Government as the case may be. He further submits that considering the long criminal history of the accused-opposite party of heinous offences, a known gangster and the most dreaded criminal is otherwise not entitled for

superior class. He, therefore, submits that the impugned order being without jurisdiction and also on merit the accused is not entitled for superior class looking at his long criminal history and he being an accused for offences under Chapter-XVI, he is not entitled for grant of superior class inasmuch Paragraph 258 bars granting of superior class to such a criminal.

9. Sri Upendra Upadhyayay, learned counsel for the opposite party is not in a position to dispute the legal position that the learned trial court has only recommendatory power, and the power ultimately vests with the State Government to grant or refuse the superior status for reasons to be recorded on consideration of relevant factors as mentioned in Paragraph 258 of the Jail Manual. He also can not deny that the accused-opposite party is facing the trial for offences under Chapter-XVI and if such a person is accused of offences under Chapter-XVI, ordinarily he should not be recommended for superior class.

10. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

11. The accused-opposite party is the known gangster, a dreaded criminal and bahubali. Following criminal cases have been registered against the accused-opposite party:-

"1. NCR No.219 of 1978, under section 506 IPC;

2. Case Crime No.169 of 1986, under Section 302 IPC,

3. Case Crime No.106 of 1988, under Section 302 IPC,

4. Case Crime No.410 of 1988, under Sections 147, 148, 149, 302 and 307 IPC,

5. NCR No.233 of 1988, under Sections 504 and 506 IPC,

6. Case Crime No.124 of 1990, under Sections 364, 395 and 397 IPC,

7. Case Crime No.399 of 1990, under Sections 147, 148, 149 and 307 IPC,

8. Case Crime No.682 of 1990, under Sections 147 and 506 IPC,

9. Case Crime No.266 of 1990, under Sections 467, 468, 420, 120-B IPC,

10. Case Crime No.44 of 1991, under Section 302 IPC,

11. Case Crime No.172 of 1991, under Sections 147, 148 and 302 IPC,

12. Case Crime No.294 of 1991, under Sections 307 and 302 IPC,

13. Case Crime No.229 of 1991, under Sections 147, 148, 149 and 302 IPC,

14. Case Crime No.456 of 1993, under Sections 365 and 387 IPC,

15. Case Crime No.503 of 1993, under Section 5 TADA,

16. Case Crime No.834 of 1995, under Sections 353, 504 and 506 IPC,

17. Case Crime No.165 of 1996, under Sections 323, 352 and 307 IPC,

18. Case Crime No.192 of 1996, under Section 3(1) U.P. Gangster Act,

19. Case Crime No.264 of 1996, NSA,

20. Case Crime No.237 of 1996, under Sections 120, 135, 136 Lo.Pra.Adhi.;

21. Case Crime No.19 of 1997, under Sections 364A, 365, 302, 120-B and 34 IPC;

22. NCR No.19 of 1997, under Section 506 IPC,

23. Case Crime No.121 of 1997, under Section 364A IPC;

24. Case Crime No.377 of 1997, under Section 506 IPC;

25. Case Crime No.58 of 1998, NSA;

26. Case Crime No.33 of 1999, NSA;

27. Case Crime No.17 of 1999, under Section 506 IPC;

28. Case Crime No.60 of 1999, under Sections 419, 420, 109 and 120-B IPC;

29. Case Crime No.106 of 1999, under Sections 307, 302 and 120-B IPC;

30. Case Crime No.126 of 1999, under Section 506 IPC;

31. Case Crime No.428 of 1999, under Section 2/3 U.P. Gangster Act;

32. Case Crime No.66 of 2000, under Sections 147, 336, 353 and 506 IPC;

33. Case Crime No.209 of 2002, under Section 3/7/25 Arms Act;

34. Case Crime No.131 of 2003, under Sections 353, 504 and 506 IPC;

35. Case Crime No.9A of 2004, under Sections 147, 148, 149, 307 IPC;

36. Case Crime No.808 of 2004, under Sections 147, 148, 149, 393, 307, 507,

506, 504 and 342 IPC;

37. Case Crime No.493 of 2005, under Sections 302, 506 and 120-B IPC;

38. Case Crime No.589 of 2005, under Sections 147, 148, 149, 302, 307, 404,

120-B IPC and Section 7 Criminal Law amendment Act;

39. Case Crime No.1580 of 2005, under Sections 147, 148, 149, 302, 435, 436, 153A IPC;

40. Case Crime No.1051 of 2007, under Section Gangster Act;

41. Case Crime No.361 of 2009, under Sections 302, 120-B IPC and Section 7 Criminal Law Amendment Act;

42. Case Crime No.1182 of 2009, under Sections 307, 506 and 120-B IPC;

43. Case Crime No.66 of 2009, under Section 3 Makoka Act;

44. Case Crime No.1866 of 2009, under Sections 147, 148, 149, 307, 302, 325, 404, 120-B IPC and Section 7 Criminal Law Amendment Act;

45. Case Crime No.399 of 2010, under Sections 302, 307, 120-B, 34 IPC, Section 7 Criminal Law Amendment act and Section 25 Arms Act;

46. Case Crime No.482 of 2010, under Section 3(1) U.P. Gangster Act;

47. Case Crime No.891 of 2010, under U.P. Gangster Act;

48. Case Crime No.20 of 2014, under Section 147, 148, 149, 302, 307, 506,
120-B IPC and Section 7 Criminal Law Amendment Act;

49. Case Crime No.05 of 2019, under Sections 386 and 506 IPC;

50. Case Crime No.04 of 2020, under Sections 419, 420, 467, 468, 471, 120B IPC Section 30 Arms Act;

51. Case Crime No.160 of 2020, under Section 3(1) U.P. Gangster Act;

52. Case Crime No.236 of 2020, under Sections 468, 471, 120-B IPC and Section 3 Sa.Sa.Nu, Adhi;

53. Case Crime No.55 of 2021, under Section 3(1) U.P. Gangster Act;

54. Case Crime No.369 of 2021, under Sections 419, 420, 467, 468, 471, 120-B, 506, 177 IPC and Section 7 Criminal Law Amendment Act;

55. Case Crime No.121 of 2021, under Section 25/26 Arms Act;

56. Case Crime No.185 of 2021, under Sections 419, 420, 467, 468, 471 and 120-B IPC;

57. Case Crime No.287 of 2022, under Section 3(1) Gangster Act; and

58. Case Crime No.08 of 2022, under Section 3(1) Gangster Act."

12. Considering the aforesaid facts and the legal position, I am of the view that the order impugned in the present petition is not only without jurisdiction but also unsustainable on merits, therefore, the same is liable to be set aside.

13. Thus, the petition is allowed and the impugned order dated 15.3.2022 passed by the First Additional Sessions Judge/Special Judge, MP/MLA, Ghazipur in Session Trial No10-A of 2010, arising out of Case Crime No.1182 of 2009, under Sections 307,

506 and 120-B IPC, Police Station Mohammadabad, District Ghazipur, is hereby set aside.

Order Date :- 18.1.2023
Rao/-