

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 21, 2009

Decision on : July 03, 2009

WRIT PETITION (CRL) 14 of 2005

DEEPAK SOLANKI @ SANSAR Petitioner
Through: Mr. B.D. Batra, Advocate

versus

THE STATE & ORS Respondents
Through: Ms. Mukta Gupta, Senior
standing counsel with Mr. Rajat Katyal,
Advocate
SI Vidyadhar, IO, PS Palam Village.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure 1973 ('CrPC') seeks a direction to quash the history sheet opened in respect of the Petitioner by the Respondents at the Police Station Dwarka, South-West District, Delhi and

delete the name of the Petitioner entered in the Surveillance Register maintained at the said police station.

2. The Petitioner states that he has passed 12th class from the Open National School. His family owns a farm land in Village Theriya District Sonapat, Haryana. He has been residing at Palam Village with his mother, uncle and a member of the family of the uncle. It is stated that between the years 1992 to year 2003 the Petitioner was falsely implicated in the following four criminal cases:

(1) FIR no. 241/99 registered at Police Station, Dwarka under Sections 341/323/34 IPC titled *State v. Kuldip etc.*

(2) FIR No. 522/00 registered at Police Station, Dabri under Sections 307/341/34 IPC titled *State v. Ashwani Kumar etc.*

(3) FIR No. 38/2002 registered at Police Station, Dwarka under Sections 308/341/34 IPC titled *State v. Rajesh & Ors.*

(4) FIR No. 26/2003 registered at Police Station Dwarka under Sections 341/323/34 IPC titled *State v. Virender Singh Solanki.*

3. The father of the Petitioner, who was employed in the Central Ordinance Depot, died during the course of his employment. The Petitioner's employment with the Central Ordinance Depot was recommended but he could not be appointed on account of the four pending criminal cases. At the

time of filing of this petition the Petitioner had already been acquitted or discharged in three of the four cases. The fourth case was of a summary nature and has since ended in a compromise. The Petitioner stands discharged in the said case as well.

4. It is submitted that at every 3rd or 4th day the Petitioner is visited by the police officials and this is causing harassment to the Petitioner. He submits that he is made to sit for hours together in the police station and is given threats of false implication in some criminal case. On one of his visits the police had taken his photographs and also obtained his finger prints. The Petitioner and the members of his family are frequently threatened with dire consequences.

5. Mr. B.D. Batra, learned counsel appearing for the Petitioner drew the attention of the Court to the relevant provisions of the Punjab Police Rules ('PPR'). It is pointed out that by an order dated 6th October 2004 of the Deputy Commissioner of Police (DCP) the history sheet of the Petitioner was opened and his name was included in the surveillance register No.10. By the time the Deputy Commissioner of Police (DCP) on 6th October 2004 agreed with the note and recommended the opening of the history sheet, the Petitioner had been discharged in the fourth case as well. This is evident from noting in the column against the said case in Part I of the file which states "compromised 4.10.04." It is further submitted that the decision of the

police to open an history sheet should be based on reasonable grounds and that in the present case there is nothing to indicate the formation of such opinion by the police. Reliance has been placed upon the judgment of the Supreme Court in ***Dhanji Ram Sharma v. Superintendent of Police, North District, Delhi Police AIR 1966 SC 1766***. It is submitted that there is also no reasonable ground to come to the conclusion that the Petitioner was a habitual offender. Reliance is placed upon the judgment in ***B.R. Chopra v. Commissioner of Police & Ors. 1986 Crl L J 970***. It is further submitted that the cases in which the Petitioner was implicated were not of such a nature so as to endanger peace and public security. Reference is made to the decision of this Court in ***Ved Prakash Gulati v. Commissioner of Police 1984 (1) SLR 298***. It is then submitted that the facts of the present case show that the Superintendent of Police has mechanically endorsed the note of his subordinate. Consequently the mandatory requirement of Rule of 23.4 (2) PPR has not been complied with. Reliance is placed upon the judgments of the Division Bench of this Court in ***Peter Samual Wallace v. Inspector General of Police 1981 Crl.L J 1195 (DB)***, ***Inder Singh Malik v. The State (Delhi Administration) 1986 (3) Crime 1991***, ***Mangru Ram v. Union of India 1988 Crl LJ 1133*** and ***Baleshwar Prashad v. Commissioner of Police 1988 Crl L J 1127***. It is submitted that the provisions of Rule 23.4 PPR are no different from Section 110 CrPC and a violation of the mandatory requirement of the said decision would result in a violation of liberty and of the individual as enshrined in Article 21 of the Constitution. Reliance is placed on the judgment in ***Gopalanachari v. State of Kerala (1981) 1 SCR 1271***. It is submitted that despite orders passed by this Court, the police

continue to retain the Petitioner's name in Bundle 'B'. The present proposal is that it will continue to be kept in the personal file. It is submitted that since there was no justification in the first place for opening the history sheet, the present proposal does not really address the principal grievance of the petitioner.

6. Ms. Mukta Gupta, learned Senior standing counsel appearing for the State opposed the aforesaid plea. She placed reliance upon the judgment of the Supreme Court in *Malak Singh v. State of Punjab & Haryana & Ors.* AIR 1981 SC 760 and submitted that the requirement of the law is only that there should be a reasonable belief that the Petitioner is a habitual offender and there was sufficient material. She also placed reliance upon the judgment of the Supreme Court in *Pandharinath Shridhar Rangeekar v. Deputy Commissioner of Police, State of Maharashtra* AIR 1973 SC 630 to contend that the grounds on which an externment order is passed are no different from the grounds on which history sheets are maintained. It is submitted that PPR only requires a review to be undertaken of the position from time to time, which was done in the case. Ms. Gupta further submitted that the history sheet in the instant case was opened on the basis of a detailed note dated 28th September 2004 of the Station House Officer ('SHO') of Police Station Dwarka which was self explanatory and this was fully consistent with the requirement of Rules 23.4 and 23.8 PPR. In terms of the Rule 23.10 the history sheets of the persons whose names are entered in the Surveillance Register shall be kept in Bundle I and those not entered in the

Surveillance Register and removed to the personal file in Bundle II. Under Rule 23.12 the history sheet of a person no longer addicted to crime shall be transferred to the personal file. Rule 23.13 provides that the personal file shall form the main material by which the superior officers would be guided thereafter as to whether to open a history sheet or not. It is submitted by Ms. Gupta that after the history sheet was opened in the instant case, it was found that the Petitioner was not residing in the jurisdiction of Police Station Dwarka from 29th October 2004 till 21st February 2007. By an order dated 24th October 2005 this Court had directed the history sheet of the Petitioner to be reviewed. It was then reviewed on 3rd December 2005. It was noted that the Petitioner has been acquitted in two FIRs on account of the witnesses turning hostile. In the third FIR the Petitioner had entered into a compromise with the complainant. At the relevant time the Petitioner was not traceable and his means of earning the livelihood were not known and therefore it was decided that the name of the Petitioner would continue to remain in the Register No. X in Part II. Thereafter the address of the Petitioner was visited on 30th July 2008 and thereafter again on 11th January 2009. The Petitioner's contention that during this time he was in Sonapat was found to be incorrect. After the order passed by this Court on 14th January 2009, the position was again reviewed and the history sheet of the Petitioner as downgraded from bundle A to bundle B. The grant of any relief to the petitioner is opposed on the basis of the above pleas.

7. The above submissions of learned counsel for the parties have been considered. Under Rule 23.4 PPR the Surveillance Register No. X is to be maintained at the police station in the manner indicated in Rule 23.4 (1). Rule 23.4 (2) requires that in Part I of the Surveillance Register, the name of the proclaimed offender, the released convicts, etc. are entered. Under Rule 23.4 (3), in Part II of the Register there shall be entered “at the discretion of Superintendent” the names of persons who have been convicted twice, or more than twice. In clause 23.4 (3) (b) the name of “persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not” may be entered “at the discretion of the Superintendent”. It may be mentioned that the explanation offered by Ms.Gupta appearing for the State for opening the history sheet of the Petitioner is with reference to the aforementioned provision.

8. Rule 23.8 which talks of the preparation of history sheet read as under:

“Preparation of history sheets: The initial preparation of a history sheet requires great care, and should invariably be done by the officer in charge of the police station himself or by a thoroughly experienced assistant sub-inspector under specific orders:

(1) The description of the criminal should be such as will enable the person reading it to form for himself a picture of the individual described, special attention being given to peculiarities of appearance, gift, speech etc., by means of which the man may be distinguished.

(2) The space for “relations and connections” should be filled in with a view to affording clues to those persons with whom the criminal is likely to harbor when wanted by the police, including relations or friends living at distance from his home, and his associates in crime, abettors and receivers. The particular nature of each person’s connection should be noted against each, and when persons shown as connections themselves have history sheets, a cross reference with those sheets should be given.

(3) Under property, and mode of earning livelihood, such particulars should be entered as will facilitate a judgment as to whether the criminal is at any time living beyond his means; whether he is capable of furnishing a personal recognizance of any value; whether he is an owner of property, a tenant or a wage-earner, and so on.

(4) **The “description of crime to which addicted” should be in some detail showing not merely the class of crime, but the particular type of that crime, methods followed, localities chiefly frequented, weapons or instruments used, etc.**

When these particulars have been carefully and concisely entered, the initial entry on the reverse side of the form should be made in the form of a summary of the individual’s criminal career up to the date of his history sheet being prepared and **should include the particular reasons and authority for its being prepared.** Copies of

history sheets prepared and published by the Criminal Investigations Department and published in the Criminal Intelligence Gazette shall be filed with the history sheets in all such cases will be endorsed with the letters C.I.D. and the criminal's provincial numbers in red ink. The activities of all such criminals subsequent to the publication of their provincial history sheets must be communicated promptly to the Criminal Investigation Department through the District Central Investigating Agency. Duplicate of the sheets of criminal known or suspected to operate on the railway shall be supplied to the nearest railway police station and the originals of such sheets shall be endorsed with the letter 'R' in red ink. The District Police shall also supply the Railway Police Station with copies of all subsequent entries made in such History Sheets, so that the Railway Police copies may be kept strictly up to date.”

(emphasis supplied)

9. A perusal of the aforementioned rule shows that the preparation of a history sheet is not expected to be a mechanical exercise. In particular the description of the crime to which person is addicted should be set out in detail. The PPR also do not leave the matters to the sole discretion of any one police officer. This is evident also from the actual practice followed of having the superior police officers [for e.g. the Assistant Commissioner of Police (ACP) and thereafter the DCP] review the decision of the subordinate, for eg., the SHO. All relevant materials have to be considered

and no relevant material should be excluded from consideration. There has to be a deliberated decision taken giving reasons which should reflect application of mind to such materials. After all, being labeled a “history sheeter” has grave adverse consequences for a person and therefore such power should be exercised with caution and responsibility.

10. The records of the instant case have been produced before this Court for perusal. Part I of the record is titled “written or oral suspicion”. This notes the four FIRs registered against the petitioner and their current status. It notes that as regards FIR No. 38/02 dated 17.2.2002 registered at PS Dwarka, New Delhi and FIR No. 522/00 dated 1.6.2000 registered at PS Dabri, New Delhi, the petitioner stood acquitted. In FIR no. 26/2003 the matter was compromised on 4th October 2004. FIR No. 241/99 was shown as pending trial. It may be mentioned here that although the note in Part II was prepared by the SHO on 28th September 2004, Part I shows FIR No. 26/03 as having been compromised on 4th October 2004. Ms. Gupta sought to explain that the date of 4th October 2004 was added in the relevant column in Part I by the SHO subsequent to preparing the note. However, this assumes significance because it appears that the superior officers who saw his note did not perhaps notice this fact.

11. In Part II under the title “Particulars of Movements” the SHO made a detailed note dated 28th September 2004 in Hindi. The initial portion of the

note is about the background of the Petitioner. It is stated that even from childhood the Petitioner displayed delinquency by picking up small fights. After the death of his father he had come into contact with criminal elements and he himself started getting involved in small crimes. This resulted in FIR Nos. 241/99, 522/2000, 38/2002 and 26/2003 being registered. Without mentioning the exact status of the said cases, the note concludes that keeping in view the above cases the name of the Petitioner should be kept in the Surveillance Register so that a watch could be kept on his movements. When this note which was placed before the officer immediately superior i.e. the ACP, the latter made a summary of the said note in one paragraph and recommended that the Petitioner's name may be kept in Register X Part II under bundle 'A'. When the note was further placed before the DCP South-West he simply endorsed that "I agree with the proposal of SHO/DW and the recommendation of ACP/NG."

12. What is significant is that the note prepared by the SHO, and the subsequent notings by the ACP and DCP, do not actually discuss the two judgments of the trial courts acquitting the Petitioner. This despite the fact that copies of the two judgments are in placed in Part II of the file. In the judgment dated 15th May 2003 in FIR No. 38/2002 the learned ASJ noted that PWs 1 and 2 had turned hostile. As far as the FIR No. 522 of 2000 is concerned, the judgment dated 5th July 2003 passed by the learned ASJ shows that the version of the prosecution witnesses did not inspire confidence. It was not a case where all the witnesses had turned hostile.

After analyzing the testimonies the learned ASJ held that the prosecution had failed to prove the case against the co-accused in the manner alleged. As regards the Petitioner it was observed in para 14 as under:

“14. So far as accused Deepak Solanki @ Sansar is concerned, his name also does not find mention in the FIR. It appears that his name for the first time came in the alleged disclosure statement of Ashwani Kumar allegedly made on 1st June 2000 which has been proved as Ex.PW-12/A. Name and address of accused Deepak Solanki @ Sansar has been mentioned in Ex.PW12/A. In another word, police had come to know about his alleged involvement on 1.6.00 yet he was not arrested by the police. He allegedly surrendered before the learned MM on 21.7.00 when an application for holding TIP was moved Id. MM however accused refused to join the TIP on the ground that he has been shown to the witness. Proceedings in this regard has been proved as Ex.PW12/A,B and C. In his cross-examination IO had specifically stated that when accused appeared in the Court and surrendered he was unmuffled. He has also stated that he was present when accused surrendered in the Court. There is nothing on record as to what was the purpose in connection with which SI Avtar Singh was present in the Court when accused Deepak Solanki @ Sansar surrendered. This shows that he had knowledge of his expected surrender in the court. In the absence of such an explanation, a doubt is created that accused might have been shown to the witnesses outside the

Court when he surrendered, therefore, his refusal to join the TIP was justified.”

13. From a reading of these judgments there is no indication, as is now sought to be suggested, that the petitioner had a hand in the witnesses turning hostile. It is indeed unfair that in the absence of any concrete material, an inference can simply be drawn that the witnesses turned hostile because of the petitioner. The effect of such an arbitrary decision is that it is used as a justification not to give effect to the acquittal by a judicial verdict and continue to treat the acquitted person as a criminal. This is certainly not envisaged by the above provisions of the PPR.

14. The law as regards the PPR and its requirements was explained by the Supreme Court in *Malak Singh*. It was noticed that “so long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 there cannot be any complain about inclusion of a name in the Surveillance Register. However the entry has to be made on the basis of the material provided by history sheet whose contents, by their very nature, have to be confidential.” It was further observed that there must be sufficient material in term of Rules 23.4 and 23.7 to justify inclusion of the name in the Surveillance Register. It was emphasised that the entry can only be made by the order of the Superintendent of Police who is “prohibited from delegating his authority under Rule 23.5.” It was further stated that the Superintendent of Police "must entertain a reasonable belief that persons

whose names are to be entered in Part II are habitual offenders or receivers of stolen property.” Ultimately it was held that “while it may not be necessary to supply the grounds of belief to the persons whose names are entertained in the surveillance register, it may become necessary in some cases to satisfy the Court when an entry is challenged that there are grounds to entertain such reasonable belief.” It was held (AIR, paras 9 & 10):

“9.....The very rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognise the caution and care with which the police officers are required to proceed. **The note following Rule 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly Rule 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobstrusive and within bounds.**

10. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behavior. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not may be entered. It is only in the case of this

category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5. **Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in Part II are habitual offenders or receivers of stolen property.** While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the Court when an entry is challenged that there are grounds to entertain such reasonable belief.”

(emphasis supplied)

15. It is seen that the notings on the file do not satisfy the requirement of Rules 23.4 and 23.8. The fact that the Petitioner stood acquitted in three of the four cases and only one case was pending, was not mentioned in the notings. Learned counsel for the Petitioner is right in drawing a comparison between Rule 23.4 and Section 110 CrPC. The mandatory nature of the PPR which require there having to be reasonable grounds for justifying the opening of a history sheet is consistent with the requirement of Article 21 of the Constitution. The procedure envisaged by the PPR has to be a just, fair and reasonable one and not based on any personal prejudices or predilections. Although the learned counsel for the State sought to compare

the drawing of a history sheet with the passing of an externment order, it appears to this Court that the two are not comparable. Nevertheless, even in ***Pandharinath Shridhar Rangeekar*** while dealing with the provisions of the local law concerning externment the Supreme Court emphasised the procedural safeguards however “slender” should be “strictly complied with.” The decision to open a history sheet definitely cannot be based on surmises and conjectures. It is easy to label a person a “habitual offender” or a person “addicted” to crime but when such a decision is challenged in court, the authorities will have to satisfy the court that such decision was based on relevant materials and that any such relevant material was not excluded from consideration when such a decision was taken. The following observations of the Supreme Court in ***Gopalan Chari v. State of Kerala (1981) 1 SCR 1271*** though in the context of Section 110 CrPC are relevant in this context:

“6..... We have not the slightest doubt that expressions like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with

it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous; to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor man, the man without political clout the person without economic stamina, who in practice gets caught in the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the casualty. After all the judicial process must not fail functionally as the protector of personal liberty.”

16. This Court had passed a detailed order on 14th January 2009 requiring the police to apply their minds afresh and decide whether the Petitioner’s name should continue to be in the Surveillance Register. In response thereto, the State has filed a status report stating that the name has been shifted from Bundle A to Bundle B. Upon perusing the record, this Court finds that nowhere is there a mention of the order passed by this Court on 14th January 2009. It is really not clear whether the police have accounted for the views expressed by this Court in the said order. Even the earlier review by the note dated 3rd December 2005 of the SHO, pursuant to the order of this Court, appears to have been based on surmises and conjectures.

For instance while mentioning the two cases in which the Petitioner was acquitted it notes that “the possibility of terror of B.C. in the mind of witnesses cannot be ruled out.” There is no acknowledgment that in fact in none of the cases has the petitioner been convicted. Surely, this was relevant material that should have gone into the decision making process. The compromise in the fourth case that was pending at the time of the previous note, on the basis of which the history sheet was opened, was a subsequent development which should have been taken note of. As on the date of review there was in fact no pending case involving the petitioner in a crime, much less a serious crime.

17. The superior police officers, viz., the ACP and the DCP have also not noticed the materials on record and have simply accepted the recommendation of the SHO that the Petitioner’s name should be continued in Bundle B. They have not appreciated the rigorous standards that are demanded to be observed in terms of the above provisions of the PPR. These decisions affecting the life and liberty of citizens must satisfy the constitutional mandate of Article 21 read with Article 14 since being labeled a ‘history sheeter’ has severe adverse consequences for the person so labeled. In the considered view of this Court in the instant case there was no material on record on the basis of which the police could have reasonably concluded that the petitioner was a habitual offender. The relevant material on record that suggests to the contrary was not accounted for. The effect of the orders acquitting or discharging the petitioner cannot be sought to be

nullified by continuing to keep his name in the Surveillance Register. Merely because on some dates of visit the Petitioner was not found at the address cannot *ipso facto* provide the basis for retention of his name in the Surveillance Register. In the considered view of this Court there was no justification in the first place even to open a history sheet of the Petitioner.

18. Accordingly, it is directed that the Petitioner's name be removed from the Surveillance Register and also not be kept in the personal file of the Petitioner. The photographs taken of the Petitioner be also removed from the record and returned to the petitioner. The petitioner's history sheet will accordingly stand quashed.

19. The petition is allowed in the above terms with no order as to costs.

S. MURALIDHAR, J.

JULY 3, 2009

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