

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 20.12.2023

Pronounced on: 30.12.2023

OWP No. 1591/2015

c/w

CCP(S) No. 354/2023

CPOWP No. 182/2017

CCP(S) 337/2022

- 1. Sudershan Singh Wazir** Appellant(s)/Petitioner(s)
S/O S. Rajinder Singh Wazir,
R/O H. No. 18-A, Sector 7, Trikuta
Nagar, Jammu.

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Navyug Sethi, Advocate.

Vs

- 1. State of Jammu and Kashmir** Respondent(s)
Th. Commissioner/Secretary, Home
Department, Civil Secretariat, Srinagar.
- 2. Director General of Police**
Jammu and Kashmir State, Police
Headquarters, Srinagar.
- 3. Inspector General of Police,**
Jammu Zone, Jammu.

Through: Ms. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner, who claims to be the former President of J&K State Sikh Gurudwara Prabhandak Board, had earlier filed the writ petition bearing OWP No. 1239/2015, which was disposed of by the Court vide order dated 03.09.2015 pursuant to the submissions made by the learned Senior Counsel appearing for the petitioner, with the directions to the respondents therein to look into the matter strictly on the basis of the

circular/policy for reviewing the security, in view of threat perception to the petitioner.

2. The petitioner thereafter filed another writ petition for directing the respondents not to withdraw the security provided to the petitioner in view of the threat perception to him and his family members on the ground that his nephew was brutally murdered by two persons, namely, Jatinder Singh and Royal Singh and one of the accused, namely, Jatinder Singh happened to be son of a dreaded criminal and gangster of Jammu. It was also stated that contract for killing the petitioner was also given to certain dreaded criminals by the father of the accused mentioned above. The grievance projected by the petitioner in the writ petition is that despite the directions passed by the Court vide order dated 03.09.2015, the respondents have not considered the issue of the security of the petitioner and have rather threatened to withdraw the existing security cover.
3. While issuing notice to the respondents, interim order dated 28.10.2015 was passed by the Court directing the respondents not to withdraw the security provided to the petitioner, however, the order was subject to objections from the respondents.
4. The respondents filed the compliance report as well as the objections. In the compliance report it has been stated that four guards, namely, Kuldeep Singh, Rakesh Kumar, Ronak Singh and Janak Raj have been deployed at the residence of the petitioner. Besides, two PSOs were also provided to him for his security. In the objections filed by the respondents, it has been stated that four Guards have been deployed at the residence of the

petitioner. Besides, two PSOs have also been provided to him. The respondents have mentioned the particulars of the guards and PSOs provided to the petitioner in their objections and as such, have sought the dismissal of the writ petition filed by the petitioner. It is also stated that the security as per X2 category was provided to the petitioner pursuant to the decision of Security Review Coordination Committee held on 05.04.2002.

5. During the pendency of the writ petition, the petitioner filed the contempt petition bearing CPOWP No. 182/2017, thereby stating in Para 17 of the petition that the respondents continued to comply the order dated 28.10.2015 i.e. the order passed in the present writ petition while issuing the notice to the respondents, but in March 2016 i.e. on 29.10.2015 one of the PSOs, namely, Shabir Ahmed was withdrawn. It needs to be noted that there is error in the pleadings of the petitioner in Para 17 of the contempt petition, as month of March 2016 does not reconcile with 29.10.2015. Be that as it may, it appears that one PSO, namely, Shabir Ahmed was withdrawn. The petitioner claims to have approached the Dy. S. P. concerned in respect of withdrawal of PSO in utter contempt of the order passed by the Court and the petitioner was assured that the mistake committed by the respondents will be rectified by restoring back the PSO, but except assurance nothing was done. Thereafter, another PSO, namely, Gulzar Ahmed was also withdrawn in March 2016 and the same was brought to the notice of DIG, Doda Range and SSP, Doda, but nothing was done. Later, one PSO, namely, Gulzar Ahmed was restored back to the petitioner, but the other PSO, namely, Shabir Ahmed was not restored.

It is further stated that on 29.09.2017, the respondents abruptly and without any intimation or notice to the petitioner withdrew the complete security cover/guards. The petitioner, as such, sought initiation of contempt proceedings against the respondents.

6. Along with the contempt petition one application was also filed for seeking directions to the respondents to maintain the status quo as it existed on 28.10.2015. In the said contempt petition, notice was issued to the respondents and the respondents were directed to comply the order dated 28.10.2015 whereby it was provided that the security provided to the petitioner shall not be withdrawn. The respondents filed the statement of facts/compliance report stating therein that the security has not been withdrawn and as per the order dated 04.01.2017 passed by the Security Hqrs. J&K, the petitioner has been categorized under X-2 category protectee. Thereafter, another set of statement of facts was filed in the month of March 2019, where in it was stated that four (1+3) personnel were deployed with the petitioner and further SPO, Gulzar Ahmed has been deputed as PSO with the petitioner.
7. During the pendency of the writ petition and contempt petition mentioned above, the petitioner filed another contempt petition bearing CCP(S) No. 337/2022, pleading therein that the respondents abruptly without any intimation on 29.11/2022 have withdrawn the entire security cover in utter disregard of the order dated 28.10.2015. After hearing Ms. Monika Kohli, learned senior AAG vide order dated 09.12.2022 the Court directed the respondents to comply the order dated 28.10.2015. The respondents filed

the compliance report stating therein that the security of three personnel has been provided to the petitioner.

8. In never ending process of filing contempt petitions, another contempt petition bearing No. CCP(S) No. 354/2023 has been filed by the petitioner against the respondents for disobeying and flouting the order passed by this Court. In this contempt petition besides giving the past history, it is stated by the petitioner that the respondents in due deference to the order passed by the Court on 09.12.2022 had restored the security cover comprising 3 Personal Security Officers and 1X4 Security personnel at the residence of the petitioner which security cover remained in force till 31.01.2023, when the petitioner was wrongly and falsely implicated in a case registered at New Delhi. The petitioner claims to have been discharged from the charge-sheet by the Delhi Court and further after his discharge he is residing at his residence in Jammu but the security provided to the petitioner in the form of 3 PSOs and 1x4 Security Guards at the residence of the petitioner has not been restored back despite written requests made by the petitioner to the respondents. The petitioner further claims to have approached the Director General of Police through written application dated 28.10.2023 for restoration of the security cover and the same was endorsed to the Additional DG (Security) for taking appropriate action as per the court directions. When the security cover was not restored to the petitioner, he filed another application bearing CM No. 6978/2023 for restoration of the security cover provided to the petitioner in deference to the court directions issued on 28.10.2015 and order dated 09.12.2022 passed in CCP(S) No. 337/2022. While taking

cognizance of the application bearing CM No. 6978/2023, after hearing learned senior counsel for the petitioner vide order dated 22.11.2023 the Court directed the respondents to ensure compliance of the directions in terms of order dated 28.10.2015 and the said order was passed in presence of learned senior counsel for the petitioner and learned senior AAG for the respondents. As the respondents did not comply with the order dated 28.10.2015 and 22.11.2023, the petitioner filed this contempt petition.

9. Respondents have filed response to the contempt petition stating therein that in compliance to the directions issued by this Court vide order dated 03.09.2015, the petitioner was categorized and provided X-2 category security only. It is further stated that the respondents had reviewed the security of the petitioner on 04.01.2017 and the petitioner was kept under X-2 category. In compliance to the order dated 09.12.2022 in terms of directions issued thereunder, the security of the petitioner was restored and security of 1+4 Police Personnel was provided to the petitioner. It is further averred that thereafter, the petitioner was arrayed as an accused in FIR No. 557/2021 for commission of offences under Section 302, 201, 34, 120-B, 174-A IPC read with Sections 25/27 Arms Act registered at Police Station, Moti Nagar, Delhi. After the petitioner was arrayed as an accused, the wife of the petitioner submitted an application for withdrawal of the security cover on the instructions of her husband. The respondents have placed on record a copy of the application submitted by the wife of the petitioner. The respondents, as such, withdrew the security and thereafter the petitioner again filed an application before this Court for restoration of the security of the petitioner by concealing the fact that the

order of discharge of the petitioner had already been stayed by the High Court of Delhi. Copy of the order passed by the High Court of Delhi has been annexed with the statement of facts filed by the respondents. It is stated by the respondents that the security assessment of the petitioner had already been done in the year 2017 by virtue of which the petitioner was entitled to X2 security only and as per threat perception report of 2019 there was no threat to the petitioner. The respondents have also mentioned about the various categories of the security cover on the basis of threat perception to an individual, as per the guidelines of the Ministry of Home Affairs Government of India. The X2 category protected person is entitled for 2 PSOs only in militancy affected areas and if the petitioner desires more security, he can apply under Rule 41 of Police Rules which provides for payment for getting additional security. Respondents have admitted that an application from the petitioner was received and the matter was taken up with the Additional Director General of Police (Security) J&K and request for assessing fresh threat perception in respect of the petitioner was made. In response the Additional Director General of Police (Security) J&K vide communication dated 12.02.2023 has informed as per record the petitioner was entitled to X2 category.

10. The petitioner has also filed a supplementary affidavit and besides giving past history has also placed on record the statements of two witnesses recorded during the course of investigation in case FIR No. 557/2021 of Police Station, Moti Nagar, Delhi and the alleged confessional statement of the co-accused in the said FIR.

11. Mr. Sunil Sethi, learned senior counsel appearing on behalf of the petitioner has argued that till date the petitioner has not been provided with any security and in view of the threat perception, the respondents are under obligation to provide security to the petitioner. He further argued that the wife of the petitioner had sought withdrawal of the security only because the petitioner was implicated in a false and frivolous case and when the petitioner was discharged and released he sought the security cover from the respondents. He further argued that though the High Court of Delhi had stayed the order of discharge of the petitioner, but the petitioner was already released from jail when the order of staying the order of discharge was passed by the High Court of Delhi.
12. *Per contra*, Ms. Monika Kohli, learned senior AAG appearing on behalf of the respondents submitted that whether the petitioner suffers from any threat or not is to be determined by the Security Review Coordination Committee and the threat perception to an individual cannot be determined by High Court in exercise of jurisdiction under Article 226 of the Constitution of India. She further submitted that the petitioner has been filing contempt petitions time and again without there being any justification for the same and the security cover provided to the petitioner was withdrawn pursuant to the request made by the wife of the petitioner. The petitioner cannot request for providing the security and withdrawal of the same at his own whims and fancies and as there is no threat perception to the petitioner, therefore, the writ petition along with the contempt petitions is required to be dismissed. Ms. Monika Kohli has relied upon the judgments passed by this Court in case titled "*Depinder Kour Vs.*

State of J&K and others”, “*Dr. Kamal Saini Vs. State of J&K and others*” and “*Noor Ahmad Shah Vs. State of J&K and others*” in order to demonstrate that it is for the Security Review Coordination Committee to determine the threat perception to an individual and the Court cannot determine the same while exercising jurisdiction under Article 226 of the Constitution of India.

13. Heard and perused the record.
14. From the pleadings of the parties it becomes evident that the petitioner was having threat to his life in the past and because of that reason only he was granted protection under X2 category. Vide order dated 28.10.2015 the respondents were directed not to withdraw the security cover provided to the petitioner. Thereafter, from time to time the petitioner raised the grievance of lack of security cover to him in view of the threat posed to him and the Court always came to his rescue by directing the respondents to comply the order dated 28.10.2015. The petitioner in his contempt petition bearing CCP(S) No. 354/2023 has himself admitted in Para 4 of the petition that the respondents in due deference to the directions as recorded in order dated 09.12.2022 restored the security cover comprising of 3 personal security officers and deployed 1x4 security personnel at the residence of the petitioner, which remained in place till 31.01.2023 when the petitioner was arrested. It is evident from the record that the wife of the petitioner requested the respondents to withdraw the security as her husband was arrested in FIR No. 557/2021 of Police Station, Moti Nagar, Delhi and perusal of the annexure-1 annexed with the statement of facts reveals that it was on the request of the petitioner that his wife sought

withdrawal of the Police Guards deployed at the residence. It is only after the petitioner was discharged by the Delhi Court that he is seeking fresh protection.

15. No doubt, the petitioner was/is an accused in the murder of Sh. T. S. Wazir and was discharged by the Delhi Court, which order was stayed by the High Court of Delhi, but this is a fact that the petitioner is residing in Jammu and till the issue of his custody is decided by the High Court of Delhi, he is entitled to live freely and without any threat from any quarter. Equally true is that the person cannot determine the extent of security cover required for himself, as it is for the SRCC to determine the extent of threat to an individual. Ms. Monika Kohli, learned Sr.A.AG is also right in her submissions that this Court cannot determine the extent of threat to a particular individual as the same is required to be determined by the Security Review Coordination Committee (SRCC), a specialized committee constituted for the said purpose.
16. In order to prosecute and punish any person under contempt jurisdiction for the violation of the orders passed by the Court, the violation must be deliberate and willful. So far as the present case is concerned, this Court does not find any willful disobedience on part of the respondents, but equally true is that the petitioner has placed on record certain documents along with his supplementary affidavit which are required to be examined by the respondents for the purpose of examining the threat perception to the petitioner. This is also evident that the X2 protection was provided to the petitioner in the past and as per order dated 08.11.2018 issued by Security Hqrs. J&K, the person under X-2 category protection, is entitled

to personal security cover of 02 PSOs only in militancy affected areas. The respondents are absolutely silent as to the order/guidelines pursuant to which the Security guards/PSOs in addition to X-2 category protection, were provided to the petitioner.

17. In view of the above, this Court deems it appropriate to dispose of the present writ petition by directing the respondents to place before the SRCC, the material placed on record in the form of supplementary affidavit by the petitioner and in the event the SRCC arrives at the conclusion that there is threat perception to the petitioner, he be provided necessary protection and security as permissible under rules and till the SRCC takes any informed decision, the petitioner be provided security which was being provided to him in terms of order dated 09.12.2022, which order was stated to have been complied with by the respondents as averred in the para-2 at page-5 of the statement of facts. The entire exercise shall be completed within the period of 30 days from today.
18. The contempt petitions arising out of the interim order dated 28.10.2015 and any order made pursuant thereto are also dismissed.
19. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
30.12.2023
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.