

CWP No.16232 of 2015

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.16232 of 2015

Date of Order: 09.02.2016

Rakesh

....Petitioner

Versus

State of Haryana and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Manish Soni, Advocate for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

RAKESH KUMAR JAIN, J

The Petitioner is a resident of Gurgaon. He has prayed for issuance of a writ in the nature of Mandamus, seeking a direction to the respondents, to provide him security by deputing 4-5 trained police officials or commandos, since he is allegedly having danger to his life because on 15.7.2015, some persons, at the instance of one Narinder Bandi, a property dealer of Gurgaon, had tried to eliminate him.

In short, the case set up by the petitioner is that on 15.7.2015, at about 9.00 AM, his vehicle was attacked at M.G Road, Gurgaon as a result, his driver suffered bullet injuries in his head, one auto rickshaw driver, standing nearby, died from a stray bullet injury and another rickshaw driver got seriously

injured when petitioner's car rammed in his Auto. The said incident was reported to the police and an FIR No.463 dated 15.07.2015 under Sections 148,149,302,307,120-B IPC and 25 of the Arms Act was lodged against Narinder Bandi and other unknown persons at P.S., DLF Qutab Enclave, Gurgaon. The petitioner filed an application to the Commissioner of Police, Gurgaon to provide security to him and his family. Said application was received in the office of respondent No.3 vide receipt No.12461 dated 22.7.2015 but despite that no action has been taken. It is also alleged that one property dealer, namely, Sandeep Dabbu, a hardcore criminal of the area, lodged in District Jail, Gurgaon had also threatened the petitioner in the District Court, Gurgaon that he would get him eliminated.

After notice, the respondents have filed reply wherein it is averred that the petitioner himself is a habitual offender and has been involved in as many as 20 cases as per the report received from P.S Sector 10-A, Gurgaon. The detailed chart of the said cases is reproduced as under:

<i>Sr. No.</i>	<i>FIR</i>	<i>Date</i>	<i>U/s</i>	<i>Police Station</i>	<i>Present Status</i>
1	80	07/03/07	148,332,325,24 9,427 IPC	Sec 10A	Quash-09.04.08
2	169	07/05/07	302,201,34 IPC	Sec 10A	Acquitted-05.08.09
3	189	24.05.08	148,149,333,35 3,341,506 IPC	Sec 10A	Acquitted-26.04.13
4	233	19.07.08	148,149,323,30 7,452,427,506 IPC & A. Act	Sec 10A	Undertrial
5	297	13.12.10	160 IPC	Sec 10A	Acquitted-21.08.13
6	274	18.08.08	506,34 IPC	Sec 10A	Acquitted-30.05.13
7	320	04/10/08	294,506 IPC	Sec 10A	Under Trial
8	480	22.08.08	420 IPC	City, GGN	Acquitted-14.11.13

<i>Sr. No.</i>	<i>FIR</i>	<i>Date</i>	<i>U/s</i>	<i>Police Station</i>	<i>Present Status</i>
9	479	22.08.08	420 IPC	City, GGN	Under Trial
10	93	2003	379 IPC	Sadar, GGN	Acquitted-25.07.06
11	483	2004	382 IPC	Sadar, GGN	Acquitted-28.07.07
12	702	2006	323/506 IPC	Sadar, GGN	Acquitted-20.03.10
13	15	2008	A. Act	C.B Delhi	Under Trial
14	177	02/06/11	307/188 IPC	Sec 10A	Acquitted-02.08.13
15	209	23.06.11	302,307,148,14 9,435 IPC & A. Act	Sec 10A	Under Trial
16	365	03/11/11	307/120-B IPC & A. Act	Sec 10A	Acquitted-05.08.15
17	387	2007	395/397/386 IPC	Sec 10A	Acquitted-19.05.11
18	100	2003	406,452,457 IPC	Sadar, GGN	Acquitted-20.05.09
19	59	29.01.15	147,149,323,50 6 IPC	Sec 10A	Under Investigaation
20	530	10/08/15	25,54,59 A. Act	DLF Sec 29	Under Investigation

It is further averred that the representation dated 22.07.2015 made by the petitioner was got enquired from the SHO P.S DLF Sector 29 through DCP East, Gurgaon and Security Assessment Report was also obtained from P.S Sector 10A and Kherki Daula. During the course of inquiry, it transpired that FIR No.463 dated 15.07.2015 was registered on the complaint of the petitioner and the same is under Investigation. It is further averred that the petitioner had vacated House No.805-B, Beverly Park, Gurgaon on 26.07.2015 and was not found residing in Village Hayatpur. It is also averred that on 15.07.2015, two revolvers 32 bore each and 73 live cartridges along with two licenses were found, issued by the Licensing Authority, Jhajjar in the name of Kuldeep S/o Mahender R/o Village Luksar, District Jhajjar and the second licence by Dimapur Authority (Nagaland)

in the name of Bhagat Singh son of Harikesh Village Moth Karnail, Narnaund, District Hisar, though cancelled on 15.1.2015 and thereupon, a case vide FIR No.530 dated 10.08.2015 under Sections 25/54/59 of Arms Act was registered at P.S Sector 29 against the petitioner, Hans Raj and Het Ram from whose possession, two revolvers and 73 live cartridges were recovered. As per the report of DCP East, the petitioner was found involved in heinous crimes and is a known hardcore criminal of the area.

Though, the representation of the petitioner was rejected by the police on 11.8.2015 but so far the same has not been challenged by the petitioner in this petition as only a mandamus has been sought and not a writ of certiorari. The petitioner also filed a rejoinder/replication in which he has alleged that except for the cases at Sr.No.19 & 20, he had been acquitted in all other cases.

During the course of hearing, in order to assess the social status of the petitioner, he was asked to file an affidavit. The petitioner has filed affidavit dated 19.10.2015 alleging that his father has left behind a residential house and some agricultural land situated in village Hayatpur out of which about one acre of land has fallen to his share. Said land has already been sold by the petitioner in 2008 and purchased around two acres of land. He stated that he had constructed one commercial building over a plot comprising three floors including basement, for rental purposes, over a piece of land i.e 45'x80' but the said

building is lying vacant. He is also having a hotel in the name of "The Carolina Inn" comprising of Restaurant, one hall and living rooms, which is built over an area measuring around 120 sq. yards, located in Village Hayatpur District Gurgaon. It is alleged that he has been married to one Dr. Inderjit Kaur in the year 2015, who is in a family way and is looking after his family from the produce of the agricultural land.

Reply to the affidavit was filed by Sh. Ramesh Pal, Assistant Commissioner of Police, P.S DLF, Gurgaon after verifying the averments made therein. It was found that 1.5 acres of land was in the name of the petitioner at village Hayatpur in which there is no crop. One room was found constructed in the said land and given on rent @ ₹10000/- per month. It is alleged that one incomplete/under-construction building is also existing near the rented shop and its further construction is stopped about one and half years back. One hotel (three storeyed with basement) on Kakrola-Bhagrola Chowk was found vacant in which no commercial activities were carried out. It is, thus alleged that the property of the petitioner is either under construction or if it is fully constructed, the same is lying vacant, generating no source of income and the land allegedly two acres is also lying vacant as it is not being cultivated. It is alleged that the petitioner owned a SUV Car bearing HR 26-CL-3614 from which two revolver and 73 live cartridges were recovered and strangely when the alleged occurrence took place, the petitioner and his paternal uncle Het

Ram son of Gajraj, who was also allegedly accompanying him at that time, did not suffer any injury rather his driver suffered bullet injuries and a stray injury hit the auto rickshaw driver.

Learned counsel for the petitioner has relied upon a judgment of this court reported as **Mohinder Kaur Vs. State of Punjab, 1995 (3) RCR (Criminal) 471**. In this case, protection was sought by a lady for the life of her husband, who was involved in seventeen criminal cases out of which he was acquitted in six cases. She was apprehending that her husband may not be liquidated in false encounter. Direction was issued that if the petitioner's husband is to be involved in some FIR, he would not be arrested for a period of seven days and during this period, he would be given advance notice of arrest. It was also observed that it was an unusual order based on unusual facts.

Learned counsel for the petitioner has further relied upon a decision of Allahabad High Court reported as **Lalta Prasad Dubey Vs. Director General of Police, Lucknow and others** 2001 All. LJ 208 wherein security was provided to the petitioner because he was an eye witness in the case of murder of his nephew and was given threats when he was going for Paravi. Learned counsel has further relied upon a judgment of this Court reported as **Musa Khan Vs. State of Punjab and Others, 2005 (1) RCR (Criminal) 960** wherein it was held by this Court that entering name of a person in Surveillance Register No.10 when his case was not covered under Rules,

would be a violation of fundamental right.

On the other hand, learned counsel for the respondents has relied upon a decision of this Court passed in CWP No.6656 of 2015 on 15.10.2015 titled as Umesh Pandit Vs. State of Haryana and Others in which prayer made by the alleged Secretary of Committee of Kisan Cell All India Congress (I), who was apprehending threat from Student Islami Movement of India (SIMI), was declined.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The respondents have not denied that a case bearing FIR No.463 dated 15.7.2015 has been registered on the statement of the petitioner and is under investigation in which few arrest have been made. It is also not disputed even by the petitioner that he had been involved in as many as 20 cases, already referred to above in the earlier part of this order. However, the petitioner has been acquitted/released in many cases but few cases are still pending against him.

The argument of learned counsel for the respondents that most of the times, the petitioner has earned acquittal on account of non-cooperation of the witnesses of the police/prosecution, which itself raises a finger towards credentials of the petitioner, who has been termed as a hardcore criminal by the respondents. The financial position of the petitioner cannot be adjudged from the facts brought on record because he only owns two acres of land, which is not even under

cultivation and rest of his property is lying redundant without any earning but still he has been enjoying the facility of SUV, maintaining a driver and also got recovered two revolver and 73 live cartridges from his car. All these facts and circumstances negate the right of the petitioner for seeking 4-5 security men in uniform. Consequently, this court is of the view that no direction can be issued to the respondents in this writ petition, especially when the representation of the petitioner has already been rejected by the Commissioner of Police, Gurgaon on 11.8.2015, and has not been challenged by the petitioner either in this petition by amending it or after withdrawing the same, by way of a writ in the nature of Certiorari.

In view of the aforesaid discussion, I do not find any merit in the present petition and the same is dismissed.

February 09 , 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE