

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.525 of 2013**

Abhay Singh S/o Lt Premsingh Aged About 35 Years R/o Shankargarh, Ps Shankargarh, Distt Balrampur, Present Address Babupara, Cenral Jail Colony, Ambikapur, Dist Surguja,CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Deptt, Mahanadi Bhawan, Mantralaya, New Rajdhani, Ps New Rajdhani, Distt Raipur,c G
2. The D.G.P. C.G. Polcie Headquarter, Raipur, Ps Civil Lines, Distt Raipur, Cg
3. The I.G. Surguja Range Ambikapur, Distt Surguja, Cg
4. The Superintendent Of Police Balrampur, Spoffice, Balrampur,d Istt Balrampur, Cg
5. The Superintendent Of Police, Ambikapur Surguja, Distt Ambikapur (Surguja)

---- Respondents

For Petitioner	:	Shri S. C. Verma, Advocate
For Respondent/State:		Shri Prafull Bharat, Additional AG with Shri D. R. Minz, Dy.GA
For Intervener	:	Shri Rahul Kumar, counsel appears on behalf of Shri R. S. Marhas, counsel for intervener.

Hon'ble Shri Justice Manindra Mohan Shrivastava**C A V Order****12/12/2017**

By this petition under Article 226 of Constitution of India, the petitioner has prayed for a direction to the State for constitution of High Power Secret Investigation Committee for making enquiry into the allegations made by the petitioner in the petition. The petitioner has also prayed for a direction to provide complete protection to the petitioner and his family members. The petitioner has also prayed for a direction to maintain the secrecy about the movement of the

petitioner. The petitioner has further prayed that he may be heard in camera proceedings as a measure of safety.

2. The pleadings made in the petition to seek aforesaid directions are that the petitioner, on his request, was engaged by the Police Department of the State of Chhattisgarh as undercop in fight against naxalite forces operating and active in Surguja District. According to the petitioner, he was sent for high level secret mission in the year 2003 for a period of two years. Upon completion of training of two years, he was deployed in Anti-naxalite secret mission working along with the Police Officers. The petitioner helped the police machinery to undertake operation against naxalites. It is the claim of the petitioner that he passed on secret and sensitive information to the police agency. In recognition of his dedicated service, various certificates and appreciation letters were also issued in his favour. In this manner, it is stated, the petitioner remained associated with the police in Anti-naxalite operations for a period of 12 years as an undercop.

It has also been pleaded that during the course of secret operation, the petitioner received various informations regarding involvement of high level officers of the State with the naxalites. He received information that one Platoon Commander Brijesh Tiwari, Member of CG Armed Force, is passing on vital and important informations relating to Anti-naxalite operations to one Rahul Tiwari, who happens to be the Naxalite Commander operating in the Surguja Range and in this activity, one IPS Officer was also involved. When this fact was informed to high level Officers of the Police Department, he was advised to keep silence and also warned that if he discloses anything against Brijesh Tiwari and Rahul Tiwari, he may have to face dire consequences. Thereafter,

the petitioner started separating himself from secret missions. According to the petitioner, several applications and various representations made to high level Police Officers of the Police Department regarding alleged activities of said Brijesh Tiwari with an apprehension that the petitioner may be murdered, but no efforts were made to save his life. The petitioner's request for providing security was also not accepted.

3. The petitioner in his spate of allegations also stated that one Yagyavalkya Mishra, a naxalite, also threatened to kill the petitioner. According to the petitioner, Yagyavalkya Mishra, under the cloak of journalist, is engaged in criminal activities and there are allegations that he set on fire the vehicle of a minister. It is further alleged that attempts were made on various occasions to assault the petitioner by naxalites Rahul Tiwari, Bada Vikas @ Nageshwar and Yagyavalkya Mishra. The petitioner made various complaints against Yagyavalkya Mishra but no action was taken. The petitioner apprehends that he may be attacked and murdered by Yagyavalkya Mishra.

Further allegation of the petitioner is that the petitioner was threatened over Mobile by one naxalite Bada Vikas that the petitioner and Town Incharge of Police, Ambikapur would be murdered. Thereafter, the petitioner lodged FIR, but no action was taken. Further allegation is that one Dhiraj Jayaswal, associate of naxalite, threatened to kill the petitioner. He alleges that said Dhiraj Jayaswal and some IPS Officers of the State Police are working in association with naxalites and making money from illegal activities. He made complaints against Dhiraj Jayaswal also. In support of his claim that the petitioner was a police informer and that his family was provided protection, reference of letter dated 04-01-2012 of one Minister of the State was also placed on record.

Various letters were written by the petitioner that attacks were made to eliminate him and he was attacked on many occasions. On such allegations, the petitioner has prayed that a high level enquiry be directed to unearth the alliance between the naxlites and the police officers and the petitioner be protected against any assault on his life. Dhiraj Jayasawal, Bada Vikas and other police officers are attempting to eliminate the petitioner, because the petitioner is possessed of critical information regarding nexus between the police officers and the naxalites. It has also been submitted by way of additional pleadings contained in the rejoinder and various interim applications filed from time to time that during the pendency of application, the petitioner was provided security under the orders of the Court but the security was withdrawn, though it was again later on, restored after three months. The petitioner also raised grievance that in order to harass/victimize the petitioner, he has been falsely implicated in a criminal case, offence was registered and he was arrested without seeking leave of the Court and the allegation against the petitioner that he has indulged in criminal activities, is an afterthought because the petitioner was out of station at Delhi and was under the security of a Police Officer provided by the respondents.

4. Based on the aforesaid pleadings and documents placed on record, the petitioner has prayed for high level enquiry by the National Investigation Agency constituted under the National Investigation Agency Act and protection of his life. In support of his prayer, learned counsel for the petitioner has relied upon the decisions of the Supreme Court in the case of ***Rubabbuddin Sheikh vs State of Gujarat and others, (2010) 2 SCC 200, State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal***

and others, (2010) 3 SCC 571, Jaywant P. Sankpal vs. Suman Gholap and others, (2010) 11 SCC 208, Narmada Bai vs. State of Gujarat and others, (2011) 5 SCC 79, Mehboob Batcha and others vs. State represented by Superintendent of Police, (2011) 7 SCC 45, Prithipal Singh and others vs. State of Punjab and another, (2012) 1 SCC 10, Lalita Kumari vs. State of Uttar Pradesh and others, (2012) 4 SCC 1, Advocates Association, Bangalore vs. Union of India and others, (2013) 10 SCC 611, Pooja Pal vs. Union of India and others, (2016) 3 SCC 135 and Sangita Vilas Ingle vs. State of Maharashtra and others, (2017) 2 SCC 728.

5. On the other hand, learned State counsel submits that the petitioner's claim that he was employed with the Police Department as undercop is false. He submitted that the petitioner was never employed by the police personnel as undercop in the Police Department. The petitioner was never sent for any type of training and his services were taken occasionally as Informer and guide in various naxalite operations and the only capacity of the petitioner was of an Informer. Learned State counsel would further submit that the petitioner made complaints, which were duly enquired into and even cases were also registered. He further submitted that the allegations made by the petitioner in this petition are highly vague, unspecific and misleading also. He would further submit that on the allegation against Brijesh Tiwari, various enquiries were made and these allegations were not substantiated. Referring to various documents filed along with the return, it has been submitted that the allegation that Brijesh Tiwari was related to Rahul Tiwari was false and there is no material to show that they were related to each other. He further submitted that Rahul Tiwari died long back in the year 2007 and thus allegation are per se false, fabricated and only an

attempt to make wild allegation against a responsible police officers, who is having exemplary services records having received awards from the President of India, Governor of the State and the Police Department from time to time and now he is no longer posted in the Surguja area in the naxalite operation, but posted in other districts of the State. He further submitted that the petitioner was provided security also. There are no specific incident about any attack made on the petitioner either by Yagyavalkya Mishra or Dhiraj Jaisawal or Rahul Tiwari or Bada Vikas. Every time, on allegations made by the petitioner, the matter was duly inquired and complaints were found baseless. It is also submitted that later on, a criminal case was instituted against the petitioner and in the said case, he has been arrested. Legality and validity of institution of criminal case and arrest is separately challenged in W.P.(Cr.)No.132 of 2016. According to the learned State counsel, the pleadings are at complete variance with the documents filed by the petitioner. Lastly, it is submitted that the relief prayed for by the petitioner for providing security is granted because during the pendency of the petition, the petitioner has been provided security. Moreover, it is submitted that under the directions issued by this Court n 10-09-2013, a High Level Enquiry by Senior Police Officers of the Police Department was made, in which, petitioner was also called and he participated also. During the said enquiry, the petitioner was asked to disclose informations and the name, which the petitioner did not disclose in the petition. After completion of inquiry, a report, as directed, has also been placed before this Court by the Committee of High Level Police Officers, after recording statement of petitioner and other persons and after considering the documents/records, the Committee came to the conclusion that during enquiry, the petitioner could not produce any concrete evidence of he having been engaged by the Police Department as undercop nor any material

was brought during enquiry that any IPS Officer of the State Police was associated with naxalites. The relief sought for by the petitioner are otherwise granted by constituting a committee of High Level Enquiry, resultantly, the petition may be disposed off. Learned State counsel has placed reliance on a decisions in the case of ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571 & Pooja Pal vs. Union of India and others, (2016) 3 SCC 135.***

6. In this case, intervention application has been filed by one Yagyavalkya Mishra opposing the relief sought in the petition, by stating that the petitioner had animosity with him and he has also made complaints and allegations against the petitioner regarding his criminal activities. It is submitted that institution of criminal case against Yagyavalkya Mishra have ended in his acquittal which shows that allegations made by the petitioner have no basis. He has emphatically denied any kind of association with naxalites.

In this case, an order was passed by this Court on 18-04-2013 that on proper verification, if it is found necessary, appropriate steps are required to be taken to provide protection to the petitioner. According to the respondents, security requirement of the petitioner was assessed on number of occasions, but no such threat of attack was found to be correct. Despite this fact, the petitioner was offered security under the provisions of Regulation 495 of the Police Regulations. The records also show that during the pendency of the petition, the petitioner was provided security on 14-09-2013 which continued till 16-02-2016 when it was withdrawn. Later on, security was again restored in the month of May, 2016. This fact has not been disputed by the petitioner. It has also not been disputed that now, the petitioner is under arrest in connection with

allegations of commission of offence and those proceedings are under challenge in a separately constituted petition W.P.(Cr.)No.132 of 2016. Earlier, this Court directed hearing of the present petition and W.P.(Cr.)No.132 of 2016 analogously but during the course of hearing, it was found that the respondents of W.P.(Cr.)No.132 of 2016 were not noticed and therefore, the notices were issued to the respondents and the present petition & W.P.(Cr.)No.132 of 2016 were de-linked and heard separately. During the course of hearing, the petitioner made an application for supply of copy of enquiry report which was also objected by the State. On 01-09-2017, it was submitted before the Court that when hearing has begun in the matter and report is also submitted before the Court along with the pleadings, documents on record and statement of the parties. It may be considered and examined by the Court. Accordingly, application for supply of report was disposed off.

7. From the return of the respondents, it is revealed that after the order was passed by this Court on 18-04-2013 that appropriate steps to be taken to provide security to the petitioner, on proper verification, if it is found necessary, security assessment was made by the Officers of the respondents and though, it was not found to be a case of providing security at the cost of the State, the petitioner was offered security under the provisions of Para 495 of the Police Regulations. In the affidavit of Shri T. J. Longkumer, Additional Inspector General of Police, Surguja Range, District Surguja filed in compliance of order dated 27-08-2013 of this Court, it has been stated that on 27-04-2013, Inspector General of Police, Surguja directed the Superintendent of Police, District Balrampur to assess security threat of the petitioner and take necessary action. The Superintendent of Police, Balrampur submitted a report on 04-05-2013

stating that there is no requirement of permanent Security Guard to the petitioner and security shall be provided as and when needed. Another letter dated 06-05-2013 was addressed by the Inspector General of Police, Surguja Range to the Director General of Police, Chhattisgarh for carrying out security assessment of the petitioner by way of Special Branch Police Headquarters, in response to which, Assistant Inspector General of Police, Special Branch, Police Headquarter, Raipur, vide letter dated 20-05-2013 directed Superintendent of Police, Balrampur to submit report with regard to the security threat of the petitioner, after verification. In compliance thereof, the Superintendent of Police, District Surguja, on the basis of report dated 09-05-2013 of Station House Officer, Police Station, Ambikapur sent an assessment report on 21-05-2013 to the Police Headquarter stating that there is no specific threat to the petitioner and there is no requirement for permanent security guard and further that adequate security shall be provided as and when required. Another assessment report was also sent on 22-05-2013 by the Superintendent of Police, District Balarampur. Instructions were thereafter issued by the Police Headquarter on 24-05-2013 that the petitioner may be provided security under the provisions of Clause 495 of the Police Regulations. Thereafter, vide letter dated 28-05-2013, communication was made by the Inspector General of Police, Surguja to the Superintendent of Police, Surguja and Balrampur for providing proper security to the petitioner. A letter was given to the petitioner on 08-06-2013 for giving his consent for providing security under Clause 495 of the Police Regulations.

8. It is not in dispute that the petitioner was providing security on 14-09-2013 which continued till 16-02-2016. This security was however withdrawn, but in

May, 2016, the security was again restored to the petitioner. During the period, i.e. from the date security was withdrawn and till the date security was restored, there is no specific material on record led by the petitioner to show that any attempt or assault was made by any one or even any threat was administered to him. It is a matter of record that the petitioner was later on arrested when a criminal case was registered against him on complaints made against him of he being involved in criminal activity, which is subject matter of criminal case pending against the petitioner. In fact, the petitioner has filed another writ petition W.P.(Cr.)No.132/2016 for quashing criminal case instituted against him in connection with which he has been arrested. It is not in dispute that on the date, the petitioner was arrested, he was having security guard provided to him. Till the date, the petitioner was arrested, he was under security, therefore, on the security aspect, no further directions are required to be issued at this stage.

9. The petitioner has come out with a case that he was engaged as undercop by the Police Department which fact has been denied emphatically in the return by stating that there is no appointment of the petitioner as undercop or any Police Officer in any capacity. However, the respondents have admitted that the petitioner's services were taken by the Police Machinery as Informer/Guide in combating naxalite activity in the area. During the course of arguments also, this fact was not disputed but it was emphasized that the petitioner is not under any appointment in the Police Department and his capacity is only as Informer to the Police. The petitioner could not place on record any order in writing except certificates, which also indicate that the petitioner had worked as Informer and Guide to the Police in combating naxalite activity in the area. Therefore, the averments and documents which have been

placed on record by the petitioner can be accepted only to the extent that the petitioner has acted as Informer and Guide.

10. The petitioner has made an allegation against the Police Officer Brijesh Tiwari, who was at the relevant point of time, working and posted in Anti-naxalite operation in Surguja Area. The petitioner has placed on record certain complaints against the said Brijesh Tiwari. Those complaints make an allegation that Brijesh Tiwari conspired to murder the petitioner as the petitioner had come to know about the connection of Brijesh Tiwari with naxalite Rahul Tiwari. In the petition, an allegation has been made that Rahul Tiwari was relative of the petitioner. However, in the return, it has been stated and death certificate has been filed to submit that the said Rahul Tiwari is not found to be relative of Brijesh Tiwari, Platoon Commander and no evidence in this regard was found. Except making allegations, the petitioner has not come out with any material to show that the said Rahul Tiwari is related to Mr. Brijesh Tiwari. The respondents have placed on record the death certificate of Rahul Tiwari which shows that he died on 22-08-2007. This fact could not be rebutted by the petitioner by any cogent material. Moreover, from the return of the respondents, it is revealed that the complaint of the petitioner was enquired into by the Officer of the rank of the Additional Superintendent of Police, Surguja as well as Additional Superintendent of Police, Balrampur and enquiry report has been filed collectively as Annexure R/4, which does not support the petitioner's allegations. Mr. Brijesh Tiwari has been stated to be an Officer of exemplary service with track record of valuable participation against naxalite movements, for which, he has been awarded out of turn promotion on three occasions. He has also been awarded appreciation and cash award by the Director General of Police,

Inspector General of Police, Additional Inspector General of Police and the Chief Secretary of the State. Further, it is stated that on 06-02-2006, Mr. Brijesh Tiwari was awarded appreciation by the Governor of Chhattisgarh and also gallantry award by the President of India on 28-06-2006. To support this averments, certificates of appreciation/award have been collectively filed by the respondents as Annexure R/2. Therefore, upon consideration/evaluation of the material placed by the petitioner and the respondents, the allegations of the petitioner having been enquired by the responsible Senior Police Officer and the track record of Shri Brijesh Tiwari, the petitioner's allegations are found to be without any material to direct any further enquiry into the allegations.

11. The petitioner has also involved one Yagyavalkya Mishra, who is alleged to have threatened the petitioner. In this petition, the petitioner has made various applications. The respondents in their return have come out with the averment that in the police records, there is no evidence to show that Mr. Yagyavalkya Mishra is a naxalite, though he is a person of criminal antecedents and certain criminal case has been registered against him. It has been further stated that after registration of criminal case, against Yagyavalkya Mishra and other accused, charge sheet has also been filed and directions were issued for his arrest on due permission of higher authorities. It is also a matter of record that in some cases, Yagyavalkya Mishra have been acquitted. At the time of filing return, it was stated that crime in Crime No.73/2013 was registered against Yagyavalkya Mishra and the matter was under investigation. Arms licence granted in favour of Yagyavalkya Mishra was cancelled by the District Magistrate on 17-06-2013. Therefore, it cannot be said that on the petitioner's complaint, no action was taken against Yagyavalkya Mishra. If the petitioner is

aggrieved by his acquittal on complaints made by the petitioner, remedy of the petitioner lies in taking remedy against the order of acquittal.

12. In relation to the allegation of threat held out by the so-called naxalite Commander Bada Vikas alias Baleshar, who is alleged to have given threat of life to the petitioner, crime in Crime No.119/2016 was also registered by the Police and after investigation, the allegations were not found proved leading to closure of the case and submission of Closure Report before the Court of Competent Jurisdiction.

13. The respondents have also come out with specific averment in para 16 of the return that on 11-03-2012, Crime No.136/2012 has been registered against Dhiraj Jaiswal at Police Station Ambikapur for alleged commission of offence under Section 294, 506 of IPC and upon due investigation, charge sheet has also been filed before the Chief Judicial Magistrate, Ambikapur. The allegation that the Dhiraj Jaiswal and Brijesh Tiwari, Platoon Commander were working as group of criminals is not supported with any material evidence on record.

14. Though, in the petition, the petitioner has made an allegation that a Senior IPS Officer is in association with naxalites, harassing the petitioner, but the petitioner has chosen not to disclose the name either in the petition or in any other enquiry.

15. It would be pertinent to mention here that on 10-09-2013, this Court directed the Secretary, Department of Home(Police) to hold an enquiry with the assistance of an Officer, not below the rank of Director General of Police/ Additional Director General of Police/Inspector General of Police into the

allegations made by the petitioner in this petition against various police officials and other persons. A detailed report with regard to enquiry conducted by the Inspector General of Police, Crime Investigation Department, Police Headquarter, Raipur was submitted before this Court in a sealed cover, which runs in 41 pages. It shows that the petitioner was allowed to participate in the enquiry and granted opportunity to produce all the material which was available with him to support various allegations. The petitioner produced certain affidavits/photographs/C.D. And many other documents. The statement of one Yagyavalkya Mishra, against whom, certain allegations were made, was recorded. Statement of Brijesh Tiwari was also recorded. The statement of Shri S.R.P. Kaloori, Inspector General of Police at Police Headquarter, Raipur, who was posted as Superintendent of Police between the period 21-07-2004 to 01-05-2008, was also recorded. In para 6 of the report, it has been stated that the report was also called from the then Superintendent of Police, Balrampur and the same was also obtained. The allegation against Brijesh Tiwari, the then Platoon Commander that he was planning to murder the petitioner, has also been found to be without any basis. No material was found to show that he was related to Ravi Tiwari, so-called naxalite Commander nor said Ravi Tiwari was found to be relative of Brijesh Tiwari. The report further submits that though, the petitioner submitted 17 affidavits but none of the deponents presented during enquiry to record statement. The statements of the petitioner, his wife, mother and relative were recorded. Moreover, the report states that the C.D./photographs, boarding pass and Mess bill produced before the Enquiry Officer do not support the petitioner's allegations. The allegations of the petitioner have not found to be substantiated. Moreover, the petitioner has not come out with any specific plea much less concrete material warranting any

further enquiry into the matter.

16. Number of authorities have been cited by learned counsel for the parties. However, considering that under the orders of this Court, the petitioner was already provided security and that a committee of High Power Enquiry was made on the allegations of the petitioner in respect of the allegations made against various persons, no concrete material has come to direct further enquiry by any other High Power Investigating Agency in any other law, this petition is finally disposed off.

17. The enquiry report and all connected material submitted before this Court by the respondents shall form part of the record of the present case and shall be attached along with the records, duly sealed under the authority of Registrar (Judicial) of this Court.

SD/-
(**Manindra Mohan Shrivastava**)
Judge