

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.87 of 2015

Rakesh Singh Bais, S/o Shri Late D.S. Bais, aged about 48 years,
R/o B-37 Century Colony, Pandit DeenDayal Upadhyai Nagar
Raipur District Raipur (CG)

--- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Home Department, Mantralaya, Raipur, District Raipur (CG)
2. Director General of Police, Police Headquarter at Raipur, District Raipur (CG)
3. Superintendent of Police, Raipur, District Raipur (CG)
4. Station House Officer, Police Station Pandit Deendayal Upadhyai Nagar Thana Raipur, District Raipur (CG)

--- Respondents

For Petitioner:	Mr.Sakti Raj Sinha, Advocate
For Respondents:	Mr.Priyank Rathi, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/04/2019

1. The petitioner seeks deletion of his name placed in criminal / Gunda list prepared by Police Station-D.D.Nagar, Raipur stating inter-alia that in 9 criminal cases registered against him, he has already been acquitted and he is not covered by Regulation 855 of the Chhattisgarh Police Regulations (hereinafter called as "the Police Regulations").
2. The respondents/State filed their return stating inter-alia that 11 criminal cases have been registered against the petitioner though in some of them he has been acquitted by giving the benefit of doubt, yet looking to his criminal antecedents, his name has been placed in Gunda list prepared by respondent No.4, which calls for no

interference.

3. Mr.Sakti Raj Sinha, learned counsel for the petitioner, would submit that respondent No.4 is absolutely unjustified in placing the name of the petitioner in Gunda list merely on the ground that certain criminal cases were registered against him though in most of them he has already been acquitted and surveillance is also confined to the limited class of citizens who are determined to lead a criminal life or whose antecedents would reasonably lead to the conclusion that they will lead such a life, as such, name of the petitioner be directed to be deleted from said list and the petition be allowed with cost(s).
4. Mr.Priyank Rathi, learned counsel for the respondents/State, would submit that the petitioner has criminal antecedents and he has been charge-sheeted in 11 criminal cases though in some of them he has been acquitted by giving the benefit of doubt and he is determining to lead a criminal life, therefore, respondent No.4 finding it reasonable danger and his criminal antecedents would lead to the conclusion that he will lead such a life, and therefore, his name has rightly been placed in Gunda list.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. It is not in dispute that the petitioner's name has been placed in the list of criminal/Gunda list prepared by respondent No.4. Section III provides for Surveillance. Regulation 855 of the Police Regulations provides as under:-

“855. Surveillance-persons fit for.” Surveillance proper, as distinct from general supervision, should be restricted to those persons, whether previously convicted or not, against whom reasonable material exists to induce the opinion that they show a determination to lead a life of crime, being confined to such criminal activities as involve public peace and security and are dangerous security risk. Mere convictions in criminal cases where nothing gravely imperils safety of society shall not warrant surveillance under this regulation. When the entries in a history sheet or any other information at his disposal, lead the Superintendent of police to believe that a particular individual is leading a life of crime, as aforesaid, he may order that his name be entered in the Surveillance Register. The Circle Inspector will thereupon open a history sheet, if one is not already in existence and the man will be placed under regular surveillance.”

Regulation 855 of the Police Regulations empowers the surveillance only on the person against whom reasonable material exists to induce the opinion that they show a determination to lead a life of crime, being confined to such criminal activities as involve public peace and security and are dangerous security risk. Mere convictions in criminal cases where nothing gravely imperils safety of society shall not warrant surveillance under this regulation. When the entries in a history sheet or any other information at his disposal, lead the Superintendent of police to believe that a particular individual is leading a life of crime, as aforesaid, he may order that his name be entered in the Surveillance Register. The Circle Inspector will thereupon open a history sheet, if one is not already in existence and the man will be placed under regular surveillance.

7. The Supreme Court in the matter of **Govind v. State of Madhya Pradesh and another**¹ considered the validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulation and held that the

¹ AIR 1975 SC 1378

provisions have statutory force, but further observed that regulations verging perilously near unconstitutionality and held that surveillance is also confined to the limited class of citizens who are determined to lead a criminal life or whose antecedents would reasonably lead to the conclusion that they will lead such a life. It was observed as under:-

“33. When there are two interpretations, one wide and unconstitutional, the other narrower but within Constitutional bounds, this Court will read down the overflowing expressions to make them valid. So read, the two regulations are more restricted than counsel for the petitioner sought to impress upon us. Regulation 855, in our view, empowers surveillance only of persons against whom reasonable materials exist to induce the opinion that they show a determination, to lead a life of crime-crime in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils safety of society cannot be regarded as warranting surveillance under this Regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow-up at the end of a conviction or release from prison or at the whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality.”

8. In the matter of Prem Chand v. Union of India and others² the Supreme Court has held that there must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence.
9. Following the principles of law laid down by the Supreme Court in Govind (supra), the Division Bench of Madhya Pradesh in Jorawar Singh v. State of M.P. & others³ has held that Regulation 855

² AIR 1981 SC 613

³ 1985 JLJ 556

empowers surveillance only on persons against whom reasonable material exists to induce the opinion of the authority concerned that such material shows a determination to lead the life of crime. Relying upon Govind (supra), the High Court of Madhya Pradesh further held that crime being confined to such a involve public peace or security only and if they are dangerous security risks.

10. The Madhya Pradesh High Court in Jorawar Singh (supra) held as under:-

“7. Supreme Court in the aforesaid judgment has observed that Regulations empowering surveillance are verging perilously near unconstitutionality. It is to be regretted that the advice given and the fond hope expressed by the Supreme Court almost a decade back in the case of Govind v. State of M.P. (supra) should have so far gone unheeded and the Police Regulations should remain as they were. This Court only hopes that at least now they shall be brought in consonance with the spirit of the Constitution before it is too late. In the circumstances, there shall be no order as to costs. The outstanding amount of the security deposit, after verification, be refunded to the petitioner.”

11. In the instant case, from the return filed on behalf of the respondents/State, it is quite vivid that merely because 9 criminal cases have been registered against the petitioner as shown in Annexure R/1 and out of which, in 7 criminal cases he has been acquitted clearly giving the benefit of doubt, but his name has been directed to be placed in Gunda list. Apart from this, there is no material on record to demonstrate that the petitioner has determined to lead the life of crime and there is serious danger to the public peace and tranquility if his name is not placed in Gunda list and he is not kept under surveillance invoking Regulation 855 of the Police Regulations. Even otherwise, no order of competent authority has been placed on record directed him to be placed in

Gunda list except it has been stated in affidavit that his name has been placed in Gunda list.

12. In view of above, respondents No.3 and 4 are directed to delete the name of the petitioner from Gunda list prepared by respondent No.4 forthwith.
13. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-