

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE P.D.AUDIKEVALU

W.P.No.21564 of 2018
and
WMP. Nos.25313 and 25314 of 2018

Dhanapal

... Petitioner

Vs

Deputy Superintendent of Police
the officer-in-charge of the Police Station,
Idol Wing- Criminal Investigation Department,
C48, Old Sidco Corporation Building,
Thiru Vi Ka Industrial Estate
Guindy, Chennai - 32.

... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in Na.Ka.No.05 Ka.Tu.Ka/C.T.Tha.P/South Zone/2018 dated 12.07.2018 on the file of the respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.M.Nalla Thambi
For Respondent : Mr.C.Iyyapparaj, APP

ORDER

Calling in question the legality and validity of the communication dated 12.07.2018 issued by the respondent, the petitioner has come up with this writ petition.

2.According to the petitioner, he was working in the HR&CE Department, without any remarks and reached the position upto Commissioner and now retired from service. While so, he was implicated as one of the accused in Crime No.1 of 2018 for the offences punishable under Sections 403, 409, 418, 420 r/w 120-B and 477-A IPC. Apprehending arrest, he moved an anticipatory petition in CrI.OP.(MD) No.9928 of 2018, which was allowed by this Court, vide order dated 21.06.2018, subject to the following conditions:

"(a)Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate, Kumbakonam and on his executing a bond for a sum of

Rs.10,000/- (Rupees Ten Thousand Only) with two sureties for a like sum to the satisfaction of the learned Magistrate concerned.

(b)....

(c)The petitioner shall stay in a place of his choice within the city limit of Kumbakonam for a period of sixty days from the date of surrender and execution of sureties. He shall appear before the respondent as and when summoned for enquiry.

(d)The petitioner shall be under surveillance of the police personnel personally chosen by Thiru A.G.Pon Manickavel, Inspector General of Police, Railways, i/c Idol Wing CID. The cost of providing such police personnel shall be borne by the petitioner.

(e)...."

Pursuant to the aforesaid order, the petitioner was under surveillance of the police personnel chosen by the Idol Wing CID. Thereafter, the respondent sent a communication dated 12.07.2018 to the petitioner, directing him to pay a sum of Rs.7,74,220/- representing the charges for deployment of police personnel for surveillance duty. Aggrieved over the same, the petitioner is before this Court with the present writ petition.

3.Upon notice, the respondent filed their reply affidavit, stating inter alia that they deployed one Sub Inspector and four Head Constables, which was the minimum required strength for the surveillance duty; since no separate Government Order or guidelines are available specifically for calculating the cost of surveillance duty, the amount payable by the petitioner was calculated based on the amount payable for guard duty charges as per G.O.Ms.No.249, Home (Pol.VIII) Department, dated 21.03.2017; and the payment of surveillance charges, by no stretch of imagination, can be construed as punishment before trial and it is nothing but compliance of conditions imposed by this Court, while granting anticipatory bail.

4.The learned counsel for the petitioner submitted that the charges determined in the impugned communication were based on G.O.Ms.No.249 Home (Pol.VIII) Department, dated 21.03.2017, which applies to provision of security by policy for bandobust duty for private mega events from the departments /Undertakings of Central and State Government, Banks etc., whereas, in the present case, the respondent deployed the police personnel for surveillance duty and the petitioner provided them food, beverages and accommodation; in such event, the charges demanded from the petitioner, that too, an exorbitant amount, is arbitrary and illegal. Hence, the learned counsel sought allowing of this writ petition by setting aside the impugned

communication issued by the respondent.

5.Reiterating the averments as were made in the reply affidavit filed by the respondent, the learned Additional Public Prosecutor appearing for the respondent submitted that when the petitioner has given an undertaking that he would abide by any of the conditions imposed by this Court, for considering his anticipatory bail petition favourably, he cannot be now heard to contend that the charges imposed on him for providing police personnel for surveillance duty, is arbitrary, illegal and onerous. He further submitted that based on the earlier Government Order, the communication impugned herein came to be issued to the petitioner and the same does not call for interference by this Court.

6.Heard both sides and perused the records.

7.It is not in dispute that the petitioner was granted anticipatory bail and he was under surveillance of the police personnel chosen by the Idol Wing CID for a period of 60 days, as per the order of this Court dated 21.06.2018 in CrI.OP(MD) No.9928 of 2018. What is put to question in this writ petition is the quantum of charges demanded from the petitioner for providing police personnel for surveillance duty.

8.According to the petitioner, when he has provided food, beverages and accommodation for such police personnel, it is not fair on the part of the respondent for imposing such a huge sum towards perks and allowances for the police personnel engaged in the surveillance duty and G.O.Ms.No.249 Home (Pol.VIII) Department, dated 21.03.2017 relied on by the respondent is not at all applicable to the present case. The stand so taken by the petitioner was totally denied by the learned Additional Public Prosecutor appearing for the respondent. According to him, when the petitioner agreed to abide by any conditions imposed by this Court at the time of hearing of his anticipatory bail petition, he cannot question the communication issued by the respondent, demanding payment of Rs.7,74,220/- from him for providing police personnel for surveillance duty in compliance with the order of this Court.

9.From a reading of the communication impugned herein, it is evident that the respondent arrived at the sum of Rs.7,74,220/- for payment to the police personnel deployed for surveillance duty, on the basis of G.O.Ms.No.249 Home (Pol.VIII) Department, dated 21.03.2017, a cursory glance at the contents of which would reveal that the aforesaid order provides for calculation of the charges for providing bandobust for private mega events from the Departments / Undertakings of Central and State Government, Banks etc.

10. Such being the case, this Court is of the view that the aforesaid Government Order cannot be cited as a precedent for determining the charges payable by the petitioner, as the purpose for which the police personnel deployed in the present case is entirely different from the purpose stated thereunder. It is nonetheless important to mention at this juncture that the petitioner provided accommodation, food and beverages to the police personnel deployed for surveillance duty. Hence, the impugned communication issued by the respondent is arbitrary, illegal and without any basis and the same is liable to be set aside.

11. However, it may not be out of place to state here that the petitioner, at the time of hearing of his anticipatory bail petition, has, in unequivocal terms, given an undertaking that he would abide by any condition imposed by this Court. As such, the undertaking so given by the petitioner cannot be slightly wished away. Therefore, this Court deems it appropriate to direct the petitioner to pay a reasonable sum towards costs.

12. Accordingly, this writ petition stands disposed of by setting aside the impugned communication dated 12.07.2018 issued by the respondent. However, the petitioner is directed to pay a sum of Rs.1,00,000/- towards costs to the Cyclone Gaja, Chief Minister's Public Relief Fund, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. Deputy Superintendent of Police
the officer-in-charge of the Police Station,
Idol Wing- Criminal Investigation Department,
C48, Old Sidco Corporation Building,
Thiru Vi Ka Industrial Estate
Guindy, Chennai - 32.

+1cc to the Public Prosecutor, S.R.No.7085

W.P.No.21564 of 2018

KAN(CO)
GSP(30/01/2019)