

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.AUDIKESAVALU

W.P.No.27588 of 2018

Muthaiya Sthapathi

... Petitioner

Vs

1.The State
rep.by its Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Deputy Inspector of Police,
Idol Wing (South)
Tiruchirappalli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent dated 14.07.2018 in his proceedings 03/KTK/CTP/South/2018 and quash the same and consequently direct the second respondent to refund to petitioner a sum of Rs.7,45,250/- (Rupees Seven Lakh Forty Five Thousand Two Hundred and Fifty Only).

For Petitioner : Mr.PL.Narayanan
For Respondents : Mr.C.Iyyapparaj, APP

ORDER

Through the medium of the present writ petition, the petitioner is calling in question the legality and validity of the communication dated 14.07.2018 issued by the second respondent, whereby, he was directed to pay a sum of Rs.7,54,250/- towards charges payable to the police personnel for surveillance duty. The petitioner is also seeking a consequential direction to refund the said sum to him.

2.The brief facts of the case are that the petitioner was arrested and remanded to judicial custody on 26.03.2018 in

connection with a case in Crime No.1 of 2018 for the offences punishable under Sections 403, 409, 120-B, 418, 420 and 477-A IPC by the second respondent. Subsequently, he moved a bail petition in Crl.OP.(MD) No.6778 of 2018, which was allowed along with another petition in Crl.OP (MD) No.6779 of 2018, by this Court, vide order dated 26.04.2018, subject to certain conditions, Clauses (i) and (ii) of which read as follows:

"(i)The petitioner in Crl.OP (MD) No.6778 of 2018 (first accused) shall reside only at Chennai and shall not move out of Chennai for a period of 90 days. The petitioner in Crl.OP(MD)No.6779 of 2018 (second accused) shall reside at Coimbatore and shall not leave the City limits of Coimbatore for a period of 90 days.

(ii)Both 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 by the petitioners."

Pursuant to the aforesaid order, the petitioner was enlarged on bail and he was under surveillance of the police personnel chosen by the Idol Wing CID. Thereafter, the second respondent sent a communication dated 14.07.2018 to the petitioner, directing him to pay a sum of Rs.7,54,250/- representing the charges for deployment of police personnel for surveillance duty. On receipt of the same, the petitioner has paid the said sum to the respondents. However, he has filed the present writ petition for the aforesaid reliefs.

3.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 police for bandobust duty for private mega events from the departments /Undertakings of Central and State Government, Banks etc., whereas, in the present case, the second 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.

4.On the contrary, the learned Additional Public Prosecutor appearing for the respondents 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 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.

5. Heard both sides and perused the records.

6. It is not in dispute that the petitioner was released on bail and he was under surveillance of the police personnel chosen by the Idol Wing CID for a period of 90 days, as per the order of this Court dated 26.04.2018 in Crl.OP(MD)No.6778 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.

7. 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 second 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 second 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 respondents. According to him, when the petitioner agreed to abide by any conditions imposed by this Court at the time of hearing of his bail petition, he cannot question the communication issued by the second respondent, demanding payment of Rs.7,54,250/- from him for providing police personnel for surveillance duty in compliance with the order of this Court.

8. From a reading of the communication impugned herein, it is evident that the second respondent arrived at the sum of Rs.7,54,250/- 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.

9. 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 second respondent is arbitrary, illegal and without any basis and the same is liable

to be set aside.

10.However, it may not be out of place to state here that the petitioner, at the time of hearing of his 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.

11.Accordingly, this writ petition stands disposed of, in the following terms:

(i)The impugned communication dated 14.07.2018 issued by the second respondent is set aside.

(ii)Since the petitioner has already paid the demanded sum of Rs.7,54,250/-, the respondents are directed to refund a sum of Rs.6,54,250/- to the petitioner, after retaining 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.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Deputy Inspector of Police,
Idol Wing (South)
Tiruchirappalli.

+1cc to Public Prosecutor, S.R.No. 7084

W.P.No.27588 of 2018

SSV(CO)
GN(19/02/2019)