



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) No.11773 of 2019

Raja @ Arumuga Pandian @Rocket Raja
@Vivekanandana Rocket Raja

: Petitioner

Versus

1.The Commissioner of Police
Tirunelveli City
Tirunelveli

2.The Assistant Commissioner of Police
Law and Order, Palayamkottai
Tirunelveli

3.The Inspector of Police
Tirunelveli Medical College Hospital Police Station
Tirunelveli : Respondents

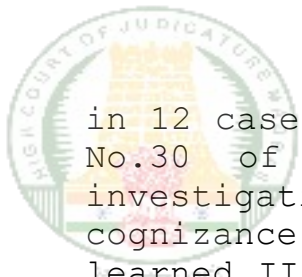
Prayer: Petition is filed under Section 482 of the Criminal Procedure Code for a direction, directing the respondents to provide adequate police protection to the petitioner at the time of his appearance before the District Court Campus at Tirunelveli.

For Petitioner : Mr.Niranjan S.Kumar
For Respondent No.1 :Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This petition has been filed for a direction, directing the respondents to provide adequate police protection to the petitioner at the time of his appearance before the District Court Campus at Tirunelveli.

2. The learned counsel for the petitioner submitted that the petitioner facing serious life threat from the rival gangs and seriousness of life threat was affirmed by the 2nd respondent herein by way of a written report submitted by him. He further submitted that the petitioner has been implicated falsely in various cases from the year 1993 by the respective Police Station of Tirunelveli and Thoothukudi District. In fact, he got acquittal



in 12 cases so far. He has been now implicated as accused in Crime No.30 of 2018, in which, the 3rd respondent completed the investigation and filed final report and the same has been taken cognizance in S.C.No.68 of 2018 and it is pending before the learned II Additional District and Sessions Judge, Tirunelveli. In the said crime number, this Court granted bail to the petitioner in Crl.A.(MD).No.320 of 2018, dated 03.08.2018 with the following conditions:

"11. In the above circumstances, the investigation is already over and the case already taken on file. The appellant is in custody for the past 80 days. The trial Court order is set aside and this criminal appeal is allowed and this Court is inclined to release the appellant on bail on following condition.

(i) The appellant shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two sureties, of whom, one should be a blood relative, each for alike sum to the satisfaction of the learned II Additional District and Sessions Judge, Tirunelveli District.

(ii) the sureties shall affix their photographs and left thumb impression in the surety bond and the learned II Additional District and Sessions Judge, Tirunelveli District may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity.

(iii) the appellant has to reside in Mumbai till the completion of the trial of the case in S.C.No.68 of 2018 and he has to appear before the Commissioner of Police, Mumbai and sign two times a day ie. At 10.00 a.m and 5.00 p.m until further orders.

(iv) the appellant should not enter the concerned District by name Tirunelveli until all the prosecution witnesses are thoroughly cross examined.

(v) the Trial has to be conducted on the representation of the appellant through his counsel. If the Court insists for the appellant's presence, the appellant has to obtain period permission from this Court.

(vi) the appellant shall not tamper with the evidence or the witness either during investigation or during the trial

(vii) the appellant shall not threaten or do any harm to the defacto complainant, his family members of the witnesses.

(viii) on breach of any of the aforesaid conditions, the learned Magistrate/trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions



have been imposed and the appellant released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji Vs.State of Kerala* 1 (2005) AIR SCW 5560.

3. Accordingly the petitioner has complied all the conditions imposed by this Court and subsequently filed a relaxation petition in Crl.M.P(MD).No.2488 of 2019, in which, this Court modified the condition to the effect that the petitioner was permitted to report before the Tharavi Police Station, Mumbai once in a week. Again the condition was modified in Crl.M.P(MD).No.4678 of 2019, in which, the petitioner was permitted to enter into Tirunelveli District. Thereafter, the petitioner appeared before the trial Court in S.C.No.68 of 2018. Since there are so many rival groups and also communal community against the petitioner, they tried to kill the petitioner on various occasion. Therefore, he has real apprehension of threat at the hands of all the rival groups and hence, he submitted the representation on 08.08.2019 for police protection. On receipt of the same, the respondent kept the same without taking any action.

4. The learned counsel for the petitioner in support of his contention relief upon the Judgment of the Hon'ble Division Bench of Bombay reported in **(2002) 102 BOMLR 390 in the case of Arun Gulab Gavli Vs.The State of Maharashtra and others**, wherein, the relevant portions have been held as follows:

"68. In view of the aforesaid conclusions, our answers to the three questions mentioned at the outset (in para 3) are as under:-

(i) The protection of life and personal liberty guaranteed under articles 21 of the Constitution does not include a right in favour of a person like the petitioner claim that the State must afford him armed police protection for 24 hours a day, everyday, that is to say, round the clock.

(ii) In the absence of any such right flowing from the mandate of article 21, as indicated in our answer to question (i) the State can, by an executive fiat, like the circular dt. 9th August 1990, as amended on 12th May, 1997 distinguish between law-abiding person on the one hand and a person having a criminal background on the other for the purpose of deciding whether armed police protection round the clock is to be granted or not.

(iii) Despite the above, however, if a person like the petitioner, makes out a specific case of a genuine and imminent threat to his life on a particular occasion or at a particular place, the State Government would not be justified in refusing to grant armed police



protection to him qua that particular occasion or place. This would, however, be subject to occasional review by the threat perception committee constituted by the State Government.

69. In this view of the matter, the Writ Petition filed by Arun Gavli for the reliefs claimed in the petition must be rejected. We have set out in para 4 the reliefs, in the blanket form, prayed by the petitioner. In the view that we have taken on the first two questions, the petitioner will not be entitled to any relief in terms of prayers (A) & (B) of the petition. However, we must add that in the event of the petitioner making out a specific case of a genuine and imminent threat to his life on a particular occasion or a particular place, the State Government would be obliged to grant him armed police protection qua that particular occasion or place".

5. He also cited the order of this Court reported **in (2013) 3 MLJ 486 in the case of K.Kalaivanan Vs. The Superintendent of Police, Thiruvarur District, Thiruvarur**, wherein paragraph 23 of the order reads as follows:

"23. But the same yardstick is not applied in this case. The submissions of the learned Special Government Pleader that are advanced meticulously in this case should have also been advanced in W.P.No.4476 of 2012. However, that was not done in the said case. Had it been opposed, I am of the view that this Court could have taken a different view in that case. Since the State came forward to provide police protection in W.P.No.4476 of 2012, this Court disposed the said writ petition giving police protection to V.K.Senthilkumar. But, in the present case on hand, the learned Special Government Pleader has expressed serious concern about criminalization of politics and opposed granting of police protection to the petitioner, but there is no answer from him for the silence of the State in W.P.No.4476 of 2012. Had there not been such an order dated 08.03.2012, in W.P.No.4476 of 2012 giving police protection to Mr.Senthil Kumar, who is leading another criminal gang, I have no hesitation to reject this Writ petition, in the light of the judgment of the Supreme Court (Cited supra) and the Bombay High Court referred to above. A person with a criminal background cannot have an advantage, because of his political power, over another person/gang. Hence, I am inclined to issue a similar direction, as in the case of V.K.Senthilkumar, in W.P.No.4476 of 2012 dated 08.03.2012".

6. Hence, he sought for police protection to the petitioner



even at the time of entering into Tirunelveli District and also while appearing before the District Court Campus at Tirunelveli District.

7. Per contra, the learned Government Advocate (Crl.Side) submitted that the petitioner is a history sheeted and notorious criminal and he has involved in 12 cases for the various offences including three murder cases. Finally, he was arrested in Crime No.30 of 2018 registered for the offences punishable under Sections 147, 148, 447, 294(b), 324, 302, 506(ii) and 120(B) I.P.C and Section 3 & 4(a) of Explosive Substances Act, 1908 and Section 3(1)(r), 3(1)(s) & 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989, in which, the 3rd respondent completed the investigation and filed the final report and the same has been taken cognizance in S.C.No.68 of 2018 on the file of the II Additional District and Sessions Judge, Tirunelveli. Further, he submitted that the petitioner has been provided with full police protection at the time of his attendance before the trial Court on every hearing without any deviation, as the same is bounden duty of the police.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State and the perused the materials available on record.

9. The petitioner sought for police protection at the time of his appearance before the District Court Campus at Tirunelveli District. The petitioner has involved in 12 cases, registered for various offences including 3 murder cases in Crime No.30 of 2018. He was arrested and released on condition that the petitioner should report before the Commissioner of Police, Mumbai and should not enter into the Tirunelveli District. Subsequently, both the conditions were modified and the petitioner was permitted to enter into the Tirunelveli District and he is also appearing before the trial Court on all hearings. The learned Government Advocate (Crl.Side) submitted that the petitioner has been provided with full police protection at the time of his attendance before the trial Court at Tirunelveli District. Further, it is also seen that the petitioner has been provided police protection for all hearing dates and it is the bounden duty of the police to provide adequate police protection to him while appearing before the Court below. The para cited above from the decision of the Hon'ble Division Bench of Bombay in **Arun Gulab Gavli Vs. The State of Maharashtra and others, (2002) 102 BOMLR 390**, would also show that

(i) The protection of life and personal liberty guaranteed under articles 21 of the Constitution does not include a right in favour of a person like the petitioner claim that the State must afford him armed police protection for 24 hours a day, everyday, that is to say, round the



(ii) In the absence of any such right flowing from the mandate of article 21, as indicated in our answer to question (i) the State can, by an executive fiat, like the circular dt. 9th August 1990, as amended on 12th May, 1997 distinguish between law-abiding person on the one hand and a person having a criminal background on the other for the purpose of deciding whether armed police protection round the clock is to be granted or not.

(iii) Despite the above, however, if a person like the petitioner, makes out a specific case of a genuine and imminent threat to his life on a particular occasion or at a particular place, the State Government would not be justified in refusing to grant armed police protection to him qua that particular occasion or place. This would, however, be subject to occasional review by the threat perception committee constituted by the State Government.

10. But, in the present case on hand, admittedly the petitioner is a notorious criminal and he has involved 12 cases. He was arrested and remanded to judicial custody in Crime No.30 of 2018 and thereafter, while granting bail to the petitioner, he was directed to stay at Bombay. Though the conditions are modified and the petitioner has been permitted to enter into Tirunelveli District, he has been provided adequate police protection while he is attending the trial Court. Therefore, the police protection cannot be granted to the person like a petitioner for 24 hours a day ie. round the clock or while he is entering into Tirunelveli District. The 2nd respondent police stated in the counter that they are providing adequate police protection to the petitioner at the time of his attendance before the trial Court on every hearing. Therefore, the prayer sought for by the petitioner was already considered and the respondent police are providing adequate police protection to the petitioner while attending the trial in Tirunelveli District. In view of the above, the respondent police shall ensure the safety of the petitioner while he is attending the trial proceedings before the learned II Additional District and Sessions Judge, Tirunelveli.

12. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The II Additional District and Sessions Judge
Tirunelveli District

2.The Commissioner of Police
Tirunelveli City
Tirunelveli

3.The Assistant Commissioner of Police
Law and Order, Palayamkottai
Tirunelveli

4.The Inspector of Police
Tirunelveli Medical College Hospital Police Station
Tirunelveli

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-85432[F] dated
05/09/2019)

Order made in
Crl.O.P. (MD) No.11773 of 2019
Dated: 05.09.2019

KM/ (24.09.2019) 7P 7C