

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No.451 of 2022

Tapas Kumar Acharya

....

Petitioner

*Mr. Jagabandhu Sahu, Sr. Advocate
along with Ms. Kajol Sahu*

-versus-

State of Odisha

....

Opp. Party

*Mr. D.K. Mishra, Addl. Govt. Advocate
Mr. P.C. Das, A.S.C.*

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing: 16.11.2022

Date of Orders: 07.12.2022

- 08.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The above noted CRLMP application has been filed by the petitioner invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India read with Articles 14, 19 and 21 thereof. By filing present writ petition, petitioner is seeking for a direction to Opposite Parties to provide police protection as he is apprehending danger to his life. Further, it is has been prayed by the petitioner for a direction to the Opposite Parties to review their order dated 25.08.2020 with regard to providing necessary police protection to the present petitioner.
 3. The factual background of the case, in a nutshell, is that the present petitioner is a practising lawyer. The brother of the petitioner, namely, one Tapan Kumar Acharya had earlier approached this Court by filing CRLMP No.1118 of 2014 alleging that the present

petitioner is getting threat calls from the accused persons, who are in jail custody. It is pertinent to mention here that the younger brother of the present petitioner, namely, Tarun Kumar Acharya has been murdered by some accused persons and accordingly, a police case was registered. After filing of the charge-sheet, the trial took place and in the said trial some of the accused persons have been convicted. Since the petitioner was getting threat calls from such accused persons, he was compelled to approach this Court for the safety of his life and for protection of his family. Accordingly, this Court by order dated 07.01.2015 passed in CRLMP No.1118 of 2014 protected the petitioner by directing him to approach the Superintendent of Police, Ganjam, Chhatrapur for providing police protection.

4. Pursuant to the order of this Court dated 07.01.2015, the petitioner was provided with a P.S.O. by the Superintendent of Police, Ganjam, Chhatrapur, after considering the threat perception. It has also been stated in the writ petition that the petitioner was looking after the trial of his younger brother's murder case that was taking place in the court of learned Additional District and Sessions Judge, Khallikote. In that connection, the petitioner was required to travel to Khallikote frequently. After conclusion of the trial, accused persons, namely, N. Ramesh @ N. Narayan Reddy, Suresh Chandra Sahu, Santosh Moharana, Lullu @ Sibaram Naik along with P. Shyamsunder Prusty were convicted for life by the Additional Sessions Judge, Khallikote vide judgment dated 27.06.2020.

5. Although the trial was concluded with the conviction of the accused persons in a split up trial, the prime accused, namely, Gudu @ Nrusingha Charan Panda has not been arrested and is absconding

till date. The IIC of Khallikote Police Station had submitted a report indicating the threat perception in respect of the petitioner. However, the Superintendent of Police, Ganjam by order dated 20.11.2019 had withdrawn the P.S.O. granted to the petitioner. However, the decision to withdraw the P.S.O. had not been intimated to the petitioner. When the petitioner enquired about such fact under the Right to Informant Act on 28.06.2020, he was given information regarding withdrawal of the P.S.O. From Memo No.22353 dated 25.08.2020 issued by the Superintendent of Police, CID CB, Odisha, Cuttack to the Superintendent of Police Ganjam containing information that after a review of the threat perception and after the review committee was satisfied that the security is no more required to the petitioner, the security which was attached to the petitioner has been withdrawn w.e.f. 20.11.2019.

6. Heard Mr. J. Sahoo, learned Senior Counsel appearing for the petitioner along with Ms. Kajol Sahu and Mr. D.K. Mishra, learned Addl. Government Advocate assisted by Mr. P.C. Das, learned Additional Standing Counsel. Perused the records.

7. It is submitted by Mr. J. Sahoo, learned Senior Counsel appearing for the petitioner that pursuant to the order passed by this Court, the threat perception towards the petitioner was considered and accordingly on the basis of a report of the IIC, Khallikote, Superintendent of Police, Ganjam provided security to the petitioner. However, it is alleged that the same was abruptly withdrawn without any proper information to the petitioner and without any proper assessment of the threat perception that exists. It is further argued that there are several conflicting reports on record basing upon which a whimsical decision has been taken by the authorities to withdraw

the security that was provided earlier to the petitioner.

8. It is further contended by Mr. Sahoo, learned Senior Counsel appearing for the petitioner that one of the prime accused, namely, Gudu @ Nrusingha Charan Panda is still absconding and the police is unable to apprehend the said accused. Moreover, some of the accused persons, who have been convicted, are at large either on parole or on interim bail. Therefore, it is submitted by learned Senior Counsel for the petitioner that the assessment of threat perception of the petitioner by the review committee is completely erroneous and the withdrawal of the P.S.O. and security is driven by mala fide motive on the part of the Ganjam Police. In such factual background, learned Senior Counsel for the petitioner submits that the assessment of threat perception is completely erroneous and the hasty decision to withdraw of the security / P.S.O. is without any justifiable reason.

9. Moreover, it is also contended by Mr. Sahoo, learned Senior Counsel for the petitioner that the conduct of the Ganjam police seriously infringes the fundamental right of the petitioner as has been guaranteed to him under the Constitution of India in the shape of Articles 19 and 21. He further contends that since the absconding accused persons are still at large, therefore, there exists a threat to the life of the petitioner. He further submits that in such scenario, State is duty bound to protect the life of every citizen including the petitioner. It is also contended by learned Senior Counsel for the petitioner that the duty of the State under the Constitution is not only to ensure rules of law prevails in the society, but also to ensure that the life and liberty of every citizen is protected. Since the threat perception that was existing earlier has not completely vanished or obliterated, it is incumbent upon Ganjam Police to have continued with the security

arrangement made earlier and accordingly, they should have provided police protection/security to the petitioner till all the accused persons are forwarded to the judicial custody.

10. It is further argued by learned counsel for the petitioner that since the petitioner is a lawyer by profession, he is required to move around in the State of Odisha, particularly, he is required to go to his native place i.e. Khallikote frequently in connection with his professional/legal work. The petitioner is also required to visit his native place as many of his relatives are staying at his native place. In such view of the matter, it is submitted by learned counsel for the petitioner that the petitioner is terribly afraid now and as such, unable to visit his native place. Therefore, the fundamental rights guaranteed to the petitioner under the Constitution of India are seriously affected. Finally, Mr. Sahoo learned senior counsel urges before this Court that the opposite parties be directed to implement the order dated 07.01.2015 passed by this Court in the earlier round of litigation and to provide protection to the petitioner by revoking order dated 25.08.2020.

11. Mr. D.K. Mishra, learned Addl. Government Advocate appearing for the State submits that no doubt, initially there was a threat to the life of the petitioner and accordingly, he was provided with police protection/security by providing him a P.S.O. He further contends that now several years have passed in the meantime and some of the accused persons have been convicted by the trial court in split up case. So far the absconding accused persons, namely, Gudu @ Nrusingha Charan Panda is concerned, it is submitted by Mr. Mishra that the whereabouts of such accused is not known and he is unheard of in the locality for last several years. He further submits

that above named absconding accused does not have any immovable property in the locality. Therefore, despite best efforts put in by the police team, they have not been able to apprehend the absconding accused.

12. Mr. Mishra, learned Addl. Government Advocate further contends that for each district in the State of Odisha, there exists a review committee of the police department. From time to time such committees on the basis of credible information and the materials available assess the threat perception and accordingly, provide security to the citizen whose life is in danger. So far the present petitioner is concerned, the threat perception was assessed pursuant to an order passed by this Court on 07.01.2015 in CRLMP No.1118 of 2014 and accordingly, he was provided with police security/P.S.O. Thereafter, the same was re-assessed and it was found that no complaint whatsoever has been lodged by the police regarding any threat received by the petitioner or any specific danger to the life of the petitioner. Accordingly, the situation was reviewed by the committee and it was decided to withdraw the security by order dated 25.06.2020 otherwise also Mr. Mishra submits that reports were received by the police that the petitioner is misutilizing the security/P.S.O. provided to him. Therefore, the review committee after considering the case of the petitioner decided to withdraw the security that was made available to the petitioner. Mr. Mishra, further contends that providing security separately and individually to a citizen is not only an expensive affair, but the cost of the same is to be borne out of public fund. Therefore, he submits that the police security/protection cannot be granted on the mere asking by any citizen without there being any threat or danger to the life of the

person concerned. Moreover, the police force has a larger public duty to maintain law and order situation in the society. Once the police personnel are withdrawn from the law and order duty and used for personal security of individual citizen then it would become difficulty on the part of the State to carry out its responsibility to maintain the law and order situation in the society.

13. In view of the aforesaid submission, Mr. Misrha, Addl. learned Government Advocate defends the decision of the Superintendent of Police, Ganjam, which was communicated by order dated 25.08.2020 whereunder the P.S.O. provided to the petitioner has been withdrawn.

14. With regard to assessment of the threat perception, this Court on the submission of the learned senior counsel for the petitioner, specifically directed the Superintendent of Police, Ganjam as well as Superintendent of Police, Berhampur to file comprehensive affidavit indicating their assessment of threat perception in respect of the present petitioner. On perusal of the affidavit dated 31.10.2022 filed by the Superintendent of Police, Ganjam, it is observed that N.B.W. has been issued against the absconding accused since 29.09.2014 thereafter Sections 82 and 83, Cr.P.C. procedure has been resorted to in respect of the absconding accused, however, since the absconding accused does not have immovable property, no action under Sections 82 and 83, Cr.P.C. has been taken against such accused. Further, it has been stated in the said affidavit that on enquiry from the local Ward Corporate, Ward Member, and the neighbours of the absconding accused persons, it was ascertained that the absconding accused has not been seen in the locality for the last more than eight years. Even the said absconding accused had not attended the funeral right of his beloved mother Sanjukta Panda held on 06.10.2019. Only

married sister of the absconding accused is staying at the parental house of Pratap Nagar, 2nd Lane, Berhampur Town, Berhampur with her two minor children. On enquiry, they have also disclosed that the accused has not contacted them for last eight years. It has also been stated in the said affidavit that no complain has been received in any police station of Ganjam district against the absconding accused in any form whatsoever. Further, it has been stated that pursuant to the interim order passed by this Court on 20.08.2021, the petitioner has been informed to give prior intimation before his visit to Ganjam to assess the threat perception well in advance and to take further necessary action. It has also been stated that while all the accused persons are at large, some of them are still in custody. However, no final opinion has been given in the affidavit filed by the Superintendent of Police, Ganjam with regard to the threat perception of the petitioner.

15. Similarly, the Superintendent of Police, Berhampur has also filed an affidavit on 01.11.2022 and in the said affidavit, it has been stated by the Superintendent of Police, Berhampur that the IIC, B.N. Pur Police Station has been directed to keep a vigil on the convicts, namely, Shyamsunder Prusty and Santosh Moharana, who are at large on parole. Further, it has been stated that by the Superintendent of Police, Berhampur in his affidavit stating therein that on his enquiry, he has ascertained that no such N.B.W. against the absconding accused is available in any of the police station under his jurisdiction. However, in paragraph-5 of the affidavit, it has been categorically stated by the Superintendent of Police, Berhampur that the threat perception against the petitioner might not be ruled out. While saying so, he has also stated that during the last eight years no

untoward incident has taken place involving the present petitioner inside the Berhampur police district and that the petitioner has not lodged any complaint whatsoever against any of the accused persons during last eight years.

16. On careful scrutiny of the affidavits filed by the Superintendent of Police, Ganjam as well as Superintendent of Police, Berhampur, this Court is of the considered view that both the affidavits are not consistent with each other the Superintendent of Police, Ganjam has not indicated anything about the threat perception of the petitioner, whereas the Superintendent of Police, Berhampur has in clear terms expresses that the same cannot be ruled out. Moreover, one of the accused is still absconding and some of them are at large either on parole or on interim bail granted by the appellate court. In contest, the petitioner although has been enjoining police protection, State has not reported any untoward incident since last eight years. Further with the passage of time, the threat perception has reduced gradually and some of the accused persons have already been convicted in the split up trial and the only absconding accused persons unheard of in the locality since last eight years. Further taking into consideration, the amount of money i.e. being stand from the public fund, this Court is required to maintain balance between the interest of the State as well as the interest of the citizen.

17. Considering the submissions made by the respective parties and the aforesaid analysis of facts and the materials placed before this Court as well as upon careful consideration of the affidavits filed by the Superintendent of Police, Ganjam as well Superintendent of Police, Berhampur and keeping in mind the public interest, this Court

hereby set asides the order dated 25.08.2020 and deems it proper to pass necessary order with the following terms and conditions :-

- I. The security to be provided to the petitioner shall be confined to the Ganjam police district including Berhampur police district;
- II. The petitioner shall go with prior intimation to the police during his visit to the concerned Superintendent of Police as well as Police Station under which the areas he desires to visit is situated;
- III. The petitioner shall try to confine his visit to the district of Ganjam including Berhampur once in a month;
- IV. On each visit of the petitioner to the district upon prior intimation as directed hereinabove, the Superintendent of Police of the concerned police district shall provide proper security to the petitioner at least for a day thereafter for the extended stay in the district, if the petitioner still wants to take the help of the security, then he has to bear the expenses as would be applicable under law and deposit the same with the authority concerned;
- V. The petitioner shall at no point of time misutilize the security provided to him and any report of misuse shall automatically entail withdrawal; and
- VI. The arrangement shall continue and shall be subject to review by the review committee consisting of the Superintendent of Police of the concerned district at least once in every quarter of the year. Pursuant to the review, it is open for the Superintendent of Police of the concerned police district to pass any lawful order in that regard.

18. With the aforesaid observation/direction, the CRLMP stands disposed of with liberty to both the sides to seek all variations/modification of order at any given point of time if necessity so arises.

(A.K. Mohapatra)
Judge

Jagabandhu

