



WP.No1582/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 22.07.2024

Delivered on 02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

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N.T.Stalin Barathi

... Petitioner

Vs.

1.The District Collector
O/o.District Collector
Thiruvarur.

2.The District Superintendent of Police,
O/o.District Superintendent of Police
Thiruvarur District, Thiruvarur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus to call for the records on the file of the 2nd respondent made in Ref.Na.Ka.No.668/கா.க/முகாம்/திரு/2023 dated 21.11.2023 and quash the



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same and consequently issue suitable orders to provide Personal Security Officer [PSO] to the petitioner at the cost of State Government.

For Petitioner : Mr.R.Sankarasubbu
For R1 : Mr.M.R.Gokul Krishnan,AGP
For R2 : Mr.R.Muniyapparaj,APP
assisted by Mr.M.Sylvester John

ORDER

S.S.SUNDAR & N.SENTHILKUMAR, JJ.,

- (1) This writ petition is filed seeking for issuance of a writ of certiorarified mandamus to quash the impugned order passed by the 2nd respondent dated 21.11.2023 and to give suitable directions to the respondents to provide Personal Security Officer to the petitioner at the cost of the State.
- (2) The petitioner states that he is an Advocate and a council member of Communist Party of India at Needamangalam Taluk. The petitioner is married and gifted with two children. The petitioner also admits that his mother is a Panchayat Union Counsellor. It is the case of the petitioner that his father by name Thiru.Natesa Thamizarvan, was a member of



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Executive Committee and the Union Party Secretariat of CPI party. It is the case of the petitioner that his father was murdered on 10.11.2021 by a notorious rowdy by name Boovanur Rajkumar and his associates. It is his further case that he was also attacked at the inducement of the said Rajkumar and he narrowly escaped from the attempt. In view of the threat after the death of petitioner's father, the petitioner states that the District police provided police protection at the cost of State till March 2023. Subsequently, the said Rajkumar who was suspected as an accused in the murder of petitioner's father, was also murdered and the petitioner was also arrayed as an accused and arrested in the said murder case. Following this Personal Security Officer was withdrawn. Though the petitioner was detained under the Tamil Nadu Act 14 of 1982, the order was later quashed/cancelled by this Court vide order dated 08.09.2023 in HCP.No.721/2023.

(3)The petitioner states that some persons who have prior enmity with the petitioner are targeting him. The petitioner, alleging that he faces imminent threat, submitted a representation to the 2nd respondent for police protection. The request of the petitioner was turned down by the



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2nd respondent by the impugned order dated 21.11.2023. Hence, the petitioner has filed the present writ petition with the aforesaid prayer.

(4) The fact that the petitioner was given personal security officer earlier at his request, is acknowledged in the impugned order of the 2nd respondent. Since petitioner was involved in the murder of a person by name Rajkumar, the 2nd respondent considering the fact that several criminal cases have been registered against the petitioner and the petitioner is a history sheeter as per the records maintained by Needamangalam Police Station from the year 2020, the request of the petitioner was rejected by the 2nd respondent by assigning valid reasons.

(5) In the course of arguments, the learned counsel for the petitioner highlighted the following aspects:

- (a) The petitioner is facing imminent threat from his potential enemies.
- (b) The petitioner was provided with a Personal Security Officer after the death of his father and for no valid reasons, the Personal Security Officer was withdrawn.



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(c) A complaint has been lodged when the petitioner was attacked after the death of petitioner's father and the 2nd respondent failed to consider a few aspects which are relevant and germane to the request of the petitioner.

(d) Mere pendency of criminal cases involving the petitioner is not a valid reason to reject the request when potential threat to life and property of the petitioner is not disputed.

(6) A counter affidavit is filed on behalf of the 2nd respondent. It is pointed out in the counter affidavit that 22 criminal cases have been registered against the petitioner for various offences. Even though in one case, the complaint was closed and at least in 9 cases, further action was dropped, it is seen that several cases are pending. Except in two cases where the petitioner was acquitted, the offences referred to in pending cases are serious in nature and the contention that several cases were registered because the petitioner was a political activist, cannot be accepted.

(7) The petitioner is an accused in a murder case. In few other cases, the charges against the petitioner are serious. The fact that the petitioner has been registered as a history sheeter, is not in dispute. The Deputy



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Superintendent of Police in the counter affidavit stated that the petitioner stage managed an incident as if he was attacked by a petrol bomb only for the purpose of getting Personal Security Officer and that the petitioner has criminal antecedents and facing trial in at least 10 criminal cases, for serious offences. He is a history sheeter and hence, cannot seek Personal Security Officer's cover. It is further stated that the petitioner is a habitual offender and hence, he was detained under Goondas Act. It is stated in the counter affidavit that when the petitioner was under the protection of Personal Security Officer, involved in the murder of Boovanur Rajkumar and the order providing Personal Security Officer to the petitioner was revoked

(8)Learned Additional Public Prosecutor submitted that the investigation in Koradachery Police Station Crime No.81/2023 for the murder of Boovanur Rajkumar shows the active participation of the petitioner in the heinous crime and therefore, no protective cover of a Personal Security Officer can be provided to a history sheeter and rowdy element at the cost of State.



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- (9) The learned counsel for the petitioner submitted that the petitioner is entitled to personal protection when the threat perception is real and he is unable to take care of his family. The learned counsel then relied upon the order of this Court dated **05.07.2007** made in ***Crl.OP.No.17933/2007 [D.Sivasankaran Vs. State of Tamil Nadu rep.by its Secretary, Home Department, Chennai and Others]***. The prayer in the Criminal Original Petition was to direct the Joint Director of CBI to take over the investigation of the case in few crime numbers which are pending before the Inspector of Police at Valangaiman Police Station, Tiruvarur so as to conduct a fair and impartial investigation. However, taking note of certain incidents which shows serious threat to the life and property of the petitioner, a Learned Single Judge of this Court while transferring the case for further investigation by CBCID, directed the Director General of Police to give suitable instructions to other police officials to give adequate police protection to the petitioner therein at Chennai.
- (10) The order relied upon by the petitioner is distinguishable on facts. Even though that was also a case where the petitioner therein was an accused in a case of murder, there were several circumstances and incidents that led



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to the transfer of investigation to CBCID. It is to be noted that the petitioner therein was given interim protection even during pendency of the said Criminal Original Petition and taking note of the circumstances pointed out at the time of grant of interim relief to the petitioner therein, this Court directed such protection to the petitioner therein.

(11) However, the learned Additional Public Prosecutor relied on the order of a learned Single Judge of this Court dated **01.04.2024** made in ***WP.No.5163/2024 K.Venkatesh Vs. The Principal Secretary to Government, Home Department, Secretariat, Chennai and Others***], wherein on the objection raised by the police for grant of police protection to the petitioner therein, the learned Single Judge has held as follows:-

"26.In the considered view of this Court wherever the person seeking for police protection has a criminal background and such a threat perception is as a result of his own activities, this Court should be very hesitant to grant police protection."

(12) The issue was considered by a Division Bench of Bombay High Court in the case of ***Arun Gulab Gavli Vs. The State of Maharashtra and***



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Others [1999 SCC Online Bom 635]. The petitioners who sought for police protection from the State contended that protection of life and personal liberty guaranteed by Article 21 of the Constitution includes a right in favour of a person like the petitioner, to claim that the State must afford him armed police protection for 24 hours a day ; everyday i.e., round the clock. Relevant portion of the judgment is extracted hereunder:-

"23.....Bearing in mind the approach of the Apex Court in interpreting the mandate of Article 21, the question still remains whether Article 21 can be so construed that a person like the petitioner, can insist that the State must afford him armed police protection round the clock.

24.It seems to us that the language of Article 21, which appears in Part III of the Constitution, clearly shows that the Article was intended to afford protection to life and personal liberty against State action and not against violation thereof by private individuals."

(13)The Court referred to a decision of a Constitutional Bench in

P.D.Shamdasani Vs. The Central Bank of India Limited [AIR 1952 SC



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59]. Relevant portion of the judgment in ***P.D.Shamdasani's case*** reads as follows:-

"7.....There is no express reference to the State in Article 21. But could it be suggested on that account that, that article was intended to afford protection to life and personal liberty against violation by private individuals? The words "except by procedure established by law" plainly exclude such a suggestion."

...

*25.The view expressed in **Shamdasani's case** was reiterated in **Smt.Vidya Verma, through next friend RVS.Mani Vs. Dr.Shiv Narain Verma [AIR 1956 SC 108 : 1955 [2] SCR 983.]***

(14)The Division Bench of Bombay High Court also relied upon the judgments in ***AIR 1962 SC 1044 [Calcutta Gas Company [Proprietary] Ltd. Vs. State of West Bengal and Others]*** ; ***AIR 1963 SC 507 [State of Punjab and Another Vs. Suraj Parkash Kapur, etc]*** and ***AIR 1964 SC 685 [State of Orissa Vs. Ram Chandra Dev and Another]*** and held that extraordinary jurisdiction under Article 226 can be invoked to enforce a



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legal right . Since the Division Bench held that Article 21 of Constitution shows that Article was intended to afford protection to life and personal liberty against State action and not against violation made thereof by private individuals and the Hon'ble Supreme Court also held that extraordinary jurisdiction under Article 226 can be invoked only to enforce legal right. The Division Bench has held as follows:-

"37...He contends, and in our opinion rightly, that granting of armed police protection to such criminals round the clock would be putting a premium on their criminal activities and would create a very odd situation in the society. Wherever these criminals go, they would be safely protected by armed police round the clock. This may protect not only their life and personal liberty, but would encourage and facilitate their indulging in crime. As indicated earlier, with the modern telecommunication systems being available to persons like the petitioner, we are of the view that granting armed police protection round the clock to the petitioner, would encourage and facilitate his indulging in crimes. For instance, if armed police guard is provided to the petitioner at his residence round the



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clock, nothing prevents him from contacting his 'friends' on cellular phones without being disturbed or threatened by his enemies. What he apprehends is the threat to his life and personal liberty from his enemies and not by any State action which alone is forbidden by the mandate of Article 21. It is clear to us from the observations of the Apex Court in P.D. Shamdasani's case that what Article 21 protects is only invasion of a person's right to life and personal liberty by the State. If there is a threat to the petitioner's right to life and personal liberty by a rival criminal, it is difficult to spell out a right under Article 21 in favour of the petitioner to the extent that the State must provide him with armed police guard round the clock. As mentioned in para 20 above, the ratio of the decision in P.D. Shamdasani's case has been specifically approved by the Apex Court in Vidya Sharma's case in A.I.R. 1956 S.C. 108.

38. *Our attention was invited by the learned Advocate General to the decisions in (i) (Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal) 11A.I.R. 1962 S.C. 1044 : 1962 Supp. (3) S.C.R.*



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1. (ii) (*State of Punjab v. Suraj Parkash Kapur, etc.*)¹², A.I.R. 1963 S.C. 507 : 1962 (2) S.C.R. 711, and (iii) (*State of Orissa v. Ram Chandra Dev*)¹³, A.I.R. 1964 S.C. 685. We will refer to these cases in brief to show that a person like the petitioner cannot approach this Court under Article 226 contending that since he apprehends threat to his life from a rival criminal gang. It is obligatory on the State to afford him armed police protection round the clock.

39. In the case of *Calcutta Gas Company*, the Apex Court discussed the powers of the High Court under Article 226 and made it clear that though Article 226 did not prescribe in terms the classes of persons entitled to apply thereunder, it was implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. As we have indicated at the outset, Article 226 confers wide powers on the High Courts to issue directions and writs in the nature specified therein for the enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. Relying upon the ratio of the decision in *Calcutta Gas Company's*



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case and, in particular, the observations in para 5 of the judgment, the learned Advocate-General rightly contended that the petitioner has neither any right conferred by Part III of the Constitution nor by any other statute and hence, the remedy under Article 226 was wholly misconceived.

40. In State of Punjab v. Suraj Prakash Kapur (supra), it was reiterated that the existence of a right and the infringement thereof was the very foundation of the exercise of jurisdiction of the High Court under Article 226. The relevant observations are to be found in para 4 of the judgment, at page 508, where it was observed that the right that can be enforced under Article 226 must, ordinarily, be a personal or individual right of the petitioner. It may be a right conferred by Part III of the Constitution or by any other statute. But there must be a legal right, of which infringement is pointed out.

41. Again, in State of Orissa v. Ram Chandra Dev's case (supra), the Apex Court made it clear that under Article 226, the jurisdiction of the High Court



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was undoubtedly very wide. Appropriate writs could be issued by the High Court under the said article even for the purposes other than the enforcement of fundamental rights and, in a sense, the party who invokes the special jurisdiction of the High Court under Article 226 is not confined to a case of illegal invasion of his fundamental rights alone. Nevertheless, it is held in para 8 of the judgment, that though jurisdiction of the High Court under Article 226 was very wide, the concluding words of the article clearly indicated that before a writ or any appropriate order could be issued in favour of a party, it must be established that the party had a right and the said right was illegally invaded or threatened.

42. In short, the existence of a right is the foundation of a petition under Article 226. We Find substance in the contention of Shri Sawant that persons leading a life of crime and those involved in a series of serious offences like either Arun Gavli or Ramesh Sharma cannot claim any right, either fundamental under Part III of the Constitution, or even an ordinary legal right under any other statute so as to insist that



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the State must grant them armed police protection round the clock. As stated at the outset, both Arun Gavli and Ramesh Sharma have confined their claim under Article 21 of the Constitutional. They have put it on the pedestal of a fundamental right flowing from Article 21. It is not possible to accept their claim."

(15) We fully endorse the view expressed above. The grant of police protection to an individual at the cost of State cannot be granted as a matter of right. This Court in appropriate cases, will issue suitable direction to protect the life and liberty of individual guaranteed under the Constitution. The petitioner, in the instant case, has a criminal background as seen from the records. In the present case, the security cover given to the petitioner earlier was revoked as the petitioner was found involved in a murder case when he was under the security cover. The protection cannot be given merely on the basis of threat perception as it would be impossible for the State to provide security cover to every individual. In this case, the petitioner is involved in many cases, particularly, in cases where the major offence is either 307 or 302 of IPC.



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The respondents have produced before this Court, the statement of listed witnesses and the stage of investigation which reveals the participation of the petitioner in the murder case. The petitioner is already a history sheeter and was detained under the Act 14 of 1982 because of his illegal activities. Even though he was released later, the petitioner carries a stigma in view of his past activities.

(16) There are several persons who have lost their lives fighting for a public cause. Several journalists have been murdered for publishing news which are against corruption and social evil by miscreants. Similarly, a few Government officials have been murdered when they are in their attempt to prevent illegal sand mining or theft. In a few cases, people fighting for a genuine public cause are targeted. Whenever situation warrants, the State may consider grant of police protection to the suchg class of persons, based on threat perceptions.

(17) Hence, police protection can be given by Court only in appropriate case based on threat perception. If a person invite a situation by his criminal or anti-social activities, protection merely on the basis of threat perception will be against public morality.



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(18) Having regard to the peculiar facts and circumstances of this case, this Court is unable to grant any relief to the petitioner. Hence, the writ petition stands **dismissed**.

(19) However, the learned counsel for the petitioner states that the petitioner may be given protection at his cost.

(20) If the petitioner makes an application for protection at his cost, it may be considered on merits and in accordance with law and we express no opinion on the merits of such application. However, the representation will be considered in the light of the observations and conclusions, we have made in this order. No cost. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
02.08.2024

AP
Internet : Yes
Neutral Citation: Yes



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To

- 1.The District Collector
O/o.District Collector
Thiruvarur.
- 2.The District Superintendent of Police,
O/o.District Superintendent of Police
Thiruvarur District, Thiruvarur.



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S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

AP

Order in
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