



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-5278-2024
DECIDED ON: 13.08.2024

MANMOHAN

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Ghuman, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The petition has been filed under Article 226 of the Constitution of India seeking directions to respondents no.2 to 4 to protect the life and liberty of the petitioner at the hands of respondents no.5 and 6, on the basis of representation dated 29.5.2024. Further, direction is sought to respondents No.2 to 4 to decide the aforesaid representation within a stipulated time.

2. This Court while issuing notice of motion passed the following order on 31.05.2024 which reads as under:-

“The petition has been filed under Article 226 of the Constitution of India seeking directions to respondents no.2 to 4 to protect the life and liberty of the petitioner at the hands of respondents no.5 and 6, on the basis of representation dated 29.5.2024. Further, direction is sought to respondents no.2 to 4 to decide the aforesaid representation within a stipulated time.

In view of the seriousness of the allegations made in the instant petition qua respondent no.5-Lucky Patial, which is supported by certain phone calls as well as messages transcripts, which are on record at Annexure P-3 collectively, State is called upon to file its status report within 4 weeks from today.

Adjourned to 2.7.024

In the meanwhile, Senior Superintendent of Police, Mohali, shall take all necessary steps to ensure the safety and protection to the life and liberty of the petitioner.”

Subsequently vide order dated 02.07.2024, the Superintendent of Police, Investigation, District SAS Nagar, Mohali has filed a status report dated 01.07.2024 on behalf of the respondent-State but the Court was not satisfied with the status report and had pointed out certain discrepancies in the action taken by the police wherein the State counsel sought more time to file better status report and for that purpose the matter was deferred to 17.07.2024.

Further time was sought thereon on 17.07.2024 and the matter was deferred to 23.07.2024.

During the course of proceeding, the case was taken up on adjourned date i.e. 23.07.2024, wherein status report by way of an affidavit of Tushar Gupta, IPS, Superintendent of Police (Headquarter), SAS Nagar was filed and this Court passed the following order:-

Status report by way of affidavit of Tushar Gupta, IPS, Superintendent of Police (Headquarter), SAS Nagar, Mohali on behalf of respondents No.1 to 5 as per previous order dated 17.07.2024 has been filed in the Court. The same is taken on record. Copy thereof has been furnished to the learned counsel for the petitioner.

The contents mentioned in para No.5 of the said affidavit reads as under:-

“That during the course of investigation, it was found that call which was made to the petitioner was from number +1(805) 394-2120 and the same was a Whatsapp call, therefore, the Incharge, Technical Cell/Cyber Cell has been directed vide letter No.2035/5A/PS Sadar Kharar dated 10.07.2024 to supply the Internet Protocol Detail Record (IPDR), Reverse Sweep, Whatsapp Record and IP Address, so that further steps can be taken to trace the individual who called the petitioner and threatened him.”

In view of the stand taken by the deponent, report on account of Internet Protocol Detail Record (IPDR), Reverse Sweep, Whatsapp Record and IP Address, is still awaited and some more time has been sought by the State.

At the same time, learned counsel for the petitioner also requests for some time to place on record the additional documents.

Both the parties may do so on or before the next date of hearing.

Senior Superintendent of Police, SAS Nagar, Mohali to come present in the Court to explain as to why without looking at the documents, the same are being filed in the Court which tantamount to show deliberate and intentional disobedience and disrespect to the administration of the justice.

Adjourned to 24.07.2024.”

In compliance thereof, on 24.07.2024 Dr. Sandeep Kumar Garg,

IPS, Senior Superintendent of Police, SAS Nagar, Mohali came present who assured the Court that necessary effective steps would be taken to ensure

that logical conclusion is reached in the complaint and the concern raised in the instant petition is addressed.

On 29.07.2024 when the matter was taken up for further consideration, certain glaring aspects were brought to the notice of this Court by the learned counsel for the petitioner that he is receiving threat calls from one Lucky (infamous gangster) through whatsapp and at that time Dr. Sandeep Kumar Garg, SSP, Mohali was present in Court who was also apprised of the prevailing threat perception being advanced to the petitioner in the case. It was under these compelling circumstances, the following order was passed and the matter was adjourned to 13.08.2024, which reads as under:-

“1. In compliance of the previous order dated 24.07.2024, Dr. Sandeep Kumar Garg, IPS, Senior Superintendent of Police, District SAS Nagar came present in Court along with affidavit dated 28.07.2024 on behalf of respondents No.1 to 4, which is taken on record. Copy of the same has been supplied to the learned counsel for the petitioner.

2. Learned counsel for the petitioner submits that the petitioner kept on receiving threat calls from one Lucky Patial (infamous Gangster) through WhatsApp which have been put across to Mr. Rajiv Verma, DAG, Punjab and Dr. Sandeep Kumar Garg, IPS, Senior Superintendent of Police, SAS Nagar, Mohali today itself.

3. Dr. Sandeep Kumar Garg, SSP, Mohali has ensured the Court that necessary action shall be taken with regards to the matter, expeditiously and has apprised that the information sought by this Court from the WhatsApp, may take one month time approximately. The same has been sought by his office vide letter dated 22.07.2024

meaning thereby information is expected by 22.08.2024 and on that aspect, he prays for some time to apprise this Court with regards to the progress made accordingly in the matter.

4. *However, this Court cannot ignore the fact which has come on record as is evident from Annexure A-1 that certain calls had been made by the complainant-petitioner to DSP Gursher Singh who did not respond to the calls since 01.06.2024 and the details as alleged were handed over to ASI Jaspal which have been placed on record at Annexure A-4, on which no action has been taken till date despite lapse of more than 15 days. Apart from that it is the case set up by the petitioner that the WhatsApp number and recorded conversation have also been shared to the police authorities whereby threats have been advanced, but no heed is being paid by the police authorities and the Court's order is being shown disrespect despite serious threats from Gangster Lucky Patial who is stated to be in the hit list of National Intelligence Agency (NIA) and this Court is also prima facie of the view that allegations raised in the instant petition are serious enough to be taken care by the Law Enforcing Agency which is headed by Dr. Sandeep Kumar Garg, SSP, Mohali. Some of the messages which reads at Annexure A-2 need to be printed here:-*

“Lucky patiyal

Phone chak la

Koi gal ni hun dhyan rakhi

*Kehde Kehde to phone krwa rha na
ohna nu kahi tnu bcha lenge*

Gate nu jinde la Ke rakhi”

5. *Another instance as pointed out by the petitioner is available at Annexure A-3 whereby DSP Gursher Singh allegedly told the petitioner in clear terms that he should not be disturbed by him time and again for which the petitioner has apologized and penning down the following message.*

“Sir sorry mai dhyan rkhuga pls sir family dari hoi c ta karva ta hona sorry sir mai dhyan rkha ga”

6. *Be that as it may, on an assurance given by Dr. Sandeep Kumar Garg, IPS, Senior Superintendent of Police, SAS Nagar, Mohali, two weeks' time is left at his disposal to show his seriousness with regard to the matter at hand and also take steps for ensuring the protection to the life and liberty of the petitioner as an interim measure, the cost for which shall be borne by the State Government itself at this stage.*

7. *The conduct of DSP Gursher Singh is under a cloud and also tantamounts to dereliction of duty. The conduct and action of Dr. Sandeep Kumar Garg, SSP, SAS Nagar, Mohali is expected to be such as that of an officer making sincere attempt not only to safeguard the judicial process who is monitoring the investigation in the matter but also taking up the concern of petitioner's protection to his life and liberty guaranteed under Article 21 of the Constitution of India.*

8. *Adjourned to 13.08.2024.*

9. *Personal appearance of SSP, Mohali shall remain exempted till further orders.”*

Today yet again, status report dated 12.08.2024 by way of an affidavit of Deepak Pareek, IPS, Senior Superintendent of Police, SAS Nagar, Mohali has been filed in Court wherein elaboration has been given

qua the steps taken during the intervening period which can be read out from para Nos.4 and 5 of the said affidavit. The same is reproduced hereinbelow:-

“4. That the deponent joined as Senior Superintendent of Police- SAS Nagar on 03.08.2024 and after getting the knowledge of the above said order dated 29.07.2024 passed by this Hon'ble Court, the deponent reviewed the case file as well as investigation of the present FIR No 136 dated 24.05.2024 under section 384, 506, 120-B IPC, registered at Police Station Sadar Kharar, SAS Nagar. In strict compliance of the orders passed by this Hon'ble Court and to ensure safety and protection of the petitioner following steps were undertaken.

5. STEPS TAKEN DURING THE INTERREGNUM PERIOD

(a) That in order to ensure safety of the petitioner a dedicated police constable has been deputed round the clock near the house of the petitioner.

(b) That Police patrolling vehicle has been posted near the house of the petitioner and the patrolling vehicle is directly being supervised by the Station house officer- Sadar Kharar.

(c) That vide office order No. 1939-41/5A/CR dated 05.08.2024 Special Investigation Team (SIT) has been constituted comprising Superintendent of Police (Rural) S.A.S Nagar along with Deputy Superintendent of Police (Kharar-1), S.A.S Nagar, Mohali & Station House officer Sadar Kharar Mohali who shall investigate the FIR No. 136 dated 24.05.2024 and shall submit a report as expeditiously as possible preferably within 4 weeks.

(d) That during the investigation in order to trace the culprit behind the ransom calls received by the petitioner, Whatsapp record and IP address details were obtained through proper channel. It has transpired that few of the calls were made while using the IP address

27.125.246.159 based on Petaling Jaya city of Kuala Lumpur, Malaysia, and some calls were made from IP Address 185.211.32.179 based on San Jose city of California, USA. It has further been revealed during investigation that these IP addresses were used to enlarge threat calls to some other persons also (details of which is availing in investigation file). After obtaining the details of all such mobiles, they were contacted and further investigation in this regard is being carried out by the Special investigation Team.

(e) That this Hon'ble Court observed in the order dated 29.07.2024 about dereliction in duty by Sh. Gursher Singh DSP, Pursuant thereto vide no.3551 dated 08/08/2024 notice was issued to him asking to show cause why departmental action should not be recommended against him. it is also apt to mention here that the officer has been transferred from DSP Special Cell, S.A.S Nagar, Mohali to DSP 9th battalion, PAP Amritsar and is no more connected with the investigation of the present case.

(f) That it is worth to record here that the petitioner herein was requested on 30.07.2024 to submit his mobile phone so that the same may be sent to Forensic Science Laboratory but the petitioner flatly refused to submit his phone. In this regard G.D report No 40 dated 30.07.2024 was recorded and attached with the investigation file.”

A copy of the said status report has been furnished to the learned counsel for the petitioner as well.

Apart from above, during the course of investigation the conduct of DSP Gursher Singh was under cloud and on that account SSP, SAS Nagar, Mohali had assured the Court for taking necessary action against him as well as the erring officials.

A perusal of the status report depicts that show cause notice was issued to DSP Gursher Singh asking him to explain as to why the departmental action be not recommended against him. Apart from that, he is stated to have been transferred from DSP Special Cell, SAS Nagar, Mohali to DSP 9th battalion, PAP Amritsar divesting him of his investigation in the present case.

However, an attempt seems to have been made to explain the position and satisfy the Court that departmental action is being taken against DSP Gursher Singh but neither the show cause notice has been placed on record nor the same explains that under which provisions proposed action is initiated. The language used in the present status report is *“That this Hon'ble Court observed in the order dated 29.07.2024 about dereliction in duty by Sh. Gursher Singh DSP, Pursuant thereto vide no.3551 dated 08/08/2024 notice was issued to him asking to show cause why departmental action should not be recommended against him.*

It is not known to the law as to before taking any departmental action a show cause notice is required to be issued asking the officer concerned to explain as to why departmental action be not taken against him whereas straight away show cause notice ought to have been issued under the relevant Service Rules for dereliction in duty as was observed in the status report.

However, this Court without going further into issue at this stage expects from the authorities concerned including the Home Secretary, Punjab and Director General of Punjab to ensure that the action, if any required, is taken as per Service Rules governing his service conditions in letter and spirit without applying any delay tactics.

It is undertaken by learned counsel for the petitioner that the petitioner will handover his mobile phone along with the data retained/reserved as it is by today itself before 5:00 p.m. to Investigating Officer ASI Jasbir Singh, Police Station Sadar Kharar.

Learned counsel for the petitioner at the same time having gone through the contents of the present status report as far as prayer made in the instant petition is concerned, he is satisfied and does not want to press the present petition at this stage.

However, before parting with the disposal of the present petition, Director General of Police, Punjab is requested to ensure that concrete and effective action is expected to be taken against DSP Gursheer Singh or any other erring officials in the investigation whosoever was at fault and such action taken report be furnished to Registrar Judicial, Punjab and Haryana High Court within a period of one month from today.

Registrar Judicial, Punjab and Haryana High Court is further directed to keep the follow up in the matter and to place the instant petition as and when action taken report from concerned quarter is received in the office.

The present petition in the aforesaid terms stands disposed off.

(SANDEEP MOUDGIL)
JUDGE

13.08.2024

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No