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Chandigarh

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

222

CWP-1368-2020

Date of Decision : **January 16, 2025**

SHIV LAL @ SHOLLY

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Jagjot Singh, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, under Articles 226/227 of the Constitution of India, prayer is made for quashing of demand notice dated 22.3.2019 issued by respondent No.2 for making payment of Rs.11,31,043/- for security and conveyance expenses.

2. The petitioner was convicted for life by the learned Sessions Judge, Fazilka vide judgment dated 8.8.2019 in case FIR No.120 dated 12.12.2015, under Sections 302, 307, 326, 323, 148, 149 IPC, 1860 and under Section 3(2) (V) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, registered at Police Station Bahaw Wala, District Fazilka, Punjab. During the pendency of the trial of the FIR (supra), the petitioner had approached this Court for grant of regular bail on medical

ground by filing CRM-M-5798 of 2018, and a co-ordinate Bench of this Court by drawing order dated 23.2.2018 granted permission to the petitioner to get treatment at the private hospital of his choice, however, it was specifically clarified that the expenses of conveyance, security and treatment will be met by the petitioner. The relevant extract of the same reads as under:-

“At this stage, counsel for both the parties, taking into consideration the constitutional right of the petitioner in custody and the directions of this Court dated December 22, 2017 agree that at present the petitioner can be permitted to get treatment at the private hospital where he could be treated to his satisfaction.

The petition for interim bail is adjourned to March 16, 2018.

Meanwhile, interim order is passed in the light of earlier order Annexure P-8 that the petitioner will be permitted to be treated by the subject specialists at the medical institutions of his choice for his ailments while in custody, as right of health care of an under-trial is also essential constitutional right under Article 21 of the Constitution of India.

It is clarified that the entire expenses of conveyance, security and treatment will be met by the petitioner.”
(Emphasis specifically).

3. The petitioner remained under treatment for about 142 days at a private hospital and for providing conveyance and security, a demand notice dated 23.3.2019 (Annexure P-5) was served by the Superintendent, Central Jail, Gurdaspur, where through, demand of total amount of Rs.11,31,043/- was made.

4. Learned counsel for the petitioner in the asking for the relief (supra) submits that the calculation prepared by the respondent concerned is

totally arbitrary and infact, in order to frustrate the very object of the concession given by this Court for getting medical treatment in a private hospital. He draw the attention of this Court towards Rules 2.11 and Rule 2.13 of the Punjab Police Rule, 1934, to submit that the guiding principles for calculating the total expenditure are very much available but despite that the Superintendent, Central Jail concerned arbitrarily raised the said demand, hence, he was propelled to challenge the impugned demand notice through the instant petition.

5. The learned State counsel made an endeavor to support the decision of Superintendent, Central Jail concerned by submitting that the calculation was made after considering the basic components of the salary of a Sepoy and the other officials, as deployed at hospital, during relevant time. He further submits that the specific observations made by this Court in the order dated 23.2.2018 are relevant to be considered wherethrough the entire expenditure *qua* conveyance, security and treatment, is required to be borne by the petitioner, therefore, in view of the specific order passed by this Court, the said demand was raised, which is purely in accordance with law. He also submits that the guided principle under which the calculation has been made is the SOP dated 30.5.2024 adopted by the State of Punjab for providing security to the private individuals. He further draws the attention of this Court towards security policy notified in the official gazette on 2.9.2013 to vigor his arguments.

6. This Court has considered the rival submissions made by the learned counsel for the parties concerned and has perused the entire record.

7. It is a case where the petitioner was in custody and he had approached this Court for granting permission to get himself treated from a private hospital. In that situation, the order dated 23.2.2018 was passed by a co-ordinate Bench of this Court granting permission to the petitioner to get himself treated from a private hospital of his choice, however, with a condition that he shall bear the expenses *qua* conveyance, security and treatment. It is not under dispute that the payment for treatment was also made by the petitioner but now by the impugned demand notice, the petitioner was burdened with Rs.11,31,043/- as costs for the deployment of security and conveyance for 142 days. The SOP and the security policy, which have been cited by the learned State counsel are not applicable to the facts and circumstances of the instant case. It is not the requirement of the petitioner for deployment security personnels on account of any threat, rather they were deployed to ensure that he may not flee from the clutches of law, as the petitioner was undertrial and in judicial custody, therefore, the SOP, which is referred by the learned State counsel and, that too, adopted in the year 2024 cannot be made effective retrospectively and to justify the impugned demand notice. The other guided principles, which are encapsulated in Rules 2.11 and Rule 2.13 of the Punjab Police Rules, 1934 ought to have been considered by the authority concerned.

8. The authority concerned is required to demonstrate the equity and the fair play in their act. However, the act of respondents does not pass the test of reasonableness. Infact, the impugned demand has been passed mechanically without considering the fact that the petitioner was under judicial custody and the security personnels were deployed to ensure that the

petitioner may not flee from the clutches of law, during his treatment in the private specialized hospital, therefore, the demand notice requires interference.

9. In view of the above, the instant petition is **allowed**, the impugned demand notice dated 22.3.2019 is set-aside and the matter is remanded back to the official respondents concerned to re-calculate the expenditure for security and conveyance. It is also expected that the principle of natural justice shall be complied while passing the fresh order of demand.

January 16, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No