

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 152 of 2012

BETWEEN:-

- 1. DILIP SHARMA S/O LATE OMPRAKASH SHARMA, AGED ABOUT 50 YEARS, OCCUPATION: BUSINEES R/O KAROLI MATA KA MANDIR, MAHALGAON, DISTRICT GWALIOR (MADHYA PRADESH)**
- 2. SANJAY SHARMA S/O LATE SHRI OMPRAKASH SHARMA, AGED ABOUT 46 YEARS, OCCUPATION: BUSINEES R/O KAROLI MATA KA MANDIR, MAHALGAON, DISTRICT GWALIOR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI SANJEEV JAIN - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH SECRETARY, HOME (POLICE) DEPTT., VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. ASSISTANT INSPECTOR GENERAL OF POLICE, SPECIAL BRANCH SECURITY, BHOPAL (MADHYA PRADESH)**
- 3. SUPERINTENDENT OF POLICE, DIST. GWALIOR (MADHYA PRADESH)**
- 4. DIRECTOR GENERAL OF POLICE, BHOPAL (MADHYA PRADESH)**
- 5. INSPECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, SECURITY AND LAW, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NEELESH SINGH TOMAR – GOVERNMENT ADVOCATE)

Reserved on : 19/10/2023

Pronounced on : 14/03/2024

This petition having been heard and reserved for order coming on for pronouncement this day, this Court passed the following:

ORDER

1. The present petition under Article 226/227 of the Constitution has been preferred by the petitioners seeking following reliefs:

“(a) That, a Writ of Mandamus or any other appropriate Writ, Order or Direction may kindly be issued to the respondents in particular to the respondent No.3 Superintendent of Police to provide the security by deputing a Gunman alongwith Carbine, to the each of the petitioner for the protection of life and property of petitioner and his family members in view of the aforesaid special facts and circumstances.

(b) Any other such order or direction which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case, be also passed along with the costs the writ petition.”

2. Petitioners are the real brothers and are permanent residents of district Gwalior. Petitioner No.2 is Managing Director, Heeralal Estate and Constructions Private Limited Company. They have preferred this petition with the allegations that they were allegedly

threatened by some miscreants for extortion in year 2005. They lodged complaint to the Superintendent Police of Gwalior in this regard in April 2005 (vide Annexure P/1) to provide police security (on their expenses) for protection of their lives and property. Superintendent of Police, Gwalior vide order dated 25.04.2005 provided them security for three months because they deposited expenses only for three months. It appears that some miscreants attacked petitioners and son of petitioner No.1, wherein son of petitioner No.2 Ram @ Rohit was killed whereas petitioner No.1 survived because of gunman provided to him by the Superintendent of Police, Gwalior for his security. Petitioner No.2 was eye-witness of the said incident.

3. Those miscreants namely Hari Sharma, Ram Kumar Sharma Ashok Sharma, Sunil Sharma, Rajendra Sharma, Gopal Sharma, Smt. Meena Khemariya, Rajesh Barua, Rajesh Sharma and Prasanna Sharma were prosecuted and tried for the offences under Sections 148, 307 readwith Section 149, 302 of the IPC and Section 125(1-B) of the Indian Arms Act by the Court of Special Judge (Atrocities) Gwalior. They (except two accused) were found guilty for various offences and were convicted and sentenced to life imprisonment vide judgment dated 14.02.2007. Meanwhile, petitioners prayed before the Police Authorities for providing police protection on their own expenses time and again. They made representation to different authorities.
4. On 12.05.2008 (Annexure P/1), Superintendent of Police, Gwalior asked the petitioners to remove the police protection given by way of 1-4 guards because it appears that petitioners were not making payment to the police department for security provided earlier.

5. It further appears from the pleadings that vide letter dated 21.04.2010, Superintendent Police, Gwalior again directed the Reserve Inspector, Police Line, Gwalior to provide S.A.F. guards for one month because of the threat perception. Not only this, then Additional D.G. (Tele Communication) V.K. Pawar intervened in the matter and asked the I.G. (Intelligence) Bhopal to provide the petitioners necessary police protection free of cost. However; ignoring the fact that they already have licenced weapons, one Revolver, second is Rifle 315 bore and another Gun 12 bore. When the police protection was withdrawn in 2011 then the instant petition was filed seeking police protection.
6. It is the submission of learned counsel for the petitioners that for the time being, security was withdrawn and during that period their life was under threat because at that time some of the assailants were released on bail, and as submitted by the learned counsel for the petitioners vide interim order dated 06.01.2012 passed by this Court security was provided till next date of hearing because deposition of petitioners in the said trial was to be carried out. Learned counsel for the petitioner fairly submitted that trial is being concluded and all accused persons were convicted vide judgment dated 14.02.2007 and remaining two accused persons were convicted vide judgment dated 04.04.2018.
7. Learned Government Advocate for the respondents/State opposed the prayer, immediately filed reply on 21.02.2012 and rebutted the claims made by the petitioners. As per respondents, there was no fear and danger to the lives of the petitioners as noted by the police authorities. Petitioners are having personal enmity because of civil/property related disputes with the accused persons on whose

instance alleged firing took place. With the time; both parties have settled their dispute and in fact both parties visit each other regularly. Therefore, no threat perception exists against the petitioners.

8. It is also submitted that petitioners are wealthy people and are in business of real estate etc.. They are such wealthy persons that they can make payment against taking of the services of the security guards in view of the circular dated 21.05.2010 and 26.03.2011 filed as Annexure R/11 (collectively), very comfortably. In the light of the said circulars, Superintendent of Police, Gwalior vide order dated 30.01.2012 decided and communicated to the petitioners with regard to the entitlement of the petitioners to get benefit of gun-man/security guards as per required fees. However, they did not pay the requisite fees even after demand and enjoying Police Protection of 1-4 Guards at house and 2 guards each petitioner.
9. Learned Government Advocate for the respondents/State further submitted that petitioners have already been provided arms licence vide Annexure R/2. They have three weapons (arms) in their family. One is Revolver, another is Rifle 315 bore and one is Gun 12 bore, therefore, petitioners are capable to protect themselves. Security provided to the petitioners was not permanent in nature. It was for the time being because of threat perception as found suitable by S.P. Gwalior for the time being. As submitted, petitioners are not entitled to get the benefit of security guards only on the pretext that earlier some incident took place. When for the time being, security was withdrawn then no untoward incident took place. On the basis of such flimsy pretext, staff of police cannot be misused in such manner. Petitioners are using these guards to

protect their valuable immovable and movable properties and because of the nature of duties, police department cannot depute those police guards for service of common man.

10. Anxiety of Police Department was further reflected by way of an application filed on 11.04.2023 (**I.A.No.3097/2023**) in which prayer for dismissal of writ petition was made in view of the certain facts narrated into it. It is referred in the said application that total security cost in terms of order dated 30.01.2012 by Superintendent of Police, Gwalior comes around **Rs.2,55,64,176/- (Rs.Two Crores Fifty Five Lac Sixty Four Thousand One Hundred and Seventy Six) as on 16.03.2018**. Instead of paying the said amount despite intimation being given, petitioners are enjoying the privilege whereas case against all accused persons has already come to an end and remaining two accused persons namely Prasanna Sharma and Rajesh Sharma were also convicted later on vide judgment dated 04.04.2018 in which they were convicted and sentenced to life imprisonment. In short, Police Department was much aggrieved by the continuance of such police security, because of scarcity of Police Personnel for law and order and crime investigation. Government Advocate for the State prayed for dismissal of this petition with exemplary cost.
11. Heard the learned counsel for the parties at length and perused the documents appended thereto.
12. Petitioners are residents of Gwalior city in which petitioner No.1 appears to be in public life. It is common knowledge that Gwalior region falls in the vicinity of Ravines of Chambal, known earlier for Rebels and Revolvers (Weapons). Earlier, having the trappings

of Feudalistic Pattern of Society, therefore, **Power, Position and Police** played important role in collective consciousness. Therefore, vehicle studded with Red Light, Gun adorning the shoulder of a man and person moving under Police Guards were always considered as Status symbol.

13. Instant case as unfolded, petitioners were anxious to reap the benefits of unfortunate incident occurred in their family to get personal security by way of police guards. Sometimes giving police protection by providing police guards becomes imperative and sometimes is necessary to check the Law and Order situation. But, it does not always hold true because people start enjoying the shadow of their guards and cumulatively those guards also get accustomed to civil life/duties so much that they become misfit for rigorous drills/duty in future.
14. Another aspect deserves consideration is that upto what period police security can be provided to a person under threat. Not to forget that this is paid service and one has to pay requisite fees to the department for getting police protection. However; question still looms large. Whether police is for protection of common man and for investigation of Crimes committed against citizenry at large or Police is meant to provide police protection to an individual (although on payment) who is involved in personal feud with rival parties. Answer appears to be unequivocally in favour of Citizenry. One has to approach the instant case with this affirmation in mind.
15. Instant petition was filed in year 2012 and petitioners sought relief in the nature of Mandamus seeking directions to the

Superintendent of Police, Gwalior to provide security by deputing gun-man alongwith Carbine to each of the petitioners for protection of their lives and property as well as life and property of their family members.

16. Vide interim order dated 06.01.2012, petitioners were granted interim relief by which security continued to be provided till next date of hearing. Thereafter, matter did not come for hearing many years and now heard finally. From the facts, it appears that earlier also petitioners were granted police security and they enjoyed protection for many years intermittently.
17. The alleged incident because of which petitioners raised apprehension over their lives was of year 2005 and almost 19 years have passed since then. Surprisingly, petitioners are enjoying police security for last more than 12 years uninterruptedly by the effect of interim order passed by this Court on 06.01.2012.
18. It is not out of place to mention the fact that all accused persons have been convicted. Some of the accused persons were convicted vide judgment dated 14.02.2007 and remaining two accused persons were convicted vide judgment dated 04.04.2018, therefore, those accused/miscreants who would have been source of threat to the petitioners are already suffering conviction/sentence. No other incident against petitioners is reported and no other miscreants were referred to show that the petitioners have threat from any sources.
19. Even if those sources would have been existing, even then if the petitioners have their business related rivalry and engaged in

disputes, then they would have certainly employed private security guards with licenced weapons. For protection purpose, those private guards would have been more vigilant and professionally equipped then the members of police force. However, impression of Police Guards is more shining and blazing. It is painful to know that guards by way of five persons (1-4 guards) were deputed over the residence of petitioners and two guards are given to each petitioner (total four guards) for their personal security. Surprisingly, no payment has been made by the petitioners and basking in the reflected glory of Power/Position/Police. Such conduct deserves strong deprecation. **In fact senior Police Officers should be vigilant in such cases and ensure that no person may get the benefit of security on such frivolous pretext.**

20. Another aspect deserves consideration is that both the parties have compromised in the case as reflected in the application filed by the Police Department. Specific findings have been given that members of the both the parties visit each other's house and they regularly interact each other. It means that source of threat paled into oblivion. Still, petitioners are enjoying police protection.
21. It is true that Hon'ble Supreme Court of India has declared the Law in respect of witness protection in the case of **Mahendra Chawla and others Vs. Union of India and others** reported in **(2019) 14 SCC 615** and discussed the aspect of vulnerable witness deposition. It would also be relevant to mention here that this Court is taking steps for creation of **"SANDES APP GROUP"** incorporating Station House Officer/Investigation Officer as Admin. of the Group. Beside that, Public

Prosecutor/Forensic Expert/Court Munshi/Doctors/Other Witnesses and **Complainant** would also be the members of the group. National Informatics Centre (NIC) is taking up this issue and creating mechanism in this regard. This Court in the case of **Vijendra Singh Sikarwar Vs. State of M.P. and others** reported in **2023 SCC OnLine MP 3129** discussed the issue in detail. In follow up orders of **Vijendra Singh Sikarwar (supra)** from time to time, issue of witness protection and early deposition of vulnerable witnesses is considered.

22. However; case of the petitioners for Police Protection is prior to passing of the order in the case of **Mahendra Chawala (Supra)** and even otherwise, petitioners are not vulnerable witnesses. They have already arms licence of three weapons as discussed above as disclosed by Police. Therefore, they can protect themselves very well.
23. Just as a food for thought, according to this Court, security can be provided by the Police in certain conditions. **Illustratively (not exhaustively) – instances can be –**
 - (i) **To a poor, underprivileged or Members of Weaker Section of Society or any peace loving citizen facing Revenge/Heat of Powerful or Resourceful People.**
 - (ii) **Genuine Whistle blowers and Bonafide Public Activist. Security is not for fake Whistle blowers and for Malicious Public Activist.**
 - (iii) **Persons having acute threat perception because of contingencies like deposition as**

vulnerable witnesses.

(iv) People serving Public/Social/National cause, attracted the ire of powerful people because of their good work and other related matters.

It is also true that Constitutional/Statutory and other Authorities also get the facility of security but that is a facility provided to facilitate their working in effective and confident manner, not as Status Symbol.

24. Coming back to this case, in pursuance to interim order dated 06.01.2012 passed by this Court, Superintendent of Police, Gwalior issued an order dated 30.01.2012 in which petitioners were provided police security on payment of requisite fees. For Head Constable, prescribed fees was Rs.1700 per day and for Constable it was Rs.1600 per day, which was to be paid in Police Head 0055 through *challan* papers. Even before passing of the interim order by this Court, on the request of petitioners, A.D.G. (Intelligence), Bhopal provided the security vide order dated 29.05.2010 (Annexure A/2 filed by respondent alongwith application for dismissal of petition) on prescribed fees. Therefore, it is clear that petitioners had to pay the requisite fees. On 25.03.2023, R.I. Police Line, Gwalior sent a calculation chart to the petitioners which was the charges / fee to be paid by them. Petitioners are required to pay **Rs.2,55,64,176/- (Two Crores Fifty Five Lac Sixty Four Thousand One Hundred Seventy Six)** as on 16.03.2018. Both petitioners were given one guard each (total two guards) w.e.f 18.01.2012 till 28.07.2018. From 29.07.2018 onwards, they are given two guards each (total four

guards) till date. However; the amount as reflected in chart is **due as on 16.03.2018**. This is the burden over the State Exchequer and is Public money. Petitioners are duty bound to pay the said amount without fail.

25. So far as plea of police security is concerned, it is neither a Fundamental Right nor a Statutory Right of the petitioners to claim for personal guards from police department. Police is meant for providing protection and security to common man and it is not meant for protecting persons like petitioners for years together that too without assessing threat perception. Regretfully, petitioners misused their position in such a manner that they did not bother to pay requisite fees/ charges.
26. It is true that one family member of the petitioners was murdered by miscreants and they might be having (or it was artificial) some threat perception also, but for that purpose police is competent to take appropriate action in accordance with law on the complaints made by petitioners against miscreants, including providing security for the time being, if at all required not always, even on payment. Here, it appears that petitioners misused the occasion for their personal benefits and to demonstrate it as a Trophy rather than a necessity.
27. It is clarified that this Court does not intend to convey a message that police department should not give any security to any person who is in need of police security. Police must provide security by deputing the police guards as and when situation warrants so, but for the time being only in exceptional cases only. Even otherwise, mandate of Apex Court in the case of **Mahendra Chawla and**

others (supra) wherein question of witness protection has been discussed in detail has to be followed. If petitioners were threatened in the trial then for the time being they could have been given security only on the dates of their deposition. However; on the pretext of trial, this protection cannot be extended till eternity.

28. Petitioners are in the domain of Public Service and they are required to raise certain issues of Public Importance, but it does not entitle them to get benefit and privilege of getting police security. Worst thing is that charges for getting security have not been paid by the petitioners apparently under the garb of interim order passed by the Coordinate Bench of this Court. For last 12 years, petitioners are using/misusing the position for their personal gains. This Court never issued interim order dated 06.01.2012 to grant of police security for free. It was always subject to payment.
29. How long, security can be given to an individual is the question because if security is provided to a person only on the basis of alleged threat perception, then already deficit staff in police department would be deployed in such superfluous activities and **Core Duties of Police Department; namely Crime Investigation and tackling Law and Order problem would take a backseat.** The petitioners' contention that they have taken services of police security on payment does not hold good and logical. In fact, it is contrary to **Constitutional Spirit** also because all functions of police authorities are to protect the people from the onslaught of Crime and Injustice and Functions of Sovereign is to create Just and Egalitarian Society and not

providing special privileges to persons like petitioners (even on payment).

30. Police is for security of common people and those four police personnel who are protecting petitioners would have been employed effectively for preventing the abuse of Girls Molestation or Eve-Teasing, which is rampant in the cities. If those police constables would have been deployed in the vicinity of Girl Colleges or nearby Coaching Tutorials where girls regularly visit for attending classes then the girls would have got relief from the Eve-Teasers and other miscreants. Therefore, looking to the facts from any angle, it appears that providing security to petitioners and alike persons in such manner/flimsy pretext is contrary to the **Constitutional Spirit** and undermines the well-being quotient of society at large. Agony further accentuates when such persons do not even pay the requisite fees and face the outstanding to the tune of Crores of rupees as in the present case. Therefore, from all aspects, case of petitioners does not deserves any consideration. **Director General of Police, Bhopal and Superintendent of Police, Gwalior are directed to immediately remove the police security given to the petitioners and take appropriate steps for recovery of due amount from petitioners for services rendered in accordance with law including treating dues as arrears of land revenue.**
31. It is hereby clarified that this Court has never meant to give the security on free of charge. The said interim order was always subject to the Circular/Regulation of the Police Department as well as the discussion as referred above.

32. As such **Festival of Democracy (General Elections)** is coming close in March to May, 2024, therefore, police personnel would be required in election duty in more meaningful manner.
33. This order be sent to the Principal Secretary, Department of Home, Bhopal and Director General of Police, Bhopal to reassess the threat perception of all individuals residing in the State of Madhya Pradesh and who have taken security on payment or otherwise and thereafter, after assessing the situation ensure that no frivolous person should get police security and instead those police personnel be employed for tackling the Law and Order situation in the different parts of the State and for Crime Investigation.
34. No specific rules or regulations have been provided by respondents regarding decision to be taken for giving police protection therefore, Committee comprising of Principal Secretary, Department of Home, Principal Secretary, Department of Law and Justice and D.G., Police, Bhopal would take appropriate decision/steps in future if Police Protection for some longer period is to be given (more than 7 days) to any genuine person, as per threat perception. For less than 7 days, Inspector General of Police (I.G.P.) Zone would be entitled for giving such protection. However, for vulnerable witnesses, or in some exceptional circumstances for a day or two, Superintendent of Police can also order for Police Protection. Said Committee may discuss the issue and can formulate more effective Rules and Regulations in this regard, because they are expert of their field. Court has given the direction only for the period, when no specific Rules / Regulations exist or presented before this Court.

35. Petitioners are expected to pay the requisite fees without delay else respondents shall be at liberty to recover it in accordance with law.
36. *Resultantly*, petition fails and is hereby **dismissed**.
37. Copy of this order be sent to Principal Secretary Home, Director General of Police, Inspector General of Police Gwalior Zone and S.P. Gwalior for information and compliance.
38. Case be listed and kept under the caption “**Direction**” in the month of July, 2024 for compliance.

(ANAND PATHAK)
JUDGE