

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 5485 of 2019

With

CRIMINAL MISC.APPLICATION (DIRECTION) NO. 2 of 2019

In R/SPECIAL CRIMINAL APPLICATION NO. 5485 of 2019

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SHWETA SANJAY BHATT

Versus

STATE OF GUJARAT

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Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3

MR MITESH AMIN PUBLIC PROSECUTOR assisted by
MS MAITHILI MEHTA APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 10/02/2023

ORAL ORDER

1. By way of the main petition being Special Criminal Application No.5485 of 2019, the petitioner has prayed for following reliefs.

- “(a) Be pleased to Admit and Allow this petition;
(b) Be pleased to direct the respondents to provide the petitioner and her family with armed police protection at the cost of the State;
(c) Be pleased to grant interim/ad-interim relief in terms of para.10(b);
(d) Be pleased to pass such other and further order as the nature and circumstances of the case may be require in the interest of justice and equity.”

2. However, learned advocate Mr.A.J.Yagnik makes a statement at bar that the petitioner does not press the prayers of petition being Special Criminal Application No.5485 of 2019, at this stage, and he is limiting his prayers made in Criminal Miscellaneous Application No.2 of 2019 in Special Criminal Application No.5485 of 2019, which read as under:

- “A. To direct the respondents to produce the copy of the Document of process undertaken before withdrawing the security of the petitioner;
- B. Your lordship’s be pleased to direct the respondents to produce the copy of the communication dated 16.07.2018 whereby the police commissioner was directed by the in-charge Director general of police (law and order) to withdraw the security;
- C. Your lordship’s be pleased To direct the respondents to produce relevant documents to show what were the essential factors that were considered by the reviewing committee before withdrawing the security of the petitioner;
- D. During the pendency and/or final disposal of the present application Your Lordships be pleased to grant interim or ad-interim relief in terms of Paragraph 6(A)(B)(C);
- E. To pass any other and further reliefs that may be deemed fit and proper and in the interest of Justice and Equity.”

3.1 A perusal of the prayers made in Criminal Miscellaneous Application No.2 of 2019 would indicate that the police protection granted to the husband of the petitioner was withdrawn vide communication dated 16.07.2018 and the petitioner is asking for copy of the said communication.

3.2 The Coordinate Bench of this Court *vide* order dated 02.12.2019 passed the following order:

“Learned Public Prosecutor to place on record orders withdrawing protection before the Registry on or before 24.12.2019. S.O. to 27.12.2019.”

3.3 Thereafter another Coordinate Bench of this Court, on 13.09.2021, passed the following order:

“Learned Public Prosecutor Mr.Mitesh Amin prays for time to place on record in compliance of order dated 02.12.2019. If that is so, the report be placed before the Registry so as to be tagged with this matter.

Let the matter be listed on 22.09.2021.”

3.4 Thereafter *vide* order dated 03.12.2021 the compliance of the order dated 02.12.2019 was recorded

by the Coordinate Bench of this Court which is read as under:

“In compliance of the order dated 02.12.2019 learned APP Mr.Pranav Trivedi has produced the copy of the order passed by In-charge Director General of Police (Law and Order), Home Department, State of Gujarat; the same is ordered to be taken on record. Let the matter be listed on 24.12.2021.”

4. Today when the matter was heard, learned advocate Mr.A.J.Yagnik appearing for the petitioner submitted that though the copy of the order dated 16.07.2018 is provided to him, the same cannot be said be an order but the same can be said to be communication only and not the order.

5.1 Learned advocate Mr.Yagnik submitted that it is the right of the petitioner to know the grounds or reasons for which the police protection provided to the husband of the petitioner was withdrawn and, therefore, asked for any further order directing State Government to produce reasoning behind the order dated 16.07.2018.

5.2 Learned Public Prosecutor Mr.Mitesh Amin assisted by learned Additional Public Prosecutor Ms.Mehta, at the outset, submitted that the order dated 16.07.2018 is a confidential order and the same is produced only because the Court directed the State Authority to produce the same and copy of the same is made available to learned advocate Mr.Yagnik.

5.3 Learned Public Prosecutor Mr.Amin submitted that the aforesaid order, being an order of confidential nature, under directions of the Court the same is provided and rest of the documents, which are sensitive nature pertaining to the security of VIP and VVIPs or the persons, who have asked for police protection and hence the State does not want to part with those documents.

5.4 Learned Public Prosecutor Mr.Mitesh Amin submitted that it is not the case that security of husband of the petitioner only has been withdrawn as vide order dated 16.07.2018 police protection granted to as many as 64 persons was withdrawn after assessing the overall situation by committee headed by

the Additional Chief Secretary of Home Department in its meeting dated 15.05.2018.

5.5 Learned Public Prosecutor Mr.Amin also apprised this Court about the fact that at the relevant point of time the police protection was granted to the husband of the petitioner as he was a serving police officer and also witness in respect of a criminal case. At the relevant point of time, on consideration of overall facts and circumstances, the police protection was provided. Thereafter since September, 2018 the husband of the petitioner is arrested by State Police and is behind the bar till today. Mr.Amin submitted that, in fact, in one of the trial the husband of the petitioner has been convicted as well, however, at the relevant point of time since considering the fact that he was serving as police officer as well as a witness in particular criminal case, police protection was granted to the husband of the petitioner and since those circumstances now do not exist the police protection has been rightly withdrawn.

5.6 Learned Public Prosecutor Mr.Amin further

submitted that even otherwise considering the confidentiality of the matter as it involves so many other dimensions about security of VIPs and VVIPs as well, it cannot be parted with by way of providing documents to the petitioner and, therefore, once the State Committee has considered overall threat perception and also considered the fact that at present the husband of the petitioner is under police custody, as he has already been arrested since 2018, he does not require any police protection and as such this application is nothing but an abuse and misuse of process of law, the details sought for by the petitioner cannot be parted with.

5.7 By making aforesaid submissions, learned Public Prosecutor Mr.Amin prayed for dismissal of the petition.

6. I have considered the submissions made by learned advocate Mr.Yagnik and learned Public Prosecutor Mr.Amin.

6.1 This Court put a query to learned advocate

Mr.Yagnik that whether getting police protection is a matter of right or is a matter of discretion at the end of the State Authority by taking into consideration the threat perception or not, learned advocate Mr.Yagnik could not dispute the fact that getting police protection is not a matter of right, however, submitted that administrative law requires that once police protection is granted and if the same is withdrawn, at least reasoning should be made available to the person in whose favour police protection was granted.

6.2 Learned advocate Mr.Yagnik submitted that except for the aforesaid fact as the action of the State of not providing reasons for withdrawing police protection amounts to violation of Article 14 of the Constitution of India, the State is bound to give the reasons for withdrawal of police protection.

6.3 In view of above, since learned advocate Mr.Yagnik could not establish the fact whether getting a police protection is a matter of right, this Court tried to assert the aforesaid fact from learned Public Prosecutor Mr.Amin who made submissions which are

already incorporated in foregoing paragraph.

6.4 As pointed out and noted in forgoing paras, the reason behind granting police protection, at the relevant point of time, was the fact that the husband of the petitioner was serving IPS officer then, and also was a witness in criminal trial. Today the husband of the petitioner is arrested and in jail since September, 2018 which shows that the ground on which the police protection was sought, at the relevant point of time by the petitioner, does not exist today. Further, when police protection is not a matter of right and police have very limited sources of granting protection as the men-power in police force would be very limited, at the same time, if any application is considered positively by the State Government and subsequently withdrawn and if the State is directed to assign reasons for each and every withdrawal of police protection, in that case, that limited police force which is meant for protection of citizen at large and for maintaining law and order situation will be busy with those administrative work only.

6.5 When responsible State Officer like learned Public Prosecutor makes a statement at bar and makes available copy of the order dated 16.07.2018 whereby the police protection has been withdrawn not only in respect of husband of the present petitioner but in respect of total 64 persons also, intention of the State Government cannot be questioned as the decision was taken by not one person but by a committee headed by Additional Chief Secretary, Home Department of State Government and the decision taken by said committee is approved by the State Government which shows that at various level the decision taken by the Committee was scrutinized and ultimately it is approved.

6.6 Further considering the fact that the Committee has taken a decision of withdrawing police protection not only in respect of just one person but in respect of so many persons to whom police protection was granted and thereafter the Committee has considered to continue with the police protection in respect of some persons and has discontinued the police protection to

some persons which also indicates that the Committee has decided the issue by taking stock of overall situation and facts and circumstances existing at the relevant point of time. If any decision in respect of police protection is directed to be placed on record, in that case, this Court finds that there is possibility that it may expose the various modes and methods of collecting information by the State Government in respect of security and threat perception about VIPs and VVIPs, which may be of sensitive nature. If such decision is directed to be provided to the petitioner by which methods State Government decides whether police protection is required to be granted to a particular person or not and whether to continue with it or not, there is all probability that it may travel from one hand to another and ultimately it may lead to exposing such modes and methods of the State Government which is of confidential nature to the people at large and ultimately the real purpose behind the granting of police protection may get frustrated.

6.7 When the petitioner could not successfully

establish his right of getting police protection, after overall consideration by the State Government for withdrawal of police protection if any order is passed, it is not open for the petitioner to ask for reasonings behind withdrawal of police protection.

6.8. This Court finds that State is absolutely justified in not disclosing the reasons and in refusing to place any other material as the right of the petitioner is very limited and even in the prayer also the petitioner has specifically asked for order dated 16.07.2018 and therefore the Co-ordinate Bench has observed in its order dated 03.12.2021 that order dated 02.12.2019 is complied with. Since in the prayer itself the petitioner has prayed for production of communication dated 16.07.2018, the same is produced by the State Government. As far as another prayer made by the petitioner to direct the respondent to produce relevant document to show that where the essential factors were considered by the Reviewing Committee, as discussed hereinabove, if those factors are asked to be produced before this Court, in that case, the

confidentiality of mode and method about providing or withdrawing the police protection will not be maintained and, therefore, in larger public interest, I do not deem it appropriate to issue any further direction once the order dated 16.07.2018 is already made available on record and is already provided to the petitioner.

7. In view of aforesaid discussion, the present application is required to be dismissed and it is dismissed accordingly.

8. Since the prayer made in main petition is not pressed by the petitioner, no further order is required. Hence, the main petition is also disposed of as not pressed.

(NIRZAR S. DESAI,J)

MISHRA AMIT V.

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