

(2007) 01 P&H CK 0144

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 41911-M of 2006

Kirpal Singh Randhawa

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 10, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 201, 302, 34, 342

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: Gurmeet Singh and Mr. R.S. Bains, for the Appellant; M.C. Berry, D.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Ranjit Singh, J.

Kirpal Singh Randhawa, an important witness in the case of abduction and disappearance of Jaswant Singh Khalra, Human Rights Activist, seeks directions for his proper security, which, according to him, is being thinned despite the directions of the Hon'ble Supreme Court. Jaswant Singh Khalra, was allegedly murdered brutally by group of nine police officials, including the then SSP, Tarn Taran, leading to registration of an FIR No. 14(S)/ 95/Delhi under Sections 120-B, 364, 302, 201 read with Section 34 IPC. This FIR had been registered under the directions of the Hon'ble Supreme Court and was investigated by the CBI, which had presented this challan.

The Petitioner, who admittedly is an eye-witness in the murder case of Jaswant Singh Khalra, fears that his security is endangered in view of the withdrawal of Escort Gypsy earlier provided to him under the directions of the Hon'ble Supreme Court, which has resulted in his security guard being ineffective in travelling with him, while he is required to go on some social or other such commitments. The perusal of the petition would reveal that the Petitioner has given an eye-witness

account in the case of abovenoted murder trial leading to conviction of different police officials for an offence under Sections 302/201/364/120-B/34 IPC. Having regard to the involvement of police officials and the importance of this case, the Hon"ble Supreme Court vide its order dated 15.3.1996 had given directions for providing full protection to all the witnesses, who were assisting the CBI in investigating this murder case known as 'Khalra murder case". The order in this regard has been annexed as Annexure P-1 with this petition and the relevant portion thereof reads as under:

We direct the Home Secretary and the Director General of Police, State of Punjab, to give full protection to all the witnesses who are assisting the CBI in this investigation as and when any of the witnesses ask for police protection (independent) the same be provided to them.

It may also need a notice that having regard to sensitive nature of the case and the influence that the police officials may have been able to exercise, the directions were issued by the Hon"ble Supreme Court to transfer all the police officials out of district Amritsar. So much so that Shri Ajit Singh Sandhu, SSP, Tarn Taran was not permitted to retain accommodation at Taran Taran, though he had been transferred from the district under the orders of the Hon"ble Supreme Court. On request made by DSP K.S. Joshi, Investigating Officer, CBI, Jaspal Singh, DSP, Tarn Taran and Surinder Pal Singh, SHO, Police Station, Sarhali were directed to be transferred from the District with the further directions that they shall not be posted either in the Districts of Amritsar or Tarn Taran or the adjoining Districts. Complying with the directions of the Hon"ble Supreme Court, the Petitioner was provided six gunmen, three from CISF and three from Punjab Police, who have remained with him for providing protection to his life and liberty. He was also provided Escort Gypsy alongwith 150 litres of petrol per month for his day-to-day pursuits. It is in this background that the present Petitioner was able to assist the administration of justice by appearing as a witness and giving the eye-witness account. It is now complained by the Petitioner that a few days before filing of the petition, the Gypsy provided to him has been withdrawn under the orders of Additional Director General of Police, Security Wing, Punjab (Respondent No. 4). The reasons advanced in this regard are that State is facing acute shortage of vehicles for VIP duties and hence Gypsy/Car for security provided to the Petitioner is taken back. Terming this to be an excuse, the Petitioner has complained that this is aimed at tactics to lax the security provided to the Petitioner and somehow to deter him. The Petitioner has also made reference to certain previous instances of this nature, which, as per him, were aimed at deterring him from appearing as a witness. He would refer to the case of a star witness Kikker, who was eutralized by registering of five criminal cases against him and his father. As per the Petitioner, this witness had to spend two and half years in jail before he could bail himself out. He accordingly turned hostile when time for his deposition came. The Petitioner was also consistently entangled into different criminal cases once he was cited as a prime eye-witness in this case. Even a

Criminal Writ Petition No. 70 of 1998 was filed in this Court for registration of a case against the Petitioner. An FIR No. 394 dated 28.7.2003 under Sections 376, 506, 342 IPC was registered at Police Station Sadar, Patiala through one Gurmeet Kaur and Parveen Komal, a stock police witness. This case was registered against the Petitioner when he was to depose before the trial Court in Khalra murder case. The Petitioner, being honest citizen, has tolerated this pressure of the various police officials, who obviously had a motive to support their peers. It is because of his bold and fearless stand that police officials have been convicted.

2. The Petitioner would not be un-justified in raising the present grievance. What use would be the security persons provided to him in case he is not able to take them along while attending some social or other such like functions? Petitioner cannot be expected to stick to his house. A person, who has assisted the State in administration of justice, cannot now be left to fend for himself. Why suddenly the officials have woken up to withdraw Gypsy provided to the Petitioner on the basis that there is dearth of such vehicles for performing VIP duties? This move is likely to result in making the security of the Petitioner defunct, even if the reasons behind withdrawing the Gypsy are not doubted. Though the Petitioner claims that this withdrawal of Gypsy is aimed at exposing life and liberty to a danger. The fact that this move may result in Petitioner, being exposed to some danger, cannot be ruled out. The response of the State to this petition appears to be chivalrous one. It is stated that there would not be any danger to the Petitioner now since the police officials have been convicted and are undergoing sentences awarded to them. It is being made out that they would now be ineffective. The clout the police official can have while being detained can not be discounted. They have peers to look after all those who are to be dealt with. The efforts of the police to terrorise and threat the Petitioner and other witnesses by registering false cases, as noticed above, cannot be easily ignored. The threat perception to the Petitioner, as appreciated by the State agencies is not worthy of much credence. Even after conviction the Petitioner would remain exposed to the danger to his life and liberty. This would in itself be an indicative from the fact that six persons of the security provided to the Petitioner under the directions of the Hon'ble Supreme Court are still with the Petitioner. The question required to be seen is whether they can effectively protect his life and liberty in the absence of Gypsy vehicle earlier provided to him, which has been withdrawn. The Petitioner seems to be justified in his complaint that he would not be in any position to effectively utilise the services of the security persons provided to him. As already noticed, the Petitioner cannot be expected to confine himself to the four corners of his house. Any human being can be expected to interact socially and otherwise while undertaking various social activities. If he is unable to take his security persons alongwith him, then he would certainly be exposed to the danger on being eliminated or otherwise harmed. This aspect was highlighted by this Court in its order dated October 31, 2006, which is as under:

The Petitioner, who has appeared as a witness in a very prominent Khalra murder case against some highly placed police officers, certainly is under apprehension of a serious threat. He has been provided security under the directions of the Hon'ble Supreme Court. Though the security provided to the Petitioner is continued, but a vehicle in which the security persons are to travel, has been withdrawn. The reasons given in the affidavit are that Escort Gypsy was withdrawn in view of the report of the Intelligence Wing having regard to the threat perception to the Petitioner. No doubt, the case has been decided and some of the police officials have been convicted and are undergoing sentence, but that would not, in my view, change the threat perception to the Petitioner. Since another petition filed on behalf of the Petitioner was listed before this Court, I am accordingly aware that even now the cases are being registered against the present Petitioner. Though presently there is no enactment relating to the witness protection, yet some observations in this regard were made by Division Bench of this Court in one case. This, in my view, is a fit case where protection is required to be extended to the Petitioner. The difficulty expressed by the Petitioner in moving in his vehicle with the security provided, appears to be genuine. Mr. Bains, however, seeks time to prepare the case further. On his request, adjourned to 27.11.2006.

3. Though our Country may not have system as is prevalent in some of the countries regarding the witness protection, yet our courts have been liberal in granting protection to the life and liberty of the persons. The order passed by the Hon'ble Supreme Court in the present case is a prime example in this regard. This Court in C.W.P. No. 8064 of 2003 (Dr. Gurvinder Singh Samra v. Union of India and Ors.) noticed the system of protection available in various countries, like Queensland, Scotland, Canada, United States and Australia and expressed desirability of legislature/administration for emulating the advances in this field made in criminal jurisdictions referred to in these countries. The circumstances, which are to be taken into consideration for providing protection to a witness and continued grant of such protection as available in these countries have been noticed in the above-noted criminal writ petition by this Court. It would be noticeable that enactments available in this regard have made provision for even protection to family members or associate of a person, who has helped law enforcement agencies in criminal investigation. A person, who has helped or is helping law enforcement agency in the performance of its functions, is entitled to programme under witness protection. Noticing these conditions, it can be safely assumed that protection is not to be made available to a person till he appears as a witness but should and must continue even thereafter. In numerous cases, this Court and the Hon'ble Supreme Court have been granting protection to persons specially so when they are under threat from police officials.

4. In this view of the matter, the Petitioner cannot now be left on his own once he has been bold enough to depose against highly placed police officials. Without going into the aspect of constrained expressed by the State in its recourse to

provide Gypsy to the Petitioner, I am of the view that a citizen, like the Petitioner, who has assisted the State in administration of justice needs to be protected well and properly. Even if the State is not in a position to provide Gypsy to the Petitioner around the clock as hereinbefore, yet it can certainly make available such a vehicle, on demand, to the Petitioner as and when he is required to move around for any social or other such obligations. Accordingly, directions are hereby issued to the State to make provision for a suitable vehicle, which may be Gypsy or other such vehicle for the Petitioner on demand as and when required, so that he is able to travel without fear and take the security guard along. The Petitioner would make a request in this regard to S.S.P. of his district well in advance whenever he would need vehicle for taking his security persons alongwith him on some social and other such gathering and the vehicle accordingly would be provided to him for the duration of his visit. After conclusion, the vehicle may be returned to the concerned quarters. It would not be very inappropriate to observe that even if such vehicle is not available, when demanded, the Petitioner can be permitted to make such arrangements at his own and compensated for hiring a vehicle for taking his security persons so that he does not suffer any fear or threat to his life and liberty. The present petition is accordingly allowed in the above terms.