
(2019) 06 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 1125 Of 2017

Jatin Mali

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Indian Penal Code, 1860 — Section 306

Citation : (2019) 06 GAU CK 0005

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : Sk S N Mohammad

Final Decision : Disposed Off

Judgement

1. Heard Mr. SK N Mohammad, learned counsel for the petitioner. Also heard Mr. D. Mozumdar, learned Addl. Advocate General, Assam.
2. The present matter relates to providing security guards to the petitioner, considering the threat perception against the petitioner.
3. The petitioner's counsel submits that the petitioner is a 4 (four) time MLA and was also an Ex-Minister. He submits that the petitioner had initially been given two PSOs and four House Guards while he was a Minister in the Government of Assam. However, after he lost the last Assembly Election in the year 2016, all his PSOs and House Guards were withdrawn. He submits that the withdrawal of the security provided to the petitioner has exposed the petitioner to immense danger to his life and liberty. He also submits that in pursuance to an interim order passed by this Court, the petitioner has now been provided with one PSO. He submits that being a four time MLA and a two time Minister in the Government of Assam, the petitioner is entitled to the earlier security arrangement provided to him.
4. Mr. D. Mazumdar, learned Addl. Advocate General submits that the PSOs and House Guards had been withdrawn from the petitioner on 21.09.2016, in view of

the fact that he is no longer an MLA and a criminal case had been registered against the petitioner, i.e., Jalukbari P.S Case No. 748/2016 under Section 306 IPC. He also submits that charge sheet has been filed in the above case on 31.12.2016 and the case is still pending in the Court of the learned Chief Judicial Magistrate, Guwahati.

5. The learned Addl. Advocate General also submits that a fresh threat assessment exercise, regarding the threat perception of the petitioner, was undertaken pursuant to the Order dated 10.08.2017 passed by this Court. In the Threat Assessment Report, it is stated that "since there is no specific threat at present from any corner, PSO may not be recommended". The same was signed by the Deputy Commissioner of Police (Security & Intelligence). Thereafter, the final decision was taken by the Commissioner of Police, Guwahati, which is to the following effect:- "no specific threat in Guwahati, he stays in Kamrup (Rural) District. A case against him was charge-sheeted in Jalukbari Police Station. No PSO recommended".

6. The Addl. Advocate General also submits that as per the minutes of the State Security Review Committee (SSRC), meeting held on 09.06.2011, which was chaired by the Secretary, Home & Political Department to the Government of Assam, it was decided at Serial Nos. 3 & 4 as follows:-

"3. All the MsLA will be provided with 3 (three) PSOs each.

4. All the Ex-MsLA of the last outgoing Assembly will be provided with 1 (one) PSO except the cases where specific threat is reported."

7. The Addl. Advocate General submits that that the petitioner is accordingly entitled to one PSO. He further submits that there is no threat perception to the petitioner, as per the threat assessment report made in compliance with the order passed by this Court and as the petitioner has been provided with one PSO, the writ petition should be dismissed. He also submits that if the petitioner apprehends a fresh threat perception to his life and liberty, he is at liberty to file a fresh application to the Government, who shall conduct a fresh threat assessment exercise in respect of the apprehended danger faced by the petitioner.

8. I have heard the learned counsels for the parties.

9. The additional affidavit filed by the State respondents in WP(C) No. 6231/2012 contains the Standard Operating Procedure (SOP) to be followed by the respondents in cases of threat assessment in respect of a person. It is also seen that the State respondents have conducted a Threat Assessment Report dated 31.08.2017 in respect of the petitioner in pursuance to the Order dated 10.08.2017 passed by this Court, wherein it has been stated that there is no specific threat against the petitioner and accordingly no PSO is recommended. However, the petitioner is provided an PSO, not only on the basis of the interim order passed by this Court but also in compliance with the SSRC guidelines/

decisions taken in its meeting held on 09.06.2011, wherein 1 (one) PSO is to be provided to all Ex-MLAs of the last outgoing Assembly, except where specific threat is reported.

10. In a case where a person had filed an application to be provided Police security regarding threat perception to his life, the Apex Court in the case of State of West Bengal & Ors. Vs. Biswas Nath Mitra reported in 2015 14 SCC 599 has held at para 9, 10 & 11 as follows:-

"9. We have given a thoughtful consideration to the matter in hand. It is not possible for us to accept the aforesaid complaints on their face value, nor does this Court have the expertise to draw a conclusion whether or not there is actually a threat to the life and liberty of the respondent. The only recourse open to us to determine the threat perception to the life and liberty of the respondent was to call for a report from the Superintendent of Police concerned. The aforesaid procedure was adopted and the report dated 04.02.2015 has been received, which depicts no threat perception insofar as the respondent is concerned. We find no justification for not accepting the same.

10. Despite the conclusions drawn in the report dated 04.02.2015, the learned counsel for the appellants states that the State Government would be ready and willing to provide police protection to the respondent. However, the same shall be at his own cost.

11. Based on the factual position noticed above, we are satisfied in disposed of the present appeal, with the following directions:

11.1. It shall be open to the respondent to furnish further details to the police authorities insofar as the threat perception to his life is concerned. This liberty shall be available to the respondent, as and when he perceives of such threat. When such a representation is made by the respondent to the police authorities, the same shall be examined and a decision shall be taken thereon within one week of the receipt of such representation. In case it is concluded that there is a threat to the life and liberty of the respondent, he shall be provided free protection.

11. 2. Irrespective of what has been directed by us hereinabove, and irrespective of the conclusions drawn by the Police Department, it shall be open to the respondent to claim police protection based on his own threat perception. In case he chooses to do so, the police authorities shall provide police protection to the respondent, and charge him for the same.

11. Keeping in view the judgment of the Apex Court, as reflected above, this Court is also not in a position to except any complaints, regarding the apprehended threat to the petitioner's life and liberty on their face value, as this Court does not have the expertise to draw a conclusion as to whether there is an actual threat to the life and liberty of the complainant. These matters are best left to the competent authority, such as the Police and the Committees

constituted by the State Government for the said purpose.

12. In view of above, this Court does not find any reason for him to interfere with the Threat Assessment Report dated 31.08.2017 made in respect of the petitioner, pursuant to the Order dated 10.08.2017 by this Court. It is however open to the petitioner to approach the respondent again, if he feels that there is a new apprehended threat to his life and liberty, subsequent to the Threat Assessment Report made earlier. In the event the petitioner files such application, the same should be considered/enquired into by the State respondents as per their guidelines, SOP and by the Committees constituted by them and make a fresh Threat Assessment Report.

13. The writ petition is accordingly disposed of.