
(2006) 10 AHC CK 0144
In the Allahabad High Court

Jitendra Singh @ Jatan Sirohi, through his and Smt. Reena Sirohi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 151
Penal Code, 1860 (IPC) — Section 302, 307, 364, 396

Citation : (2006) 10 ADJ 315

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—By means of this writ petition the petitioners wanted to get an order to provide adequate security to the petitioner No. 1 in the form of Central or Provincial Armed Force (Pradeshik Armed Constabulary, in short called P.A.C.) in addition to or other than the local civil armed police.

2. According to the petitioners, petitioner No. 1 has real danger that his enemies in collusion with the local police and local administration will try to kill him. The petitioner No. 2 had filed a writ petition, being Writ Petition (Criminal) No. 196 of 2004 (Reena Singh v. State of U.P. and Ors.), before the Supreme Court when the writ petition was dismissed on 01st October, 2004 by reserving liberty with the petitioner to approach the High Court within a period of six weeks, but the interim order, which was passed earlier to provide sufficient security at the time of taking the petitioner No. 1 for trial, was remained in force for a period of another eight weeks. The petitioner No. 2 was married to the petitioner No. 1 six years ago and she is living with her daughter, who is aged about three years, at House No. 665-B, NTPC Dadri, District Ghaziabad, U.P. According to the petitioners, the petitioner No. 1 has been falsely implicated and is facing Session Trial No. 99 of 2004 arising out of Case Crime No. 15 of 2001, under Sections 396 364 and 307 I.P.C., Police Station B.B. Nagar, District Bulandshahar. The

petitioners are permanent residents of Village Saidpur, Police Station B.B. Nagar, District Bulandshahar. From the very beginning the petitioner No. 1 and his family was active in local politics and formation-of local self government. But due to this reason he felt victim of village party bandi and animosity. The other party headed by Sri Sensar Pal had committed murder of petitioner"s entire family including his mother and four brothers. In that murder case, the police personnels had taken active part and four accused persons, who had murdered the petitioners" family, were serving in the civil police. According to the petitioners, several cases are going on against Sensar Pal either u/s 302 I.P.C. or Section 307 I.P.C. or Section 25 of the Arms Act in different police stations. His associates are also criminals. Such criminals have also been trying to murder the petitioner No. 1 in jail custody. From such criminals there are constant danger to the lives of the petitioners. In 2003 when the petitioner No. 1 was being tried before the Magistrate, Special Court Bhadra, Ahmadabad, Gujrat in some matters and he was in custody, the said gang tried to kill him, therefore, he had prayed the learned Additional Session Judge to direct the Jail Superintendent to provide him security while taking him to attend the Court. Such Court was pleased to direct to provide full security. The alleged criminals have tremendous influence over the local police and they tried to transfer the petitioner No. 1 from District Jail, Bulandshahar to Central Jail, Agra. The purpose behind this transfer was that he or his associates may get chance to kill the petitioner No. 1 during transit on the date fixed in the trial at Bulandshahar or with the help of the local police in a fake encounter. Learned Session Judge, E.C. Act, Bulandshahar passed an order on 17th April, 2004 granting permission to transfer the petitioner No. 1 (under trial) from District Jail, Bulandshahar to Central Jail, Agra. The petitioner No. 1 had challenged the aforesaid order dated 17th April, 2004 by filing writ petition, being Criminal Misc. Writ Petition No. 3126 of 2004 (Jatan Sirohi v. State of U.P. and Ors.) when order was stayed. One of the eye witness of murder of relative of the petitioners also moved a similar application for providing security in the concerned trial court. After final disposal of the writ petition filed by the petitioner No. 2 in the Supreme Court, the Senior Superintendent of Police, Bulandshahr and Jail Superintendent, Bulandshahr had impressed the petitioner No. 1 that he may not approach the courts, which may give bad name to the administration and he will be given sufficient security even without the orders of the Court. However, on 10th November, 2004 two co-accused in the case of the petitioner No. 1 were assaulted by the so called criminals when an application has been made u/s 151 of Code of Criminal Procedure. Another co-accused was killed in the fake encounter by the police. Under such circumstances, the petitioners wanted protection in the manner as placed before.

3. We found from the record that another writ petition, being Criminal Misc. Writ Petition No. 3126 of 2004 (Jatan Sirohi v. State of U.P. and Ors.), had been filed before the High Court, when the learned Single Judge was pleased to quash the order impugned therein dated 17th April, 2004, by which the concerned Court was pleased to direct transfer of the petitioner No. 1 from District Jail,

Bulandshahr to Central Jail, Agra during pendency of the proceedings before the learned Session Judge. Therefore, the cause of transfer from one jail to other had been evaporated by virtue of the order dated 10th November, 2005 passed in the said Writ Petition No. 3126 of 2004. This writ petition is made earlier to the date of disposal of such Writ petition.

4. The respondents filed several affidavits in connection with the cause whenever concerned Courts directed to do. It appears to this Court that the petitioner No. 1 is involved in 90 cases in different police stations. Most of the cases are arising out of heinous crimes. It was specifically stated that the petitioner No. 1 has several enemies because of his criminal activities and the petitioner No. 1 himself is responsible for the germination of the enemies. Therefore, on account of his security inside the jail as well as outside the jail, the District Superintendent, Jail, Bulandshahar and District Magistrate, Bulandshahar issued letters to the Director General (Prison), U.P., Lucknow for transfer of the petitioner No. 1 to some Central Jail (A-Class) having facilities of security. Admittedly one Sri Sensar Pal, who is heading a gang, has criminal terms with the petitioner No. 1 and some of the men of Sri Sensar Pal's gang are still inside the District Jail, Bulandshahar and the administration is very much apprehensive of the fact that any untoward incident may take place at any time. Therefore, the administration desired to transfer the petitioner No. 1 to the nearest Central Jail, Agra, where he can be confined separately from his rival group. Since the petitioner No. 1 is a previous life convict, he is entitled to be kept in Central Jail having Class-A facilities. It is also complained that the petitioner No. 1, being hardened criminal, is operating from the District Jail, Bulandshahar through the members of his gang, who used to visit on one or other pretext to have instructions. State Government has also moved an application to the Additional District and Sessions Judge, Bulandshahar seeking no objection/consent of the trial court for transferring him to the Central Jail, Agra. The Additional District and Sessions Judge vide order dated 17th April, 2004 granted permission. However, such order was quashed on 10th November, 2005 by a learned Single Judge of this High Court in Criminal Misc. Writ Petition No. 3126 of 2004 (supra). Although the order had been quashed but the order of the State Government being dated 25th May, 2004 for transferring the petitioner No. 1 to the Central Jail on administrative ground as well as on the ground of appropriate security still exists as unchallenged.

5. According to us, controversy before this Court is not the order passed by the State Government for transferring the petitioner No. 1 from one jail to another but for providing him adequate security in the form of the Central or Provincial Armed Force in addition to or other than the local civil armed police. However, the petitioner has confined his prayer in respect of providing P.A.C. from the State. Therefore, we have to go through the law how and under what circumstances P.A.C. can be provided. A copy of the Pamphlet No. 10 as annexed with the third supplementary counter affidavit, deals with the instructions for the use of the P.A.C. in the districts and introductions as regards types of duties given therein are as follows:

2. INTRODUCTION

2. The primary role of the Pradeshik Armed Constabulary is to serve as a specially trained reserve force for use during emergencies and for special assignments. It is not meant for routine day-to-day law and order duties which must essentially be performed by the District Police.

3. The aim of the booklet is to consolidate, in brief relevant portions of orders of the IGP, IG PAC, and the PAC...with regard to the functions and proper utilization of the PAC force and to lay down guide-lines, where necessary, for the guidance of the Superintendent of Police, I/C District and the Commandants.

3. TYPES OF DUTIES.

4. The P.A.C. force is generally called out to perform the following duties in the districts:

- (i) VIP duty.
- (ii) Anti-dacotity duties and duties in connection with out breaks of organized crimes or crimes resulting in widespread public panic.
- (iii) Duties in connection with important fairs and festivals.
- (iv) Duties in connection with communal riots,
- (v) Duties in connection with student agitations,
- (vi) Duties in connection with political, agrarian, and labour agitations or riots.
- (vii) Duties in connection with public entertainments and sports.
- (viii) Duties in connection with elections,
- (ix) Duties in connection with other grave and serious and law and order situations.
- (x) Duties in connection with serious natural calamities and accidents, (xi) Guarding of vulnerable points.

5. Employment of P.A.C. on routine duties should be scrupulously avoided unless this is specially authorised, in a real emergency, by the sector DIG PAC or IG PAC or IGP. The P.A.C. is utilized for unarmed duties in connection with arrangements for important religious festivals and big fairs Melas. SsP are not permitted to use PAC personnel on duties in small fairs or on Police Duties of a routine nature during periodical religious festivals.

The PAC may also be used only with lathis/canes or partly armed and partly with lathies/canes for controlling crowds during VIP visits. The PAC men should not be put on plain clothes duties on such occasion. Whenever it is intended to use the PAC to provide a guard of Honour to a very important personage, previous permission of the Sector DIG, or PAC Headquarters should be obtained. PAC

should not be used for routine drama, cinema or circus duties or singing or concert parties. Such entertainments should be within competence of the Civil Police to handle.

Some of the illustrative routine duties of D.E.F. for which PAC should not be used are enumerated as under:

- (i) Routine patrolling,
- (ii) Regulation of Traffic.
- (iii) Formation of queues and sale of tickets at places of entertainments.
- (iv) Checking of passes to regulate entry to any place of function or entertainment,
- (v) Escort of prisoners.
- (vi) Enforcement of convoy system.
- (vii) Escort of property and treasure,
- (viii) Escort of officers except in cases of communal riots and election duties and in grave law and other situations,
- (ix) Escort of trains and checking of ticketless travelling,
- (x) Fixed guards and residential guards.

6. From the aforesaid instructions it is clear that PAC can not be granted to escort the prisoners. Therefore, such writ petition can not be sustained and is accordingly dismissed.

7. No order is passed as to costs.

8. However, this order will not preclude the State from providing additional security, if any, from outside subject to payment of cost by the petitioners.