

(2017) 03 AHC CK 0056
In the Allahabad High Court
Case No : Writ - C No. 30818 of 2015

Prema Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2017) 3 AILLJ 531

Hon'ble Judges : V.K. Shukla and Ashok Kumar, JJ.

Bench : Division Bench

Advocate : Syed Safdar Ali Kazmi and Ashish Kumar Gupta, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

1. Premia Devi wife of Om Prakash is before this Court, assailing the validity of the decision dated 28th April, 2015 passed by the High Level Committee and communicated under the signatures of Deputy Secretary, Uttar Pradesh on 6th May 2015, wherein a resolve in question has been taken not to provide security cover to the petitioner at the expense of State exchequer.

2. Brief background of the case as is reflected from pleadings that has come forward is that a criminal case in question has been got registered bearing Case Crime No. 89 of 2013 under Sections 147, 148, 149, 427, 504, 506, 352, 354, 419, 420, 467, 468, 471 and 120B IPC, Police Station- Shivpur, District- Varanasi by the petitioner complaining therein that she has been subjected to criminal activity and further she has also given details of the incumbents behind the said crime in question who are no one else but near and dear of one renowned "Mafia Don" of the eastern region of the State of UP.

3. This is also reflected in the present case that in consonance with the Government Order dated 9th May, 2014 looking to threat perception in question, security cover had been provided to the petitioner at both the level is the District

Level Committee and as well as Division Level Security Committee. Both District Level Committee and Divisional Level Committee, can provide security cover for limited period. Maximum period for which security cover can be provided is three months each, and thereafter, in further security is to be provided then ultimate call in the said direction is required to be taken by the State Level Committee and accordingly in regard to extension of facility of security cover to the petitioner, a recommendation in question has been made by the local officials as well as the higher officials and at the point of time when the matter has been taken by the State Level Committee, in its meeting a resolve has been taken that there is no real threat perception to her life as such resolve is being taken not to provide security cover to the petitioner, this decision has impelled the petitioner to be before us.

4. To the challenge in question that has been so raised before us a counter affidavit has been filed and the counter affidavit in question proceeds to speak that the incumbent against whom a large scale allegations have been levelled, he is confined in jail for more than two year and security cover had been provided to the petitioner for the last two years and no untoward incident took place of any kind whatsoever against the petitioner as such there is no justification to provide security.

5. A rejoinder affidavit has been filed repeating the averments mentioned therein and reiterating therein that still threat perception continues and before the trial Court, the accused persons are not at all cooperating in the matter.

6. After respective pleadings have been exchanged, the present writ petition in question has been taken for final hearing and disposal.

7. Sri Syed Safdar Ali Kazmi appearing along with Sri Ashish Kumar Gupta, learned counsel for the petitioner submitted before this Court that once recommendation has been made from all levels that according threat perception still exists and case is made out for security cover to the petitioner, then merely by saying that in the opinion of the State Level Committee there is no threat perception has to be termed as totally arbitrary decision, and the said decision has to be accepted as without looking into the original recommendation made by the authorities who were much more conversant of threat perception to the life of the petitioner.

8. Learned Standing Counsel, on the other hand, has contended that the valid reason has been assigned for not providing security cover to the petitioner.

9. After respective arguments have been advanced, the factual situation on which there is no dispute that petitioner has been subjected to criminal activity, and this is also equally accepted position that has been carried out after investigation in the matter charge sheet in question has been filed and cognizance in question has also been taken by a competent court. This much is also clear that in the said incident in question there is active participation of family members of "Mafia Don" disclosed based on evidence and, as such,

collected version that has been set up by the petitioner has been found truthful by investigation agency and charge sheet in question has been filed. This much is also equally true that the District Level Committee as well as Division Level Committee (Security) has proceeded to provide security cover to the petitioner and thereafter, matter has been examined by the State Level Committee along recommendation in question but it appears that in mechanical manner and without assigning any reason, as to why the report that has been submitted by the authorities on the spot, has been ignored. Once a recommendation in question has been made by the authorities in their wisdom of threat perception in question being there then the said recommendation in question ought to have been considered in its correct perspective and reasons ought to have followed as to why the said recommendation in question is being ignored. The stand taken in the counter affidavit, in our considered opinion, is also not being approved by merely by saying that "Mafia Don" is in jail and no incident has taken place for last two years. Merely because "Mafia Don" is in jail that does not mean that his criminal activities outside the jail are on hold. Incident in question has taken place when "Mafia Don" was not on the spot. Merely because no incident has taken place, also can not be a relevant factor and the only relevant factor is persistency of threat perception towards life and limb fact of the matter is that authorities who have been discharging responsibility for protecting life and liberty of citizen will have to act much more responsible. In the present case, we find that in most casual manner threat perception in question has been dealt with.

10. In view of this, we disapprove the decision taken by the State Level Committee. Accordingly, both the orders dated 28th April, 2015 passed by the High Level Committee and communicated under the signatures of Deputy Secretary, Uttar Pradesh on 6th May 2015 in question are hereby quashed. The matter is remanded back to the Principal Secretary (Home), Lucknow to take a fresh decision in the matter preferably within next two months from the date of a certified copy of this order and since large period has elapsed and as to whether threat perception to the petitioner still persists or not, qua the same fresh report be called for.

11. With this, the writ petition is, accordingly, allowed.