



2024:CGHC:44770-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 201 of 2024

Ashutosh Bohidar S/o Late Shri J. P. Bohidar, aged about 38 years
Occupation - Agriculture, R/o Village Tamnar, Tahsil Tamnar, District :
Raigarh, Chhattisgarh.

... Petitioner

versus

1 - State of Chhattisgarh through the Secretary, Ministry of Home,
Mahanadi Bhawan, Mantralaya, Naya Raipur, District : Raipur,
Chhattisgarh

2 - The Superintendent of Police Raigarh, District Raigarh,
Chhattisgarh.

3 - The Sub- Divisional Officer (Police) Dharamjaigarh, District Raigarh
Chhattisgarh.

4 - The Station House Officer, Police Station- Tamnar, Tahsil- Tamnar,
District Raigarh, Chhattisgarh.

5 - Ganga Prasad Banjare, Presently posted in Police Station- Pendra,
District Gourela-Pendra-Marwahi, Chhattisgarh.

... Respondents

For Petitioner : Mr. Hari Agrawal, Advocate

For State/respondents : Mr. U.K.S. Chandel, Dy. Advocate General

No.1 to 4.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Amitendra Kishore Prasad, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

18/11/2024

Heard Mr. Hari Agrawal, learned counsel for the petitioner. Also
heard Mr. U.K.S. Chandel, learned Deputy Advocate General,
appearing for the State/respondents No.1 to 4.

2. The present writ petition has been filed by the petitioner with the following prayers:

“a. A writ and/or an order in the nature of appropriate writ do issue calling for the relevant records from the concerned authorities/Court below relating to the Petitioners' case for its kind perusal.

b. A writ and / or an order in the nature of appropriate writ do issue quashing the order dated 30.06.2022 (Annexure P-1) and all subsequent/incidental proceedings including the recommendation dated 18.05.2022 (Annexure P-2) and further be pleased to direct the Respondent authorities to delete the name of the Petitioner from the Gunda/ Surveillance List, actions, in the interest of justice.

c. A writ and/or an order in the nature of appropriate writ do issue directing to take suitable action against the Respondent no. 5 for misusing his official position, in facts & circumstances of the case.

d. Any other relief which this Hon'ble Court may deem fit in the facts & circumstances of case.

e. Cost of the petition may also be awarded.”

3. Brief facts of the case are that respondent no. 5 is the Police official (the then S.H.O. of the concerned Police Station at relevant time) at whose behest various criminal proceedings has been maliciously initiated against the petitioner by various persons and also on the recommendation of respondent no. 5 the instant Surveillance List proceedings has been initiated. From the month of April May 2022 i.e. 08.04.2022 till 17.05.2022, as many six different FIRs has been

registered against the petitioner at the very same police station in which, respondent No.5 was posted as Station House Officer, for different offences by different informant (but with a common thread, narrated in detail below). Further, when arrest has been made in the instant cases, as soon as, the petitioner gets bail or even applies for grant of regular bail/anticipatory bail, subsequent FIRS are being registered, which speaks volumes about the manner in which things are being handled in the ground.

4. All the aforesaid six FIRs has been solely registered only to harass and humiliate the petitioner at the behest of the respondent No. 5 herein solely to make the petitioner succumb to his illegal demands. Further, unfairness & vengeance on part of the respondent No.5/police authorities is apparent on the face of record, which would be corroborated from a bare perusal of documents mentioned herein above. Thereafter vide letter dated 18.05.2022, the respondent No.4/respondent No.5 had made a recommendation to the respondent No. 2 to put the name of the petitioner in the Gunda/Surveillance List. Further, the said letter dated 18.05.2022 was approved in a mechanical manner by the respondent No.3/S.D.O.P. (Dharamjaigarh) vide endorsement dated 19.06.2022. Again, vide order dated 30.06.2022, on the basis of aforesaid recommendation dated 18.05.2022, the respondent No.2 has passed an order and put the name of the petitioner in the Gunda/Surveillance List.

5. The above Gunda/Surveillance List proceedings have been conducted behind the back of the petitioner and neither any pre-decisional nor post-decisional opportunity of hearing was provided to the petitioner and it is only sometime in the month of August, 2023, the petitioner came to know about the inclusion of his name in the said list. Immediately thereafter, the petitioner filed an application under the Right to Information Act, 2005 seeking requisite information about the proceedings and vide reply dated 02.10.2023 & 19.11.2023, the information relating to Annexure P/1 and P/2 was provided to the petitioner.

6. Thereafter on 12.03.2024, the petitioner filed a detailed representation before the respondent No.1 highlighting all the aforesaid aspects of the matter and prayed for deletion of his name from the Gunda/Surveillance List. However, till date, the respondent No.1 has not decided the representation filed by the petitioner causing great prejudice to the petitioner and name of the petitioner is still included in the Gunda/Surveillance List.

7. Learned counsel for the petitioner would submit that the respondent authorities are absolutely unjustified in placing the name of the petitioner in the Gunda/Surveillance List merely on the ground that certain criminal cases have been registered against the petitioner. He further submits that there is no cogent/reasonable material on record to show that the petitioner is determined to lead the life of crime and there

is serious danger to the public peace and tranquility, if his name is not placed in the Gunda List and he is not kept under Surveillance. It has been contended that the petitioner is not an habitual offender and the time line of the events would clearly show that the alleged criminal cases have been falsely registered against the petitioner for raising his voice against the illegal act of Jindal Company. It has been further contended that the petitioner has not given adequate opportunity of hearing, which is violative of Principles of Natural Justice and amounts to infringement of fundamental and Constitutional rights. It has been lastly contended that the instant proceedings has been solely registered only to harass and humiliate the petitioner at the behest of the respondent No. 5. Hence, instant petition be allowed and the impugned order dated 30.06.2022 as well as subsequent/incidental proceedings including the recommendation dated 18.05.2022 (Annexure P-2) be set aside and a direction be given to the respondent authorities to delete the name of the petitioner from the Gunda/Surveillance List. Reliance has been placed upon the judgments rendered by Hon'ble Supreme Court in the matters of **Govind v. State of M.P., (1975) 2 SCC 148** as well as **Prem Chand v. Union of India, (1981) 1 SCC 639**. Reliance has also been placed upon the judgments rendered by Hon'ble High Court of Madhya Pradesh in the matters of **Jorawar Singh v. State of M.P., 1985 J.L.J. 556** as well as **Sanjay Golhani v. State Government of M.P and others., 2011(2) M.P.L.J. 416** in support of his contentions.

8. Per contra, learned State counsel opposes the submissions

advanced by learned counsel for the petitioner and submits that the petitioner is continuously indulged in commission of criminal offences and as many as 06 criminal cases, i.e. Crime No. 274/2021 under Section 294,506 of IPC, Crime No. 138/2021 under Sections 341,294,506 of IPC & Section 3(2) of SC/ST (Atrocity) Act, Crime No. 146/2022 under Section 506 of IPC, Crime No. 149/2022 under Sections 384,506,34 of IPC, Crime No. 152/2022 under Section 506,120B of IPC and Crime No. 175/2022 under Sections 506,509(B) of IPC have been registered against the petitioner at Police Station Tamnar, District Raigarh (CG). Such offences are cognizable offences under the law. He further submits that looking to the commission of above said cognizable offences, the Station House Officer, Police Station Tamnar, District Raigarh placed a report alongwith criminal chart appraising the fact that the petitioner is continuously indulged in commission of criminal & cognizable offences and on account of such activity there is fear and disturbance among the people of society. It has been contended that even after initiating preventive action under Section 110 of Code of Criminal Procedure, 1973, the petitioner does not improve himself and continuous involved in commission of offences. There is possibility of creation of law & order and the conduct of the petitioner is required regular checking. Based upon the aforesaid proposal/report, the Superintendent of Police, Raigarh, District Raigarh (CG) after going through with the criminal records registered against the petitioner and taking into consideration the adverse impact being

caused upon the people of the society, passed the order dated 30.06.2022, by which, the name of the petitioner has been kept in Gunda List. It has been further contended that the Director General of Police, Police Headquarter, Chhattisgarh, Nawa Raipur, Atal Nagar has issued circular dated 04.07.2019, whereby, all the Superintendent of Police (including Rail), Chhattisgarh have been directed to take effective action against goons/surveillance rogue, accordingly the respondent authorities, in view of aforesaid criminal offences registered against the petitioner, taken action against him. It has been argued that the impugned order dated 30.06.2022 (Annexure P-1) has been issued by the Superintendent of Police, Raigarh in exercise of the powers vested to him under Para 855 of Part III (Surveillance) of the Chhattisgarh Police Regulations, which prescribes to keep a person under surveillance, who continuously indulged himself in commission of criminal offences and such an act would cause danger to the society. Hence, the present petition filed by the petitioner deserves to be dismissed with heavy cost.

9. We have heard learned counsel for the parties and perused the documents appended with writ petition.

10. Before proceeding further, it would be fruitful to quote Regulations 855 and 856 of the Chhattisgarh Police Regulations made under the Chhattisgarh Police Act. The said Regulations are as under for easy reference :-

“855. Surveillance proper, a distinct from general supervision, should be restricted to those persons, whether or not previously convicted, whose conduct shows a determination to lead a life of crime. The list of persons under surveillance should include only those persons who are believed to be really dangerous criminals. When the entries in a history sheet or any other information at his disposal, leads the District Superintendent to believe that a particular individual leading a life of crime, he may order that his name be entered in the surveillance register. The Circle Inspector will thereupon open a history sheet. if one is not already in existence, and the man will be placed under regular surveillance.”

“856. Surveillance may for practical purpose, be defined as consisting of the following measures:

(a) Through periodical enquiries by, the station-house officer as to repute, habits, association, income, expenses and occupation.

(b) Domiciliary visits both by day and night at frequent but irregular intervals.

(c) Secret picketing of the house and approaches on any occasion when the surveillance (surveillant ?) is found absent.

(d) The reporting by patels, mukaddams and kotwals of movements and absences from home.

(e) The verification of such movements and absences by means of bad character rolls.

(f) The collection in a history sheet of all information bearing on conduct.”

11. In the matter of **Govind** (supra), the Hon'ble Supreme Court while considering the validity of Regulations 855 and 856 of Madhya Pradesh Police Regulations has held that the surveillance is confined to limited

class of citizens who are determined to lead a criminal life or whose antecedents would reasonably lead to the conclusion that they will lead such a life.

12. In the matter of **Prem Chand** (supra), Hon'ble Supreme Court has held that there must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence.

13. The Division Bench of the Madhya Pradesh High Court in the matter of **Jorawar Singh** (supra) has held that Regulation 855 empowers surveillance only on persons against whom reasonable material exists to induce the opinion of the authority concerned that such material shows a determination to lead the life of crime.

14. It is reflected from the record that in the year 2018, the Chhattisgarh Vidhan Sabha Elections were held in the month of November 2018 and the duration of said Vidhan Sabha was around November 2023. Accordingly, in the vicinity of the Chhattisgarh Vidhan Sabha Elections, 2023 which were scheduled to take place after its natural completion. Sometime in the month of August 2023, the police officials of the local jurisdictional police station visited the house of the petitioner raising various queries about his travel & other recent and future planned activities. During the said time, it was informed to the petitioner that these queries are being made to him since his name has been recorded in the Gunda/Surveillance List then only he came to

know about his name included in the Gunda/Surveillance List for the first time. It has been further reflected that the petitioner was not given any opportunity of hearing (neither pre-decisional nor post-decisional) and in a very mechanical manner, the police authorities have named the petitioner in the Gunda List vide order dated 30.06.2022.

15. Considering the overall facts and circumstances of the case and the submissions advanced by learned counsel for the petitioner and further considering the judgments cited above as also the Regulation 855 of the Chhattisgarh Police Regulations, we find that respondent No.2 has erred in passing impugned order dated 30.06.2022 (Annexure P/1) and named him in the Gunda List.

16. In the result, the writ petition is allowed. Impugned order dated 30.06.2022 is hereby set aside. The respondent No.2 is directed to pass fresh order after giving proper opportunity of hearing to the petitioner.

Sd/-
(Amitendra Kishore Prasad)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

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