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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 25.07.2022**

+ **W.P.(CRL) 2307/2021, CRL.M.A. Nos. 18666/2021, 20733/2021, 2111/2022 & 4709/2022**

ANIL SAMANIYA

..... Petitioner

Through: Mr P.K. Dey, Sr. Adv. with Ms Shilpi Dey Auditya and Mr Shreyasi Chakrabarty, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Neeraj, Mr Sahaj Garg, Mr Rudra Paliwal, Mr Uedansh Anand and Mr Aseem Khan, Advs. for R-1/UOI. Ms Rupali Bandhopadhyia, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs. for R-2. Mr Anil Mittal and Ms Komal Aggarwal, Advs. for R-4 & R-5/State of U.P.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking a direction to the respondents to provide police protection by a Central Agency to the petitioner.
2. It is stated that the petitioner was the Investigating Officer of the famous Nitish Katara murder case, where Vikas and Vishal Yadav, the son and nephew of Sh. D.P. Yadav, Ex. Minister and Ex. M.P. were convicted and sentenced to 25 years in jail. Their sentence was confirmed by the

Supreme Court.

3. It is stated that the petitioner has been provided a security cover since 2002 and was to be withdrawn later when he retired on 30.11.2021. Thus, the petitioner approached this court to seek relief by praying for adequate security cover for protection to his life. When this petition came up on 24.11.2021, this court had provided the petitioner with security cover till the next date of hearing and had issued notice to the Respondents. The order has continued till date.

4. Today, it is stated by Mr Dey, learned senior counsel appearing for the petitioner, that the petitioner has held very sensitive and risk taking job profiles wherein he has arrested, charge-sheeted, had encounters with not only high risk criminals but also terrorists and various inter State gangs of extortionists and murderers. He has submitted that the petitioner played a crucial role in the investigation of the Nitish Katara case and was a key witness to the conviction of the accused.

5. He further submits that Ms Nilam Katara as well as Mr Ajay Katara, who were the witnesses in the Nitish Katara case have been provided police protection.

6. It is stated that with the petitioner, now, having retired from the police force, no longer has access to police protection and fears for his life as various gang members and criminals that he arrested are out of jail, having served their sentence and may wish to seek revenge on him.

7. An affidavit has been filed by Respondent No.1 i.e the Union of India, where it is stated that :

*“5. That as the Petitioner has prayed for police protection by a Central Agency, the threat assessment of the Petitioner was*

*obtained from Central Security Agency. As per their report, Central Security cover for the Petitioner is not required”*

8. Respondent nos. 4 and 5 i.e the State of Uttar Pradesh, have also filed their reply, the operative portion of which reads as under :-

*“3. It is submitted that in U.P police thousands of police officers, during their service tenure, investigate serious crimes like murder, robbery, rape, terrorism, drugs and dacoity etc. and are instrumental in arresting dreaded criminals and accused persons and in sending them to gallows and behind the bars. If all these police officers, who are instrumental in getting dreaded criminals and terrorists punished, start demanding police protection or security cover after their retirement, then maximum number of police force would be occupied in providing protection to such retired officers, thereby, affecting the security of public at large and also affecting law & order situation in the State. If, without any threat perception security cover is provided to the petitioner just because he was an Investigating Officer in a murder case during his service career, then other retired police officers, who were Investigating Officers in serious crimes, cannot be denied similar privilege. **There has been no threat perception found against the petitioner till now.**”*

9. Mr Dey, learned senior counsel submits that the reply filed by the State of Uttar Pradesh, wherein they say that there is no threat perception against the petitioner is faulty. He states that there is legal malice in the reply filed by the State of Uttar Pradesh. He further states that on

17.01.2022, this Court had asked a senior officer of State of Uttar Pradesh to file a counter affidavit as a result of which, reply was filed in March, 2022 which stated that there is no threat perception. Mr Dey states that the petitioner had also killed a dreaded criminal Rakesh Hasanpuria in an encounter wherein he himself was also shot and received bullet wounds. The brother of Rakesh Hasanpuria has also been released from jail sometime in June, 2022. He further states that Mr D.P. Yadav has also been released about two months back and therefore there is grave and serious threat perception to his life. He also states that several co-accused in the Nitish Katara case are also due to be released this year after having completed their sentence.

10. In addition, it is stated that the petitioner is a witness in more than 100 cases and as observed by the Supreme Court in “*Mahender Chawla & Ors. v. Union of India & Ors.*,” (2019) 14 SCC 615, the witnesses are the eyes and ears of justice and must be encouraged to give evidence free of any apprehensions and fear from the accused.

11. Lastly, it is submitted that parole applications of Vikas and Vishal Yadav are pending and are listed sometime in the Month of August, 2022. It is for these reasons, learned senior counsel for the petitioner submits that there is grave and serious threat to his life and he must be provided round the clock security by the State of Uttar Pradesh.

12. *Per contra*, Mr Mittal, learned counsel for respondent Nos. 4 and 5 i.e. State of Uttar Pradesh has drawn my attention to the counter affidavit filed by the respondents. Respondent Nos. 4 and 5 have stated that they have analyzed the threat perception of the petitioner and found that “*there is no threat perception found against the petitioner till now*”. It is further stated

that the petitioner is a trained police officer and has been responsible for the safety of life, limb and properties of the citizens within his jurisdiction. He is trained to be well versed not only in the art of self defence but also in defending other people under his charge.

13. Lastly, it is submitted that the petitioner owns weapons for self defence and owns a 0.315 bore rifle and 0.32 bore revolver with authorized license and is an expert in operating the same. Lastly, Mr Mittal has drawn my attention to the judgment of the Hon'ble Supreme Court in ***Ramveer Upadhyay vs R.M. Srivastava & Ors., (2015) 13 SCC 370.***

14. I have heard learned counsels for the parties.

15. The judgment of *Mahender Chawla (supra)*, must be distinguished from the present case at hand as it speaks of ongoing cases where witnesses are required for their testimony who may turn hostile due to threat or fear. In the present case, the petitioner herein is a retired police official, who is no longer engaged in any ongoing investigation and thus has no reason to be called to court or turn hostile. If, he is ever required to be called upon as an inspector or witness in a previous matter, he may approach this court or the appropriate authority as and when required and display the danger posed to him. However, presently when there is no threat perception according to the competent authority, I cannot doubt the finding solely based on the petitioner's trepidation and distress.

16. The observations of the Hon'ble Supreme Court in ***Ramveer Upadhyay (supra)*** are relevant and the operative portion reads as under:

*“6. ....But what exactly is his threat perception and whether the same is grave in nature, obviously will have to be left to be decided by the authorities including the*

*authorities of the State or the Centre which may include even the Intelligence Bureau or any other authority concerned which is entitled to assess the threat perception of an individual. But insofar as the court of law is concerned, it would obviously be in a predicament to come to any conclusion as to whether the threat perception alleged by a person claiming security is grave or otherwise which would hold him entitled to the security of a greater degree, since this is clearly a question of factual nature to be dealt with by the authorities entrusted with the duty to provide security after assessing the need and genuineness of the threat to any individual.”*

17. I am of the view that it is the State of Uttar Pradesh who is the best judge of the threat perception to the petitioner. Once they have conducted an inquiry and come to a finding that there is no threat perception against the petitioner till now, this Court cannot substitute its own judgment to that of the State authority. Once the State authority is of the view that the petitioner does not need round the clock security cover that in my considered view is where the matter should rest. It is the State which has all relevant information, the expertise and the confidential information to evaluate threat perceptions to various individuals. I am not to sit in the armchair of the State and analyse the threat perception to an individual citizen. It is the job of a State to protect the life, limb and property of its subjects.

18. It also cannot be lost sight that the petitioner was a trained police officer having held sensitive and important positions over his career of 40 years now. The petitioner has a 0.315 bore rifle as well as a 0.32 bore

revolver with duly authorized license and has the ability to defend himself if so required.

19. If every police officer who is an investigating officer in a murder case during his service career or has handled high profile cases is to be provided round the clock security after retirement, it will neither be feasible nor desirable.

20. This court is always open to protect all citizens and their rights including those officials involved in sensitive cases. However, when there is no threat perceived or seen to be present, it will be a waste of state resources, time and machinery and able officers of the police force to provide the same. There is an abundance of cases and crimes yet to be investigated, in the process of investigation and still to be adjudicated by this court, wherein the state machinery is required. I must take cognizance of the fact that not only are the courts overly burdened with cases, the police officials are as well. To delegate some of that force to the petitioner, in light of the fact that there is no evidence on record to show the threat to the petitioner's life will be inequitable.

21. With these observations, I find no merit in the present writ petition. The same is dismissed. However, the respondent Nos. 4 and 5 i.e. State of Uttar Pradesh shall be mindful of the security and threat perception to the petitioner and will take remedial measures as and when the situation may arise.

**JASMEET SINGH, J**

**JULY 25, 2022**

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