

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved On:- 10.03.2025
Pronounced on:-13.03.2025**

Case:- OWP No. 989/2017
CM No. 4375/2024
IA No. 01/2017

Sumit Nayyar Aged 30 years S/o Sh. SunilPetitioner(s)
Nayyar R/O House No. 12, New Rehari Jammu.

Through: Mr. M.K Bhardwaj, Sr. Advocate with
Mr. Manik Bhardwaj, Advocate.

Vs

1. State of Jammu and Kashmir through Respondent(s)
Commissioner/Secretary Home Department, Civil
Secretariat, Srinagar.
2. Inspector General of Police, Jammu Zone, Jammu
3. Senior Superintendent of Police, Jammu
4. S.S.P, CID, (Special Branch).

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Aditya Gupta, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
(13.03.2025)

- 01.** The petitioner, who is a practicing Advocate in this Court had filed the
instant petition way back in the year, 2017 praying for the following relief:-

“a) An appropriate writ, order or direction in the nature of writ of mandamus commanding upon the respondents to not to withdraw and restore the security/PSO provided to the petitioner in view threat perception to the petitioner as per the field report of the Senior Superintendent of Police (CID) Special Branch (SB) Jammu dated 22.03.2016 and also as per the verification got conducted by the respondent No. 3 at their own level.”

- 02.** The ground on which the protection was sought, is that the petitioner had
filed various Public Interest Litigations in this Court, pertaining to the

security of Hon'ble Retired Judges and the Court complexes and on that basis, the petitioner apprehends threat to his life and has relied upon the report dated 22.03.2016 from SSP, (CID) Special Branch (SB) and Additional Director General of Police, CID, J&K mentioning therein that there may be a threat to his life.

- 03.** In the aforesaid backdrop, vide order dated 08.04.2017, the petitioner was provided one PSO for the period of one month and subsequently, vide order dated 15.05.2017 again, on the request of Senior Superintendent of Police, Dy. Superintendent of Police, DAR DPL, Jammu was asked to provide security to the petitioner, provisionally for a period of one month.
- 04.** The record reveals that thereafter, the petitioner did not allow the competent authority to review threat perception but rushed to this Court seeking continuation of the security already provided to him, as if the Court has expertise and domain to provide security cover or could assess the threat perception to any person who is before the Court.
- 05.** Record further reveals that the matter was listed before this Court on 22.06.2017 when an interim protection was granted to the petitioner whereby the arrangement already made vide order dated 08.04.2017 and 15.05.2017 was directed to be continued. Thus, the petitioner anyway got final relief by way of an interim order.
- 06.** It is very surprising that it took more than 03 years for the Government to file reply in the instant case, which was filed on 09.11.2020. Thus, there was a deliberate delay on the part of the respondents in filing the reply and also contesting the instant petition and this aspect of the matter also finds

mention in the detailed order passed by this Court on 17.08.2020, which is reproduced per verbatim as under:

"1. The petitioner, who is a practicing Advocate in this Court, had filed the present petition way back in the year 2017, praying for the following relief:

"An appropriate writ, order or direction in the nature of writ of mandamus commanding upon the respondents to not to withdraw and restore the security/PSO provided to the petitioner in view of threat perception to the petitioner as per the field report of the Senior Superintendent of Police (CID) Special Branch (SB) Jammu dated 22.3.2016 and also as per the verification got conducted by the respondent No. 3 at their own level."

2. The ground on which the protection was sought is that the petitioner had filed a Public Interest Litigation in this Court pertaining to security of the Hon'ble retired Judges and the Court complexes. On that basis, he apprehended threat to his life. He relied on the report dated 22.03.2016 from Senior Superintendent of Police (CID) Special Branch (SB) to Additional Director General of Police, CID, J&K, mentioning therein that there may be threat to his life. On that basis, vide order dated 08.04.2017, the petitioner was provided one PSO for a period of one month. Subsequently, vide order dated 15.05.2017 again, on the request of Senior Superintendent of Police, Deputy Superintendent of Police, DARDPL, Jammu was asked to provide security to the petitioner provisionally for a period of one month. Thereafter, the petitioner did not allow the competent authority to review threat perception but rushed to this Court seeking continuation of the security already provided, as if the expertise to provide security cover or assess threat perception to any person is available with the Court.

3. On 22.06.2017, while issuing notice to the respondents, the arrangement already given vide order dated 08.04.2017 and 15.05.2017, was directed to continue. Thereafter, as usual practice, neither the petitioner nor respondents were interested to pursue the present matter because the petitioner got final relief by way of an interim order and the respondents either keep quite or are made to sleep over. This is established from the fact that the respondents have not even taken care to file objections till date.

4. Security cover to any person is provided at the state expense for which contribution is made by the tax payers. It is not a luxury to be provided to any person as a status symbol.

5. Though the counsel had been regularly appearing in Court in different matters before the lockdown was imposed on account of COVID-19 Pandemic and even thereafter but never thought of getting the present matter listed as he was happy with the interim order passed. This is not a case in isolation where the matters are not listed after interim orders are passed. Earlier also number of matters were listed before the Court where security cover was sought by the petitioners therein on flimsy grounds and after the interim orders were passed, the same were never pursued. The facts in those cases and the case in hand have compelled this Court to seek information from the Home Secretary and the Director General of Police regarding the security cover provided to private or political persons and retired employees and the assessment of the threat perception to them. The

Court be also apprised of the policy in this regard and periodic review made for the purposes.

6. Let a copy of this order be sent to the Chief Secretary, Government of Jammu and Kashmir for information.

7. A copy of this order be also sent to Home Secretary, Government of Jammu and Kashmir and the Director General of Police, Jammu and Kashmir for compliance.

8. Adjourned to 24.09.2020.

9. To be shown in the admission cause list”.

- 07.** Record further reveals that during this intervening period, no effort was made by the respondents to get the interim direction vacated. Copy of the aforesaid order dated 17.08.2020 was sent to Chief Secretary, Government of J&K, for information. Besides, the same was endorsed to Home Secretary, Government of J&K and Director General of Police, J&K for compliance.
- 08.** Pursuant to the passing of the aforesaid order, it appears that the State has arisen from a deep slumber and filed reply in the instant petition on 09.11.2020 wherein, a stand was taken that the threat perception qua the petitioner had got conducted and as per the field report dated 17.09.2020, there was no specific threat perception to the petitioner requiring the continuation of the security cover.
- 09.** The respondents have pleaded in their reply affidavit that the petition is devoid of any merit and deserves to be dismissed but in spite of that, the matter was lingered on for one reason or the other and on many occasions, due to the absence of the learned counsel for the petitioner, perhaps for the reason that the petitioner was beneficiary of a final relief by way of interim order, which was extended from time to time and the petitioner was not interested in arguing the matter on merits.

10. Record further reveals that when the instant petition was listed on 31.05.2023, there was no representation on behalf of the petitioner and the petition was dismissed for non-prosecution along with all connected applications and the interim direction also stood vacated. Feeling aggrieved of the aforesaid order, the petitioner preferred an application which was registered as CM No. 4019/2023 seeking restoration of the instant petition which was allowed vide order dated 14.07.2023 and the writ petition was restored to its original number, but the record reveals that the interim direction was not restored.
11. As per the record, another application bearing CM No. 4375/2024 was filed by Ms. Veena Khanna W/o Sh. Pardeep Khanna R/o Plot No. 255, Rehari Colony, Jammu seeking impleadment in the instant petition, in which notice was issued to the learned counsel for the petitioner on 09.08.2024. From the bare perusal of the various orders passed by this Court from time to time, it is abundantly clear that pursuant to the application preferred by the applicant/petitioner herein, only the writ petition was restored to its original number vide order dated 14.07.2023 and the interim direction which stood vacated vide order dated 31.05.2023 was not restored while restoring the main petition. However, when the matter was listed before this Court on 06.11.2024, the Court has extended the interim direction dated 22.06.2017.
12. However, this Court vide order dated 03.03.2025 directed the respondents to file fresh security assessment report before this Court failing which, the official concerned was directed to remain present on the date fixed through

virtual mode. In pursuant to the aforesaid direction dated 03.03.2025, the respondents have provided the latest threat perception report in a sealed cover to this Court and after examination of the said report, it has come to fore that the petitioner does not face any threat from ANEs/ASEs and TQ is quantified as 01 out of 10.

13. It goes without saying that the security cover to any person is provided at the State expense, for which contribution is made by the tax payers, which by no stretch of imagination can be construed as luxury to be provided to any person as a status symbol. The Court has no expertise to assess the threat perception of an individual and it is only the competent authorities on whose inputs, the threat perception of an individual is assessed and on the basis of said report, the security is provided to an individual.
14. In the instant case, as per the report which has been provided to this Court in a sealed cover, the petitioner does not have any threat perception and thus, there is no requirement of any security to be provided to the petitioner.
15. The assertion that Courts lack the expertise to assess an individual's threat perception is reinforced by several legal rulings. The responsibility for evaluating threat levels, primarily rests with the police and security agencies, as they possess the necessary experience and intelligence resources to carry out such assessments effectively.
16. The threat perception is primarily a matter of assessment by the police authority and unless sufficient material is provided to demonstrate that the

police's analysis is incorrect, the Court cannot interfere in the decision to deny security. The evaluation of threat perception is a factual question, it would be appropriate to fasten the responsibilities to the authorities responsible for security, as the Court would be in a predicament to determine the gravity of the threat without having necessary expertise. Courts play a crucial role in ensuring that the actions of security forces uphold individuals' rights, especially, concerning due process and legality. However, when it comes to determining the seriousness of a threat, Courts may need to rely significantly on the expertise and judgment of the security authorities, responsible for such assessments.

17. The principle that the threat assessment is a specialized function of security agencies and that the Courts should refrain from intervening in such assessments unless there is clear evidence of error or *mala fide* is well-established.
18. The Hon'ble Supreme Court in case titled, *Ramveer Upadhyay v. R.M. Srivastava And Others*, 2015 SCC (13) 370, in para 6 of the judgment has held as follows;

“6. However, in our experience, we have hardly seen any security of ‘Z’ or ‘Y’ category provided to any ordinary citizen, howsoever grave the threat perception or imminent danger may be to the person concerned. The petitioner, however, has claimed it obviously as a “privileged class” by virtue of being an ex-Minister which at times, may be justified even to an ex-Minister or any other dignitary, considering the nature and function of the duties which he had discharged, which could facilitate the assessment of his threat perception even after laying down the office. 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.”

19. In the case of *HaziRais Vs. State of U.P. and others, 2006 SCC OnLine All 621*, it was observed

“that undoubtedly, need to provide security to every individual/citizen by the State is imperative. The State is under obligation to protect the life, liberty and property of its citizens and any apathy in the matter is to be ridiculed. This Court also noted the unhappy reality that the demand for security was not as much for the personal security but had ripened into a status symbol. It is enjoyed not as cathedral but as casino and, therefore, it would be duty of the high powered committed to review the security arrangements in a most objective, bona fide and honest manner.”

20. Relying upon the aforesaid principle laid down by the Apex Court in catena of judgments, this Court is of the view that it does not stand as an expert to assess the correctness of the decision of the competent authority and to evaluate the threat, if any, faced by an individual. The same has to be left to the competent authority and its assessment and discretion. This Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision for that of the competent authority pertaining to the threat apprehension entertained by the appellant. The facts that emanate from the record do not establish any real threat to the petitioner and it seems that the demand for security is to display it as an authority of symbol and to flaunt his status as a VIP. This practice of creating a privileged class on the State's expense, by using the taxpayers' money has to be deprecated.
21. It is clear that the role of this Court, when sitting in appeal over the decision made by the Security Review Committee, is not to determine the specific level of security an individual should be granted, nor to assess whether the petitioner is currently facing any credible threat. These matters

are predominantly within the jurisdiction of the relevant authorities and specialized bodies tasked with making such determinations. The decision-making process of these authorities, in this case, appears to be in line with the established procedures, and this Court does not find any procedural flaws or substantive errors that would warrant overturning the decision. Therefore, there is no illegality with the decision made by the Criminal Investigation Department through Special Branch, Jammu in the instant case, which has been provided to this Court in a sealed cover, as there is no basis to question the validity or soundness of their judgment on the matter.

22. In light of what has been discussed hereinabove and also in the light of the report submitted by the respondents in sealed cover, wherein, it is established that there is no threat perception to the petitioner, no fruitful purpose will be served by keeping this petition alive and the same is dismissed being devoid of any merit along with all connected applications.
23. Interim direction, if any, shall stand vacated.
24. While the record was being examined in the instant petition, it has come to fore that an application has been preferred by the applicant-Veenu Khanna W/o Sh. Pardeep Khanna R/o Plot No. 255, Rehari Colony, Jammu for seeking impleadment in the instant petition as party respondent in which serious allegations have been leveled against the petitioner along with CCTV Footage and relevant photographs, in which objections have also been filed by the petitioner denying such allegations. This Court while deciding the instant petition which pertains only to provide the security to the petitioner refrains from making any observation in the said application

or the allegations leveled therein. However, dismissal of the present writ petition shall not come in the way of the applicant-Veenu Khanna to avail appropriate remedy under law, if so advised.

- 25. Registry is directed to handover the record which is attached with this file to Mrs. Monika Kohli, learned Sr. AAG against proper receipt.
- 26. The writ petition is dismissed along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
13.03.2025
Tarun/PS

<i>Whether the order is speaking?</i>	<i>Yes/No</i>
<i>Whether the order is reportable?</i>	<i>Yes/No</i>