



2024:JKLHC-JMU:3013

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

**Reserved on: 11.10.2024
Pronounced on: ____ .10.2024**

**WP(C) No. 1006/2022
CM No. 3023/2022**

**Imran Khan, aged 36 years
S/O Sh. Hanif Khan
R/O W. No. 2 H. No. 432 Jain Bazar
Jhullaka Mohalla, Jammu.**

.....Petitioner(s)

Through: Mr. P.N. Raina, Sr. Advocate with
Mr. J.A. Hamal, Advocate.

Vs

- 1. Union Territory of J&K through
Senior Superintendent of Police Jammu.**
- 2. District Magistrate, Jammu.**
- 3. Superintendent of Police,
City North, Jammu.**
- 4. Station House Officer
Police Station, Pacca Danga, Jammu.**

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** The present petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking Writ of Certiorari, to quash the entry of his name from Surveillance Register No. 10 recorded by the respondents and history sheet opened in the name of the petitioner.



02. With a view to understand the background in the light of which the present controversy has arisen, it is deemed appropriate to narrate some of the material facts in brief:

02.1 That an Arms Licence No. DMJ/2006-07/95 dated 05.02.2007 was issued in favour of the petitioner by the concerned authorities and that because of the peculiar situation in the UT of J&K, the petitioner along with others having licenced weapons was directed to deposit his weapon, in compliance whereof, the petitioner deposited his weapon with Respondent No. 3;

02.2 That after some time, he went to collect his weapon back, however, a copy of Roznamcha was handed over to him, whereby he was informed that because of he, being a history sheeter, his licence has been cancelled by the respondent No. 2-District Magistrate, Jammu; that the name of the petitioner has been entered in the Surveillance Register No. 10 and a history sheet has been opened in his name by the respondents No. 2 and 4;

02.3 That the petitioner approached the office of the respondent No. 2 to enquire about why his licence has been cancelled when there is no FIR or any chargesheet pending against him; that on an application filed, the petitioner was issued



the copy of the order issued by the Additional District Magistrate Jammu, whereby his licence had been cancelled.

03. It is further pleaded that the petitioner in his prime youth was falsely implicated and challaned/chargesheeted by the police agency in following four different cases registered vide:

- (i) FIR No. 79/2002 under sections 341/323 RPC; Police Station, Pacca Danga, Jammu;**
- (ii) FIR No. 81/2003 under section 354 RPC; Police Station, Bus Stand Jammu;**
- (iii) FIR No. 14/2006 under sections 341/323 RPC; Police Station Bus Stand, Jammu and**
- (iv) FIR No. 69/2008 under section 302 RPC; Police Station, Bus Stand, Jammu;**

that the petitioner after going through the full fledged trial, was acquitted by the trial courts in all the FIRs except FIR No. 14/2006; that the entry of the name of the petitioner in the Surveillance Register No. 10 and the opening of the history sheet in his name by the respondent No. 3 is an action, contrary to the procedure laid down in the J&K Police Rules, 1960, thus being illegal, without jurisdiction and in arbitrary exercise of powers by the police authorities.

04. Pursuant to notice, the respondents have filed reply/objections to the petition asserting therein that the petitioner is notorious criminal against whom 04 FIRs had been registered from the year 2002 to 2008 in different



police stations of district Jammu i.e., 03 at Police Station Bus Stand and 01 at Police Station, Pacca Danga Jammu; that the petitioner has raised disputed questions of facts which cannot be decided in a writ petition as such, the petitioner cannot take recourse to the remedy under the writ jurisdiction; that it was utmost essential or mandatory for police to have surveillance on the petitioner on the basis of the history sheet which has been opened in the year 2009 by the then SHO Police Station, Pacca Danga, Jammu; that such a person who is a threat to the society could not be set free without a surveillance; that the licence of the weapon of the petitioner has been cancelled by following procedure vide SSP Letter No. CRB/2020/37759-60/DPOJ dated 29.07.2020; that although the petitioner has been acquitted in all the cases yet till date neither any disposal slip of the case nor judgment of the acquittal received from the Hon'ble Court nor produced by the petitioner.

- 05.** Lastly it is submitted that although no recent case has been registered against the petitioner, yet the petitioner has criminality in his mind which can be gauged from the fact that he had a licenced weapon which can be misused by the petitioner in the commission of some heinous offence and it is a grave danger to the society to let the criminal own a



licenced revolver, which he can use/misuse to show his muscle power keeping in view of the details of FIRs lodged against him.

- 06.** Mr. P.N. Raina, learned Senior counsel assisted by Mr. J.A Hamal appearing for the petitioner submits that the District Magistrate, Jammu vide his order dated 11.11.2021, while cancelling the gun licence of the petitioner, made reference to Communication No. CRB/2020/37759-60/DPOJ dated 29.07.2020 issued by the Senior Superintendent of Police Jammu, whereby he has intimated that after review of history sheet of the petitioner, having been involved in the four cases registered vide FIR No. 79/2002 registered under section 341/323 RPC of Police Station, Pacca Danga, Jammu, FIR No. 81/2003 registered under section 354 RPC of Police Station, Bus Stand Jammu, FIR No. 14/2006 registered under section 341/323 RPC and FIR No. 69/2008 registered under section 302 RPC of Police Station, Bus Stand, Jammu, the Arms licence No. DMJ/2006-07/95 dated 05.02.2007 was revoked under section 17(b) of the Arms Act, 1959.
- 07.** Mr. Raina would further argue that to describe a person as 'history sheeter', has severe and preposterous consequences, subjecting him/her to various restrictions and police



surveillance, in order to ensure that further criminal activities do not occur. As such, the history sheeters are treated as social outcasts and are referred as habitual offenders, subjecting such a person to profiling and discrimination, making him a lifetime suspicious person. He has further argued that describing a person as a history sheeter cannot be taken lightly or a routine affair. The issue of a history sheet certificate with regard to a person cannot be taken resort to without availability of sufficient material on record. He has further argued that given to the fact situation of the cases against the petitioner, as the petitioner in all the cases has earned acquittal, the police cannot describe him as a history sheeter and keep him under surveillance, as such a recourse, is not available to them to the disadvantage and detrimental to the interests of the petitioner and his fundamental rights.

- 08.** Mr. Raina, further argued that the initial preparation of a history sheet requires great care, and should invariably be done by the officer in-charge of the Police Station in terms of Rule 702 of the J&K Police Rules 1960, which, inter-alia, provides that the description of crime to which addicted should be in some detail, showing not merely the class of crime, but the particular type of that crime, methods



followed, localities oftenly frequented, weapons or instruments used, etc. He has further argued that the history sheet of the petitioner has been opened at the police station concerned in a mechanical manner without application of mind to the facts required before taking any such action in the matter and prayed that the history sheet opened against the petitioner be quashed and his name was ordered to be removed from Surveillance Registered maintained at local Police Station.

- 09.** Mrs. Monika Kohli, learned Sr. AAG ex adverso argued while reiterating the objections raised that the petitioner namely Imran Khan is a notorious criminal against whom 04 cases had been registered in different police stations of district Jammu i.e., 03 at Police Station Bus Stand and 01 at Police Station Pacca Danga, Jammu; that the petitioner has raised disputed questions of facts which cannot be decided in a writ petition for which the petitioner cannot take the recourse to the remedy under the writ jurisdiction of this Hon'ble Court, as such the writ petition is, therefore, liable to be dismissed. She further argued that in view of multiple cases registered against the petitioner and his involvement found therein, it can be safely opined that he is a habitual offender, against whom opening of history sheet



was a necessary legal requirement, so as to track his movement and future activities, which is necessary for maintenance of public order, so as to secure the society at large.

10. Rule 698 of the Jammu and Kashmir Police Rules, 1960 provides for **‘Surveillance Register to be maintained in Form 180’**. It is profitable to extract the said Rule as under:

“698-Surveillance Register No. 10

(1) In every police station, a Surveillance Register shall be maintained in Form 180.

(2) In Part 1 of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdictions of the police station concerned, who belong to one or more of the following classes-

- (a) All persons who have been proclaimed under Section 87, Code of Criminal Procedure.
- (b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made.
- (c) All convicts, the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under Section 401, Criminal Procedure Code.
- (d) All persons restricted under the Rules of Government made under Section 16 of the



Habitual Offenders (Control & Reforms) Act, 1956, (XI of 1956).

(3) In Part II of such register may be entered at the discretion of the Superintendent:-

- (a) persons who have been convicted thrice, or more than three times of offences mentioned in Rule 681;
- (b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;
- (c) persons under security under Section 109 and 110, Code of Criminal Procedure.”

11. Rule 699 of the aforesaid Rules provides **‘Entries in and Cancellations from Surveillance Register’**. It is also profitable to extract the said Rule as under:

“699- Entries in and cancellations from surveillance register-

(1) The surveillance register shall be written up by the officer in charge of the police station personally or by an Assistant Sub-Inspector in a clear and neat script. No entry shall be made in Part I except by the order of a gazette officer. Entries shall be made either under the personal direction of or on receipt of a written order from, an officer authorized by this rule to make them. In the latter case original orders shall be attached to the register until the entry has been attested and dated by a gazetted officer.



(2) Ordinarily, before the name of any person is entered in Part II of the surveillance register, a history sheet shall be opened for such person.

When the Superintendent of Police on his own accord or on the report of the officers subordinate to him may deem it proper to enter the name of a person in Register No. 10 and he will hear the objections of that person and after fully satisfying himself will order that his name shall be entered in Register No. 10 subject to the condition which may be considered proper to impose.

12. Rule 702 of the aforesaid rules provides **‘preparation of history sheets’**. It is relevant to reproduce this Rule also which reads as under:-

“702. Preparation of history sheets: The initial preparation of a history sheet requires great care, and should invariably be done by the officer incharge of the police station himself or by a thoroughly experienced Assistant Sub Inspector under specific orders.

(1) The description of the criminal should be such as will enable the person reading it to form for himself a picture of the individual described, special attention being given to peculiarities of appearance, gait, speech, etc., by means of which the man may be distinguished.

(2) The space for 'relations and connections' should be filled in with a view to affording clues to those persons with whom the criminal is likely to harbour when wanted by the police, including relations or friends living at a distance from his home and his



associates in crime, abettors and receivers, The particular nature of each person's connection should be noted against each, and, when persons shown as connections themselves have history sheets, a cross reference with those sheets should be given.

(3) Under property, and mode of earning livelihood, such particulars should be entered as will facilitate a judgment as to whether the criminal is at any time living beyond his means; whether he is capable of furnishing a personal recognizance of any value; whether he is an owner of property, a tenant or a wage-earner, and so on.

(4) The description of crime to which addicted should be in some detail, showing not merely the class of crime, but the particular type of that crime, methods followed, localities oftenly frequented, weapons or instruments used, etc.”

13. Besides the aforementioned/extracted Rules of J&K Police Rules, the Jammu & Kashmir Habitual Offenders (Control & Reform) Act, 1956, deals with registration of habitual offenders in the State and for imposing certain restrictions on them. ‘Habitual Offender’ has been defined under Sub-Section (2) of Section 2 :-

2 (2) “Habitual offender” means a person—

(a) who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act



committed on different occasions and not constituting parts of same transaction

(b) who has, as a result of such convictions, suffered imprisonments at least for a total period of twelve months.

Explanation (1)—A conviction which has been set aside in appeal or revision and any imprisonment suffered in connection there with shall not be taken into account for the above purpose.

Explanation (2)—In computing the period of five years, any periods spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.”

- 14.** A perusal of the aforesaid provisions shows that the preparation of a history sheet is not expected to be a mechanical exercise. The description of the crime to which person is addicted, should be set out in detail in particular. The Police Rules also do not leave the matters at the sole discretion of any one police officer, as the same is required to be dealt with by the senior officers as well. All materials have to be considered and no relevant material should be excluded from consideration. There has to be a deliberated decision taken, giving reasons which should reflect application of mind to such materials, after all being leveled a history sheet has grave and adverse consequence for a person and, therefore,



such a power should be exercised with caution and responsibility.

15. So long as surveillance is for the purpose of preventing crime, there cannot be any complaint about inclusion of a name in the surveillance register, however, the entry has to be made on the basis of the material provided by history sheet, whose contents by their very nature have to be confidential. There must be sufficient material to justify inclusion of the name in the surveillance register. Ordinarily, the names of the persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts or persons who have already been placed on security for good behaviour. In addition, the names of the persons, who are reasonably believed to be habitual offenders or receivers of the stolen property, may also be entered in the surveillance register.

16. The criteria for opening a history sheet is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the history sheet is opened or retained is habitually addicted or aid or abet, the commission of crime, whether convicted or not etc. While arriving at the subjective satisfaction, the activities of such persons which are informative and useful, based on



the facts ascertained by the police from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters. The discretion of the authorities has to be exercised, after seeking objections from such person, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrarily vague, fanciful, but legal and regular and it must be exercised within the limit to which an honest man competent to discharge of his office or to confine himself.

- 17.** Branding a person as a history sheeter has a tainted image in the society as compared to others. Needless to say that his relationship with others and the prospects of personal development may not remain the same. Characterization of a person is stigmatic, if any photographs is displayed in some conspicuous places in the area, where he resides, or in public places, and it affects not only his personal life, but there is every likelihood of damage being caused to his family and it cannot be lost sight of. Innocent children of such persons could be even looked down. If the officer, mechanically under the guise of prevention of crime and to protect others, open or extend history sheets, which has an impact on the right of privacy of not only the individual against whom the order is



passed, but also causes harm to other person's rights. Therefore, a fair and reasonable decision should be taken, taking into consideration the constitutional rights under Article 21 of the Constitution of India and the interests of the State. It should be noted that at the time of opening a history sheet, the individual is not informed of a decision taken by the authorities behind his back and that the information collected is discreet. Needless to say that every person wants to live with dignity and he/she cannot be condemned arbitrarily. It is also to be borne in mind that estrangement of the members of the history sheeted person in social gathering etc., is not uncommon in order, in our society. Therefore, opening or retention of history sheets, which interferes with the right of privacy of a person, should be done strictly, adhering to parameters inbuilt in the police rules, keeping in mind the object sought to be achieved. Moreover, entry in Surveillance Register can be made, nonetheless after hearing objections of such a person and not arbitrarily by the Police officers.

- 18.** Petitioner admittedly has been acquitted in all the cases, which were made foundation to open '**history sheet**' and enter his name in '**Surveillance Register**'. The exercise to enter name of any person in Surveillance Register cannot be a unilateral and arbitrary exercise, but before undertaking it,



such a person is to be heard. The petitioner in this case was not afforded an opportunity of being heard. Respondents have failed to substantiate that they had issued any show cause notice (SCN) to the petitioner, which they ought to have done, in view of the statutory requirement as per the Rules. They have also failed to point out, as to how, the name of petitioner was entered, particularly when such an entry can be made only of such a person, who qualifies in terms of Rule 698 of J&K Police Rules, such as, proclaimed under section 87 of Cr.P.C, convicts with order under section 565 of Cr. P.C., habitual offender convicted more than twice and who has suffered at least twelve months imprisonment as a result of such convictions etc.

- 19.** Having regard to the aforesaid legal position on the subject and taking into account the fact that the petitioner has earned acquittal in all the cases mentioned hereinabove, the petitioner cannot be said to be addicted to certain patterns of crime or a habitual offender.
- 20.** This Court is thus of the considered opinion that the authorities concerned have not arrived at any subjective satisfaction before opening the history sheet of the petitioner, which renders the whole exercise undertaken by the authorities concerned opening the history sheet of the



petitioner, profiling the petitioner as hard core criminal and threat to the society and entering his name in Surveillance Register No. 10 illegal and bad in the eyes of law.

- 21.** For the foregoing reasons and observations made hereinabove, the instant petition is allowed. The history sheet of the petitioner opened at the police station concerned and entry of his name in Surveillance Register, is found to be not in consonance with the rules on the subject. The history sheet of the petitioner along with all extensions is, thus, ordered to be removed from the record of the concerned police station and the entry of the name of the petitioner from the Surveillance Register No. 10 is also ordered to be removed, forthwith.
- 22.** The petitioner is, accordingly disposed of along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
22.10.2024
NARESH/SECY.

Whether judgment is speaking: Yes
Whether judgment is reportable: Yes