

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

**Reserved on:- 20.10.2023  
Pronounced on:- 15 .11.2023**

WP (C) No. 612/2023  
CM No. 1427/2023

**Jagar Singh**

S/o Sh. Kohla Ram

R/o 25 CC, Gandhi Nagar, Jammu

...Petitioner (s)

Through: Mr. Parag Sharma, Advocate

V/s

**1. UT of J&K through**

Director General of Police,  
Jammu.

2. Senior Superintendent of Police,  
Jammu.

3. Station House Officer,  
P/S Gandhi Nagar, Jammu.

...Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG

**CORAM:**

**Hon'ble Mr. Justice Javed Iqbal Wani, Judge.**

**JUDGMENT**

15. 11.2023

1. Extraordinary writ jurisdiction enshrined in Article 226 of the Constitution of India is invoked by the petitioner herein while praying following reliefs:-

- i. Writ of mandamus directing and commanding the respondents 2 and 3 to remove/delete the name of the petitioner from Police

Surveillance Register No. 10 kept in Police Station, Gandhi Nagar, Jammu and quash/close the history sheet of the petitioner under Jammu and Kashmir Police Rules 1960.

ii. Writ of mandamus directing and commanding the respondents 2 & 3 not to harass the petitioner under the cover of history sheet which is totally against the Jammu and Kashmir Police, Rules 1960.

iii. Any other order to be passed as additional/alternate relief to which the petitioner is found entitled to in the given facts and circumstances of the case in hand in order to delivery fair and impartial justice.

2. The background facts under the shade and cover of which the reliefs aforesaid are being prayed by the petitioner as pleaded in the petition are that the petitioner is an A-Class Contractor registered with the Government of Jammu and Kashmir besides being high tax payer.
3. It is stated that the petitioner herein came to be arraigned as an accused in FIR No. 247/2009 registered with Police Station Gandhi Nagar for offences under section 302/34/201/120-B RPC and 3/25/27 Arms Act.
4. The petitioner states to have got acquitted in the said case and the charge sheet laid under the said FIR tried by the Court of 2<sup>nd</sup> Additional Sessions Judge, Jammu on 10.08.2020 came to be dismissed besides others against the petitioner herein.
5. It is stated that during the pendency of the aforesaid case, the petitioner also came to be falsely implicated in FIR No. 164/2010 registered with Police Station Channi Himmat under sections 307/34/120-B RPC, section 3/25 Arms Act, wherein the petitioner came to be released on bail by the Court of Additional Sessions Judge, Jammu on 10.03.2011 though one of

- the witness in the said FIR namely Bupinder Singh made a statement before the Court on 11.08.2014 that he does not identify the petitioner and have seen him for the first time.
6. It is being next stated that during the pendency of the FIR 247/2019 supra, the respondent 3 herein entered the name of the petitioner in Surveillance Register No. 10 maintained by the police station under Rule 698 of the Jammu and Kashmir Police Rules 1960 (for short the Rules of 1960) and that the respondents continued with the incorporation of the name of the petitioner in the said Register in breach and violation of the Article 21 of the Constitution enjoyed by the petitioner.
  7. **Response/status report** to the petition has been filed by the respondents, wherein it is being stated that the name of the petitioner is incorporated in the Surveillance Register since 2009 while it is being admitted that the petitioner though was involved in FIR No. 247/2009 supra, wherein the petitioner stands acquitted by the Court.
  8. It is further stated that the petitioner has been involved in FIR No. 275/2009 registered with Police Station Gandhi Nagar for offence under section 5(2) of Prevention of Corporation Act and a final report presented thereof before the competent court stands rejected by the said Court on the ground that the investigation has not been conducted properly and that the said case is being further investigated by SP City South.
  9. It is being also stated that the a complaint had also been filed by one Tajpal Singh S/o Late Sohan Singh R/o 569/3 Nanak Nagar Jammu against the petitioner for extending threats to him and consequently the petitioner was bound down and entries thereof came to be recorded in the history sheet on 09.05.2010.

**Heard learned counsel for the parties and perused the record.**

10. Before proceedings to address to the issues involved in the petition, it would be appropriate to refer to the relevant provisions of the Police Rules of 1960 being germane herein.

**Rule 698** of the Rules of 1960 deals with Surveillance Register No. 10 and provides that in every police station a Surveillance Register shall be maintained, wherein in **Part I** of such Register names of the classes of persons residing within the local jurisdiction of a police station have to be entered being all persons who have been proclaimed under section 87 Cr PC, all released convicts in regard to whom an order under section 565 Cr PC has been made, all convicts the execution of whose sentence is suspended in whole or any part of whose punishment has been remitted conditionally under section 401 Cr.P.C and all persons restricted under Rules of Government made under section 16 of Habitual Offenders (Control and Reforms) Act, 1956, whereas in **Part II** of such Register with the discretion of the Superintendent the names of following class of persons can be entered being those persons who have been convicted thrice or more than three times of offences mentioned in Rule 681, and those persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, those persons under security under sections 109 and 110 Cr PC.

**Rule 699** of the Rules of 1960 deals with entries in and cancellation from Surveillance Register and provides that the Surveillance Register shall be written up by an Officer Incharge of the Police Station personally or by an Assistant Sub Inspector and no entry shall be made in Part I except by the order of a Gazatted Officer and that ordinarily before the name of a person is entered in Part II of the Register, a History Sheet shall be opened for such person, providing further that when the

Superintendent of Police on his own accord or on the report of the Subordinate Officer deems proper to enter the name of a person in Register No. 10, he has to hear the objections of that person and after fully satisfying himself, order the entry of the person in Register No. 10.

**Rule 702** of the Rules of 1960 deals with preparation of History Sheet and provides that the initial preparation of History Sheet requires great care and invariably be done by the Officer Incharge of the Police Station himself or by a thoroughly experienced Assistant Sub Inspector under specific orders and the description of the criminal should be such as will enable the person reading it to form for himself a picture of the individual and the space for relations and connections has to be filled in with a view to afford 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, and that the particulars of the property, mode or earning livelihood has also to be entered for facilitating a judgment as to whether a criminal is at any time living beyond his means and whether he is an owner of property, a tenant or a wage earner and that a description of the crime to which the criminal is addicted to has also to be entered in some detail, showing not merely the class of crime, but the particular type of that crime, methods followed, localities frequented, weapons or instruments used and the copies of the History Sheet so prepared had to be published in Criminal Investigation Department and published in Central Intelligence Gazette.

11. A perusal of the aforesaid rules *ex facie* suggest that the entries in the Surveillance Register have to be prepared and drawn both objectively meaning making an unbiased balanced observation based on facts which

can be verified and subjectively as well meaning making assumptions, interpretations based on personal opinions without any verifiable facts.

A reference hereunder to the judgment of the Apex Court passed in the case titled as “Malak Singh & Ors. Vs. State of P&H & Ors. reported in 1981 SCC 420” would be relevant herein, wherein at paras 6 & 9 following has been provided:-

*“6. Prevention of crime is one of the prime purposes of the Constitution of a police force. The preamble to the Police Act 1861 says : Whereas it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime. Section 23 of the Police Act prescribes it as the duty of police officers "to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances". In connection with these duties it will be necessary to keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. Organised crime cannot be successfully fought without close watch of suspects. But, surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by Article 21 of the Constitution and the freedom of movement guaranteed by Article 19(1)(d). That cannot be permitted. This is recognised by the Punjab Police Rules themselves. Rule 23.7, which prescribes the mode of surveillance, permits that the close watch over the movements of the person under surveillance but without any illegal interference. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance and no more. So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 we do not think a person whose name is included in the surveillance register can have a genuine cause for complaint. We may notice here that interference in accordance with law and for the prevention of disorder and crime is an exception recognised even by European Convention of Human Rights to the right to respect for a person's private and family life. Article 8 of the Convention reads as follows:*

*(1) Everyone's right to respect for his private and family life, his home and his correspondence shall be recognized.*

*(2) There shall be no interference by a public authority with the exercise of this right, except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder and crime or for the protection of health or morals.*

*9. But all this does not mean that the police have a licence to enter the names of whoever they like (dislike?) in the surveillance register; nor can the surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4 or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the Court's protection which the court will not hesitate to give. The very rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognise the caution and care with which the police officers are required to proceed. The note following Rule 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly Rule 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobstrusive and within bounds."*

Thus what emanates from the above is that though organized crime cannot be successfully fought without close watch of suspects, yet surveillance may be intrusive and may seriously encroach on the privacy of a citizen, infringe his/her fundamental right to personal liberty guaranteed under Article 21 of the Constitution and the freedom of movement guaranteed under Article 19(I) (d) of the Constitution, therefore, enjoining a duty upon the police officer to construe the rule strictly and confine the entries in the Surveillance Register un-obstrusive and within bounds without squeezing the fundamental freedoms guaranteed to a citizens or to obstruct the free exercise and enjoyment of

those freedoms also keeping in mind that the surveillance should not be so intrude as to offend the dignity of an individual and that the very rules which prescribe the conditions for making entries in the Surveillance Register and the mode of surveillance must recognize the caution and care with which the police officers are required to proceed.

12. Reverting back to the case in hand, it is not in dispute that the case of the petitioner does not fall within Part I of Rule 698 supra.

Perusal of the record would reveal that the name of the petitioner has been entered into Surveillance Register purportedly falling in Part II of Rule 698 supra on account of his being involved in FIR No. 247/2009 registered at P/S Gandhi Nagar for commission of offences under sections 302, 201, 34, 409, 120-B RPC, 3/25/27 Arms Act, having been entered on 05.02.2009 by Inspector Mohammad Rafiq, SHO P/S Gandhi Nagar. It is pertinent to mention here while risking repetition that the petitioner stands acquitted in the said case by a competent court on 10.08.2020.

13. Perusal of the record would also reveal that the entry of the petitioner is being continued to be in the Surveillance Register by the respondents ever since his name was entered therein on 05.02.2009 though the said fact of the acquittal of the petitioner has also been entered in the Register in question by the respondent on 23.01.2021 yet his name has been continuously entered in the said Register, thereafter and lastly on 06.04.2023 by SHO Police Station Gandhi Nagar, Jammu, though it has been provided therein that the petitioner is involved in FIR No. 275/2009 for offences u/s 5(2) PC Act pending before Anti Corruption Court, Jammu and that the entry of the petitioner has been ordered to be continued in the Register under the instructions of the SP Jammu,



although the said case stands rejected by the said Court and is presently under further investigation.

14. Having regard to the aforesaid facts and circumstances as also the principles of law laid down by the Apex Court in the judgment supra, the continuation of the entry of the name of the petitioner in the Surveillance Register seemingly is being continued by the respondents without drawing any subjective satisfaction in this regard mechanically being a person reasonably believed to be habitual offender. No reasons muchless cogent and credible have been recorded in the Surveillance Register for continuing the name of the petitioner therein on a mere belief without drawing any subjective satisfaction of possessing a reasonable belief that the petitioner is a habitual offender or is a person habitually addicted to crime thus necessitating to continuation of entering of his name in the Surveillance Register.

Here a reference to the judgment of the Apex Court in regard to a “habitual offender” passed in case titled as **“Dhanji Ram Sharma V.s Superintendent of Police, North reported in AIR 1966 SC 1766”** would be relevant herein wherein at para 7 following has been laid down.

*“A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 23.4 (3) (b) and 23.9 (2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender.”*

15. Viewed thus what has been observed and considered hereinabove, the instant petition deserves to be allowed. Accordingly, petition is allowed and the continuation of the name of the petitioner in the Surveillance Register maintained by the respondents under and in terms of Rule 698 of Police Rules 1960 is held to be arbitrary, unfair, unreasonable and illegal, as such, the respondents are commanded to discontinue the entering of the name of the petitioner in the said Surveillance Register qua the activities referred therein since 09.05.2010 till 06.04.2023.

**16. Disposed of.**

17. Registry is directed to remit the record back to the counsel for the respondents.

**(Javed Iqbal Wani)**  
**Judge**

**SRINAGAR**

**15 .11.2023**

*“S.Nuzhat”*

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| <i>i. Whether the order is speaking:</i>    | <i>Yes/ No</i> |
| <i>ii. Whether the order is reportable:</i> | <i>Yes/No</i>  |