

appearing for the petitioner could not raise any meaningful argument to challenge the correctness of the view taken in these two judgments. Thus, we reiterate the view taken in these two judgments and hold that the order of loss of lien from service would amount to retrenchment as defined under section 2 (oo) of the Act. Provisions of Section 25-F of the Act are attracted and the order passed without complying with the provisions of section 25-F of the Act, is bad in law. Even if it is taken for the sake of argument, that the order Ex. M.8 does not amount to retrenchment but to misconduct on his part being absent from duty, there is no evidence on record to show that explanation of the workman was ever obtained. Workman was never served with any notice to show cause against his absence, if any. We uphold the view taken by the Labour Court that termination of services of the workman was bad in law. The operation of the impugned order with back wages was stayed by this Court while admitting the writ petition. The workman shall now be entitled to the back wages as ordered by the Labour Court. The writ petition is dismissed with no order as to costs.

S.C.K.

Before Hon'ble V. K. Bali, J.

HAZURA SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

Crl. M. No. 19874/M of 1994

11th July, 1995

Code of Criminal Procedure (II of 1973)—Anticipatory bail—Cancellation of—Case of custodial death—Enquiry by Sessions Judge holding Police Officers prima facie guilty—Police Officer placed under suspension.

Held. that normally the bail granted once should not be cancelled even though the same has been wrongly allowed unless there are compelling circumstances for doing that or there is definite information with the Court that the accused are trying to tamper with the prosecution evidence. However, the present case is exceptional one calling for interference by this Court. It is a case of custodial death at the hands of protectors of law and there is *prima facie* finding against the respondents, so recorded by the Sessions Judge on an inquiry entrusted to him by this Court. That

apart, the petitioner unequivocally asserts that he is being threatened every day that he shall be eliminated in the same way his son was.

(Para)

Navkiran Singh, Advocate, for the petitioner, A. G. Masih, AAG.
Punjab.

R. S. Surjewala, Advocate, for the Respondents.

JUDGMENT

V. K. Bali, J.

(1) Petitioner Hazura Singh son of Waryam Singh through present petition filed by him under Section 439(2) of the Code of Criminal Procedure seeks cancellation of pre-arrest bail granted by the Sessions Judge, Hoshiarpur on November 25, 1994 (Annexure P-2) to respondents 2 to 10.

(2) Before the matter may proceed any further, it is relevant to note that prior in point of time the petitioner filed Crl. Misc. No. 19513-M of 1994 wherein the main prayer was for handing over the investigation of the matter to C.B.I., as according to the petitioner, the police officer entrusted with the matter, was trying to help the respondents. Both these petitions were ordered to be heard together and on the date when the matter came up for arguments, learned counsel for the petitioner did not press Crl. Misc. No. 19513-M of 1994 as by that time prosecution had already filed challan against all the accused in the Court.

(3) The facts on which the prayer of the petitioner for cancellation of pre-arrest bail granted to respondents 2 to 10, rests, would reveal that the petitioner is father of one Bagicha Singh, who was allegedly eliminated by the respondents, whose bail is sought to be cancelled. The petitioner, being aggrieved, filed Crl. Writ Petition No. 125 of 1993 in which his obvious prayer was for registration of a case against the respondents. The respondents, however, took the stand that Bagicha Singh escaped from the police custody, while he was being taken for the purposes of recovery of arms. The said matter came up for hearing before V. K. Jhanji, J., who entrusted the matter to the Sessions Judge, Hoshiarpur, to make an inquiry, Mr. M. S. Lobana, the then Sessions Judge Hoshiarpur,

submitted his report on November 30, 1993, concluding part whereof reads thus :

“As a result of the above discussion, it will be safe and reasonable to conclude that the version with regard to the escape of Bagicha Singh from the custody of the police party headed by Inspector Lakha Singh, SHO on 6th March, 1993 about 8 P.M. while being taken to Bariana Choe for the recovery of stengun is inherently infirm and too un-natural and improbable to be believed as correct and it seems to have been put forward with a view to justify the non-production of Bagicha Singh before the Court of Ms. Manju Bala, Judicial Magistrate, Hoshiarpur, on 8th March, 1993, on the expiry of police remand and in all probability Bagicha Singh was eliminated by that police party.”

This inquiry report was considered by this Court and it was ordered that a case be registered against Inspector Lakha Singh and other members of police party and since it was a case of elimination while in police custody, the investigation was ordered to be conducted by an officer not below the rank of Inspector General (Crime), Internal Vigilance, Punjab. The orders aforesaid were passed on August 11, 1994. Thereafter, a formal FIR bearing No. 95 dated Spetember 27, 1994 was registered at Police Station Haryana under Sections 302/148/149/201 IPC but none of the accused was arrested. Respondents, however, filed a joint application for grant of pre-arrest bail which came up for hearing before Mr. A. S. Sodhi, Sessions Judge, Hoshiarpur, on October 4, 1994. Final orders were however, passed on November 25, 1994 and all the accused were allowed pre-arrest bail. It is this order, as referred to above, which has been challenged in the present petition.

(4) Basically, the contention of learned counsel appearing for the petitioner is that the respondents have obtained orders in their favour by mis-stating the facts as also that the prosecution is siding with the respondents, who are Punjab police employees. It is also being argued that on the one hand Mr. G. S. Bhullar, Inspector General of Police, Punjab, is delaying the inquiry, on the other hand accused are sending threats to refrain from deposing against them. It is also the case of petitioner that by getting some false statements from the prosecution, respondents have been able to obtain order of pre-arrest bail in their favour.

(5) The matter has been hotly contested by the respondents 2 to 10, who have filed their written statement by way of affidavit of

respondent No. 2 Lakha Singh, Inspector. It is pleaded that I.G.P. (Crimes),—vide his letter dated September 21, 1994, ordered the registration of a case against Lakha Singh, SHO as also police party headed by him in view of orders of this Court. On September 27, 1994 an FIR under Sections 302/201/148/149 IPC was lodged against all the respondents and on October 10, 1994 the IGP (Internal Vigilance), Punjab, ordered suspension of respondents. On October 14, 1994 respondents were actually placed under suspension. On October 17, 1994, Shri G. S. Bhullar, IGP (Internal Vigilance), Punjab, directed the Senior Superintendent of Police, Hoshiarpur, not to re-instate any of the respondents without his prior permission. A copy of the letter aforesaid has been placed on records as Annexure R 2/5. The I.G.P. asked petitioner-Hazura Singh to appear before him on October 28, 1994 for recording his statement in pursuance of investigation being conducted by him. However, petitioner—Hazura Singh failed to turn up on October 28, 1994. He was once again requested to appear on November 7, 1994 for the purpose of investigation of the case against respondents in pursuance of orders passed by this Court. However, he again did not appear and in fact told Shri Gurdev Singh, Inspector, deputed for summoning the petitioner, that he would first consult Shri Shangara Singh, MLA before he might appear for investigation before I.G.P. on November 25, 1994 learned Sessions Judge, Hoshiarpur, after perusing the facts of the case as also taking note of the fact that petitioner was not associating with the investigation and after laying elaborate terms and conditions, granted bail to respondents 2 to 10. On December 12, 1994 Hazura Singh—petitioner appeared before the I.G.P. and got his statement recorded. On the said date i.e. December 12, 1994 statements of Ajit Singh, Chuhar Singh, Joga Singh, Sarwan Singh, Pakhar Singh, Kewal Singh, Bikkar Singh and Baru Ram were also recorded.

(6) On the afore stated facts, it is being strenuously argued by learned counsel from respondents 2 to 10 that once all the respondents have been suspended and there is no question of their reinstatement till such time orders in writing were passed to that effect by the I.C.P., pre-arrest bail granted to them should not be cancelled as in their present position i.e. they being suspended, they shall not be holding any power to suborne the prosecution witnesses. It is also the case of respondents that the learned Sessions Judge granted anticipatory bail at a stage when there was no evidence available with the prosecution to link up the respondents with the crime. The Sessions Judge had adjourned the case repeatedly to give chance to the prosecution to furnish details of the evidence

that might have been collected to show complicity of the respondents in the crime alleged against them and it is only on the failure of the prosecution to show anything in the matter, that the bail was granted.

(7) I have heard learned counsel for the parties and have gone through the records of the case. In the considered view of this Court, it was not, perhaps, a case where respondents 2 to 10 should have been granted anticipatory bail as they were involved in a heinous crime. Being custodians of law, they have themselves indulged in complete lawlessness. This matter, which is of a custodial death, should have been viewed very seriously by the Sessions Judge, with all the prudence which he (Sessions Judge) had gained on account of number of years that he had put in as a Superior Judicial Officer, he should not have solely relied upon the prosecution version and instead should have issued notice to the complainant as well. The back-ground of the case was known to the Sessions Judge. It was clear by the time the matter came up before him that it is on a petition instituted by the petitioner in this Court that a case was registered against respondents and the investigation was ordered to be conducted by a very high ranking police officer. It was also known to the Sessions Judge that before the orders aforesaid were passed by this Court, a fact finding inquiry had actually been conducted by none other than the then Sessions Judge, Hoshiarpur and obviously there were *prima facie* findings also against the respondents. What more, *prima facie*, evidence the Sessions Judge was looking for from the prosecution agency to link the respondents with the crime and that too at the stage when the matter was for grant or non-grant of pre-arrest bail, is wholly un-understandable. The other aspect that impressed the Sessions Judge while granting anticipatory bail to the respondents was that they had been suspended and while passing the impugned orders, it was said by the Sessions Judge that accused shall not be re-instated without prior permission of the Court. It was, perhaps thought by the Sessions Judge that having been suspended, the respondents were no more in a position to tamper with the prosecution evidence. Even this reason that impressed the Sessions Judge, in considered view of this Court, singularly ignores the fact that despite their suspension, the respondents are still in police force and by mere suspension their links with the department and the people governing the said department have not automatically been snapped. The back-ground of the case, details whereof have been given above, *prima facie*, reveal that all out attempts were made to conceal death of Bagicha Singh and it is in these circumstances that the father of deceased had

to approach this Court for registration of a case against accused-respondents. V. K. Jhanji, J. on August 11, 1994 ordered the investigation to be conducted by an officer not below the rank of Inspector General (Internal Vigilance) and it is after more than 1½ months that formal FIR came to be recorded. It further reveals the continuing links of respondents with the police department as, in considered view of this Court, it should not have taken that long time for registration of a formal FIR, particularly when the orders to that effect were passed by this Court. The positive case of the petitioner is that even though the case was ordered to be registered on August 11, 1994, none of the accused was arrested upto October 4, 1994 when the respondents prayed for their pre-arrest bail before the learned Sessions Judge. It requires to be mentioned at this stage that the respondents were placed under suspension on October 14, 1994 and it is before that date that the respondents had successfully prayed for their interim bail in the petition for grant of pre-arrest bail from the Sessions Judge. The positive case of the petitioner is that even after the respondents had obtained interim pre-arrest bail from the Sessions Judge, no progress was being made in the case despite the fact that he was always available so as to appear before the investigating officer and was willing to give his statement. As per the case of respondents, however, the petitioner for the first time appeared before the I.G.P. on December 12, 1994 on which date his statement along with others was recorded and admittedly by that time interim bail granted to respondents had since been confirmed on November 25, 1994. This Court does not wish to comment upon the manner in which the prosecution agency was dealing with the matter even after the case was ordered to be registered against them by this Court but the way and manner, in which the things have gone about, do show that the respondents were not treated in the way and manner an ordinary criminal is treated by the police and that does reveal their influence or for that matter a soft corner for them by the officers of the same department. It is reiterated that this Court is not expressing any definite opinion on the performance of the investigating agency and all that is being said in this order is simply with a view to demonstrate that the opinion of the learned Sessions Judge that the accused after their suspension were not in a position to influence the investigation, was, perhaps incorrect being not based upon real situation. That apart, as mentioned above, in a case of this kind where the department was sympathetically disposed towards the respondents, learned Sessions Judge should have done well to summon the petitioner to inquire from him as to why he was not appearing before the I.G.P. so as to support the prosecution version. While passing orders on November 25, 1994, it was

observed by the learned Sessions Judge that the Public Prosecutor conceded that so far, the investigation had not made any head-way and no evidence whatsoever had been collected against any of the accused as also that a report was produced which was signed by Inspector Gurdev Singh, stating that Hazura Singh, father of Bagicha Singh was not co-operating with the investigation and was evading to appear in the investigation on one pretext or the other as also that statements of other persons were yet to be recorded. In view of this statement of the Public Prosecutor it became all the more important to summon the petitioner. *Prima facie*, it appears to this Court that there was no earthly reason for the petitioner to have not appeared before the investigating officer and his strenuous efforts, resulting into registration of a case, as ordered by this Court, totally bely the assertion of the prosecution that he was evading to appear before the investigating officer on one pretext or the other. The two basic reasons given by the Sessions Judge for admitting all the accused to pre-arrested bail having been found to be wholly unsubstantiated while ignoring the stark realities and the inferences which ought to have been drawn in the facts and circumstances of this case, there is no choice but for to cancel the bail granted to all the accused. It may be mentioned here that the Sessions Judge while disposing of the bail application and while imposing various conditions himself said that the investigating agency would be at liberty to apply for cancellation of anticipatory bail after collecting evidence showing the complicity of the accused in the case registered against them. Concededly, as by now, not only that petitioner has given his statement, number of other persons, names of whom have been mentioned above, have supported the prosecution version and it is for that precise reason that challan under Section 173 Cr.P.C. has already been put in the Court.

(8) It may be true, as is the contention of learned counsel appearing for the respondents, that the bail granted once should not be cancelled, even though the same has been wrongly allowed unless there are compelling circumstances for doing that or there is definite information with the Court that the accused are trying to tamper with the prosecution evidence. For his afore stated contention, learned counsel relies upon a judgment of the Supreme Court in (*Bhagirath Singh Judeja v. State of Gujrat*) (1). This Court, however, finds the present case to be one which is exceptional one calling for interference by this Court. It is a case of custodial death at the hands of protectors of law and there is, *prima facie*, finding

(1) A.I.R. 1994 S.C. 372.

against the respondents, so recorded by the Sessions Judge on an inquiry entrusted to him by this Court. That apart, the petitioner unequivocally asserts that he is being threatened every day that he shall be eliminated in the same way his son was.

(9) For the reasons recorded above, this petition succeeds. Pre-arrest bail allowed to all the accused by the Sessions Judge,—*vide* order dated November 25, 1994 is cancelled. The respondents shall, however, be at liberty to apply for regular bail which shall be considered by the Sessions Judge, seized of the matter, on merits and, in particular, on the basis of evidence and quality thereof, collected by the prosecution agency culminating into final report against them under Section 173 Cr.P.C. It is made clear that all that has been discussed in this order is simply with a view to dispose of petitioner's prayer for cancellation of bail and nothing said in this order shall ever be construed to be an expression of opinion and the Sessions Judge dealing either with the regular bail or the trial would decide the matter being totally un-influenced of what has been said in this order.

S.C.K.

Before Hon'ble N. K. Sodhi, J.

DWARKA DASS,—Appellant.

versus

HARJIT KUMAR & ANOTHER,—Respondents.

F.A.O. No. 307 of 1995 (O&M)

2nd March, 1995.

Punjab State Election Commission Act, 1994—Ss. 68, 89 (1) (d) (iii) & 100—Punjab Municipal Act, 1911—S. 240—Punjab Municipal (President & Vice President) Election Rules, 1994—Rls. 3, 5, 5-A—Election for the office of President of Municipal Committee—Candidates polling equal number of votes—Election held by draw of lots in terms of section 68 of the Act—Election petition—Local M.L.A. member of Committee not available to cast vote—Such member of the committee also member of the Nagar Panchayat—Elections of both bodies held at the same time—Local M.L.A. not casting vote in the present election—Defeated candidate claiming political affiliation with local M.L.A.—Non-participation of any member including M.L.A. is no ground for declaring an election void—Election can be set aside on grounds mentioned in Section 89 of the Act.