

HIGH COURT OF PUNJAB AND HARYANA**Date of Decision: March 7th, 2024**

CWP-PIL-29, 30, 36 & 42-2024

Uday Pratap Singh**Vs.****UOI & others**

1. Affidavit dated 06.03.2024 has been filed by Shri Mahavir Kaushik, Special Secretary to Government of Haryana, Home Department on behalf of State of Haryana-respondent no.5 (in CWP-PIL-36-2024) giving the details of the orders passed regarding suspension of internet in Ambala District and various orders appended as Annexures R-1 to R-9. It has been mentioned in the affidavit that the last order was passed upto 29.02.2024 and thereafter, internet services have not been suspended in the State of Haryana. Justification has been given for issuance of the said orders regarding misuse of internet services and to avoid spread of inflammatory material and false rumours in Districts Ambala, Kurukshetra, Kaithal, Jind, Hisar, Fatehabad and Sirsa including Dabwali and spread of misinformation and rumours through various social media platforms such as Whatsapp, Facebook, Twitter etc., keeping in view the law laid down by the Apex Court in **Anuradha Basin Vs. Union of India & others, (2020) 3 SCC 637**.
2. Affidavit dated 07.03.2024 has been filed by Shri Arpit Shukla, IPS, Special Director General of Police, Law & Order, Punjab, Chandigarh, in compliance of the order dated 29.02.2024 (in CWP-PIL29-2024). It has been mentioned in the said affidavit that FIR No.41 dated 28.02.2024 (Zero FIR) under Sections 302, 114 IPC had been registered at Police Station Patran, District Patiala and post-mortem report which have been appended as Annexures R-1 & R-2, respectively. It has been averred that internet services in the State of Punjab were never suspended by the Punjab

Government though reference has been made of temporary suspension of internet services from 00.00 hrs on 28.02.2024 to 23.00 hrs on 01.03.2024 in the areas of PS Shambhu, PS Patran, PS Shatrana in District Patiala and PS Khanauri, District Sangrur and from 00.00 hours on 02.03.2024 to 23.00 hrs on 05.03.2024 as approved by the Union Home Secretary in the said areas, copy of the said orders are annexed as Annexures R-3 & R-4.

3. Details of the additional force provided on 12.02.2024 of 3169 in the three districts on account of gathering at Shambhu Border, District Patiala on 06.03.2024 of around 5000/5200 (along with 740 tractors, 930 trolleys, 50/55 cars/SUVs, 15/16 mini-buses/trucks, 40/42 water tanks, 5/6 canters/chota hathi, 25/30 bikes and 01 JCB. Similarly, at Khanauri Border, District Sangrur gathering of around 2900/3000 (along with 530/540 tractors, 630/640 trolleys, 37 cars/SUVs, 37 water tanks, 03 trucks and 27 bikes and the situation was peaceful and under control.
4. Affidavit dated 07.03.2024 of Shri Sumit Kumar, IPS, Superintendent of Police, Jind on behalf of respondents No.5 & 6 (in CWP-PIL-36-2024) has also been filed giving details and mentioning contents which have earlier also been mentioned. Thereafter detailing various facts regarding the barricading of NH 352 that it was within 1965 feet in the revenue estate of Village Datasinghwala, District Jind falling under the territorial jurisdiction of PS Garhi, District Jind, Haryana. Details have been given regarding the mob which had collected on 13.02.2024 and tried to break the barricades and were warned by the Duty Magistrate, Shri Anil Duhan, HCS, SDM Narwana to which they refused due to which lathi charge, water cannons and tear gas shell were used in compliance of the orders passed by the Duty Magistrate under Sections 129 & 130 Cr.P.C. It has been mentioned that 19 police and para-military personnel including senior officials got injured and FIR No.26 dated 13.02.2024 under Sections 332, 353, 147, 148, 149, 186, 188, 506, 307 and 427 IPC was registered at PS Garhi.
5. Similarly reference has been made to the incident of 14.02.2024 regarding farmer leaders Abhimanyu Kuhad, Surendra Belrakhan and others leading to the protest started giving provoking speeches to the agitators and FIR No.27 dated 14.02.2024 under

Sections 332, 353, 147, 148, 149, 186, 188, 506, 307 and 427 IPC was registered at PS Garhi. Regarding the incident of 21.02.2024, there is mention made regarding fire being set-up by the miscreants in the stubble and other agricultural residues in the fields to be used as a base for spraying chemical or dry chilly upon the police force. Keeping in view the gravity of the situation, it has been mentioned that a large number of officials had gathered at Datasinghwala. Reference has been made to Abhimanyu Kuhad again wherein at his instigation, agitators started to proceed towards Delhi by breaking over the barricades and the law enforcement agencies had tried to convince them not to resort to violence. However, using the benefit of wind blowing from west to east, the agitators from west set off the barricades and started burning the stubble by putting chilly powder causing intense breathing problems and near to zero visibility. Pelting stones, swords, lathis with iron nails and spears etc were used against the police personnel deployed there and FIR No.28 dated 21.02.2024 under Sections 147, 148, 149, 186, 188, 307, 332, 353, 427 & 506 IPC and Section 25(1B)a of Arms Act was registered at PS Garhi, Jind against Abhimanyu Kuhad and investigation in the matter was transferred to District Hisar by the ADGP, Hiar, Range Hisar, Haryana.

6. . Regarding the death of Subh Karan, it has been mentioned that intimation regarding medical ruqa was received that he was brought dead due to the head injury and DDR No.20 dated 21.02.2024 was recorded at Police Station Garhi, Jind. A team was constituted which was headed by DSP Jitendra Kumar, Jind which tried to approach the hospital to get the postmortem conducted and record the statement of the family members of the deceased but it was not allowed by the Punjab police due to the prevailing law and order situation from 22.02.2024 to 28.02.2024. The team had continuously visited Patiala, Punjab but was never allowed to have access by the Punjab police to Government Rajindra Hospital, Patiala and DDRs were also got recorded on daily basis in Police Station Garhi, Jind and PS Civil Lines, Patiala regarding this aspect and copy of the FIR was received in Police Station Garhi, Jind on 29.02.2024 through email. Various correspondences had already been made in this regard with the

Punjab police that as soon as the record pertaining to this matter including the post-mortem report would be received, its investigation will be carried out in a fair, proper and impartial manner.

7. Regarding the incidents in District Ambala, it has also been mentioned that young elements were eager to break through the barricading with their modified tractors and were raising slogans with the posters of Deep Sidhu, Amrit Pal and Bindrawala and were carrying dandas, spears, swords, maces and lathis with iron nails. An attempt was made to cross the river Ghaggar and they were warned by the Duty Magistrate and they tried to cause damage to the barricades and CCTV cameras, sign boards and bridge view cutters of NHAI and force had to be used in the form of lathi-charge, water cannons, tear gas/stun shell etc. DSP Adarshdeep Singh, HPS also received injuries and FIR No.40 dated 13.02.2024 under Sections 147, 149, 186, 188, 506, 307, 332, 353, 427 IPC 3 PDPP Act, 8 B NH Act was registered at PS Sadar Ambala.

8. Regarding the incident of 14.02.2024, similar details have been given regarding provocative speeches given by the leaders and agitators gathered time and again to attack the police and remove the barricading and clash taking place due to which FIR No.43 dated 15.02.2024 under Sections 332, 353, 147, 149, 186, 188, 506, 307 IPC 3 PDPP Act, 8 B NH Act was registered at PS Sadar Ambala. The factum of the talks going on with the Central Government representatives had also been mentioned and the rejection of the offer made. Inputs having been received from credible sources that the agitators shall use heavy earth movers with bullet-proof cabins to break the barricades on 21.02.2024 had been received and the fact that the Punjab police were also intimated to prevent their movement to the protest site. Similar information shared on 19.02.2024 and 21.02.2024 have also been mentioned.

9. On 21.02.2024, at District Ambala 15000 agitators had started converging near the police barricades by crossing the river Ghaggar through the adjoining fields and pelting stones and attacking the deployed force with swords, spears, lathis having iron nails. 4 police personnel got injured and FIR No.48 dated

21.02.2024 under Sections 147, 149, 186, 188, 307, 332, 353, 120B IPC 3 PDPP Act, 8 B NH Act was registered at PS Sadar Ambala. The factum of injuries to Amritpal Singh, Jaskaran Singh and Pushpinder Singh were also mentioned and till date no rukka had been received at PS Sadar Ambala or from any hospital. Police moved an application under Section 91 Cr.P.C. to the Civil Hospital, Rajpura, Punjab for providing the MLRs of injured persons which was not provided and the application was sent to the CMO, Patiala and Deputy Commissioner, Patiala.

10. It has been averred that in the ongoing agitation, 67 personnel, both from police and para-military forces have sustained injuries which substantiates the violent nature of the agitation. 40 persons sustained injuries at Naka at Datasinghwala, Jind and 27 sustained injuries at Naka near Shambhu Toll Booth, Ambala and the list of the injured police personnel and para-military forces is attached as Annexure R-1. A call to reach by the farmer leader at Delhi on 3rd, 6th and 10th of March, 2024 has also been averred.

11. CWP-PIL-42-2024 has been filed by Balbir Singh Rajewal who claims himself to be the President of Bharti Kisan Union (Rajewal) for the last 40 years. The claim in the Public Interest Litigation is for appointment of an independent Commission under the supervision of a Hon'ble Sitting Judge or a retired Judge of this Court to conduct thorough probe and to assess the damage caused to the lives and properties of the innocent farmers as a number of lives have been lost, 250 farmers having been injured. Compensation for the damage caused to the vehicles and the firing done and the police excesses is the prayer made including handing over the investigation to the CBI or any other independent investigating agency for fixing the responsibility of the State of Haryana.

12. We have perused the FIR (Annexure R-1) which has been attached with the report of Shri Arpit Shukla wherein it is pointed out that the death took place on 21.02.2024 and the FIR was only lodged on 28.02.2024 at 22.45 hours. It is a matter of record that the matter was pending before this Court having been adjourned on 20.02.2024 to 29.02.2024. Applications bearing CM-22 & 23-CWPIL-2024 had also been filed in CWP-PIL-29-2024 asking for

holding of a judicial enquiry by a Retired High Court Judge assisted by DGP, Punjab regarding the homicide of Subh Karan Singh. On the said date, CWP-PIL-36-2024 had also been listed seeking direction to register FIR under various provisions of the IPC and Arms Act regarding murder of Subh Karan in the unprovoked police firing in view of the law laid down in **Lalita Kumari Vs. State of U.P. & others, 2014 (1) SCC (Cri.) 524** and conducting of post-mortem examination which had been held up. The prayer further had been made for videography of the post-mortem under the supervision of Court appointed Judicial Magistrate and monitoring of investigation by this Court. The lodging of the FIR at 22:45 hours a day before the hearing of the case would go on to show that the State of Punjab was dilly-dally on the same and only lodged the same once it was aware that the matter was coming up on the next day.

13. The FIR lodged by Charanjit Singh, father of the deceased would go on to show that they were present at the site on 21.02.2024. The farmer's organizations had asked them to move to Delhi in a peaceful manner and they had started marching along with other farmers but due to heavy barricading and firing of the tear gas they had been directed to go back to the trolleys. It was at that time, Subh Karan was shot at the back of the head from Haryana side and fell down. He was picked up and taken to the hospital, Khanori. The police action would go on to show that he died due to the shot of rubber bullet/pellet from the Haryana side and it has been mentioned that from which direction the shot came and whether it was due to the negligence and carelessness had to be investigated. Accordingly, the matter was sent to the Police Station for registration of the Zero FIR by recording the fact that the occurrence took place within the jurisdiction of Police Station Garhi (Haryana). Thus, an attempt has been made by the State of Punjab to wash its hands off from investigating into the matter.
14. It has been brought to our notice that as per the averments made in the FIR that a clash had taken place at Dhaba Gujran, which is allegedly in Punjab. The post-mortem report would also go on to show that as per the information provided by the police, the deceased died due to rubber bullet/pallet. The post-mortem report

of the hospital records the presence of various multiple metallic density foreign bodies. The said report reads as under:

“AS PER ED SLIP NO.8899, RH PATIALA DEAT AT 3 PM ON 21.02.2024. ON 28.02.2024 BEFORE CONDUCTING THE POSTMORTEM WE HAD GIVEN THE REQUISITION FOR NCCT HEAD AS PER REPORT NO.PMCT/01/PK/2024 DATED 28.02.2024 ISSUED BY DR SULABH PURI, ASSISTANT PROFESSOR RADIOLOGY AND DR PARMINDER SENIOR RESIDENT RADIOLOGY, RAJINDRA HOSPITAL PATIALA. MULTIPLE METALLIC DENSITY FOREIGN BODIES PRODUCING EXTENSIVE STREAK ARTEFACTS ARE A SEEN SCATTERED IN BILATERAL CEREBRAL HEMISPHERES, PNEUMOCEPHALUS IS NOTED. HYPERDENSE CONTENTS ARE SEEN IN VISULAISED PART OF SUPRATENTORIAL AND INFRATENTORIAL VENTRICULAR SUSTEM. SIGN OF INTRAVENTRICULAR HEMORRHAGE. HYPERDENSE CONTENTS ARE SEEN IN VISULAISED PART OF BILATERAL SYLVIAN FISSURES AND BASAL CISTERNS SIGN OF SUBARACHHOID HEMERHHAGE, COMMUNITED DEPRESSED FRACTURE OF OCCIPITAL BONE SEN ON LEFT SIDE WITH FRACTURED FRAGMENTS DISPLACED INTO THE BRAIN PARENCHYMA, SOFT TISSUE SWELLING WITH AIR FOCI AND FEW HYPERDENSE FOCI AND FEW HYPERDENSE FOCI ARE SEEN IN OVERLYING SCALP. LINEAR NDISPLACED FRACTURE OF FRONTAL BONE IS SEEN ON LEFT SIDE.”

15. Counsel for the State of Haryana has also handed over photographs of the gathering on the various dates i.e. 13th, 14th, 20th and 21st of February, 2024 which rather go on to show that apart from the younger elements which were armed with lathis and at certain places with swords and spears and sharp-edged weapons, they were also accompanied by women and unfortunately even children were paraded in the front. The claim of the counsels espousing the cause of the farmers also, after perusing the photographs which are taken on record can be seriously doubted. It is a sad state of affairs that children who should be studying at the schools are being taught and are being exposed to violence when they are not supposed to be. Young minds being exposed to violent acts would lead to have a damaging affect on the

psychology of such children and apart from that the threat of being injured on account of stone pelting which was taking place in the apparent riot like situation.

16. Keeping in view the above facts and circumstances, this Court is of the considered opinion that the investigation regarding the death of Subh Karan cannot be entrusted solely either to the State of Punjab or to the State of Haryana for reasons obvious as both the States have several things to cover up.
17. In such circumstances, we are of the considered opinion that the matter needs to be supervised by a Committee headed by Retired Judge of this Court. Accordingly, both the States have nominated two officers each of the rank of ADGP and supplied the list of officers to this Court so that a report can be received from the said Committee regarding the incidents which had happened on the dates noted above.
18. Keeping in view the above, we constitute a Committee headed by Justice Ms. Jaishree Thakur, Retired Judge of this Court who will be assisted by Shri Parmod Ban, ADGP, Punjab and Shri Amitabh Singh Dhillon, ADGP, Haryana.
19. The said Committee will :
 - (i) firstly give a report as to whether which of the police authorities will have jurisdiction to investigate in the death of Subh Karan since the place of occurrence and the death firstly has to be confirmed as one State is shirking its responsibilities whereas the other is yearning to get its hands on the investigation. The cause of death of Subh Karan and from which type of weapon the bullet/pellet emanated would also be within the domain of the Committee.
 - (ii) The Committee shall also examine the issue whether the force which was used on the dates mentioned above was commensurate with the situation and give its report.
 - (iii) The issue of compensation to be awarded on account of the death of Subh Karan shall also be worked on. Both the States shall provide all facilities to the Retired High Court Judge who is heading the Committee and the officers nominated shall provide full assistance to her. It will be the discretion of the Retired Judge where to hold the meetings and make site visits in order to

ascertain the responsibilities which have been fixed. The State of Haryana shall provide necessary conveyance facility.

(iv) The said exercise be completed within a month. The said Retired Judge will be paid remuneration of Rs.5 lakhs for a period of each month, within one week, to be shared equally by both the States. Both the States shall also ensure that adequate security by way of one P.S.O. each is provided to the Retired High Court Judge who is heading the Committee.

20. List again on 10.04.2024.

21. Photocopy of this order be placed on the record of each connected case.

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