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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Reserved on: 7th October, 2022
Decided on: 19th January, 2023**

+ **W.P(CRL) 1326/2022**

AMANATULLAH KHAN

..... PETITIONER

**Through: Mr. M. Sufian Siddiqui, Mr.
Rakesh Bhugra and
Ms. Alya Veronica, Advocates**

V

**THE COMMISSIONER OF
POLICE DELHI & OTHERS**

..... RESPONDENTS

**Through: Mr. Sanjay Jain, ASG with
Mr. Nishant Tripathi, Mr. Akash
Kishore, Ms. Harshita Sukhija and
Ms. Tanya Aggarwal, Advocates
for respondents along with
Insp. Suhash Chand Yadav,
P.S Jamia Nagar
Ms. Nandita Rao, ASC (Criminal)
for GNCTD.**

CORAM

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The petitioner/Amanatullah Khan (hereinafter referred to as “**the petitioner**”) filed the present petition under Article 226 of the Constitution read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) for judicial review to seek quashing of the ‘**History Sheet**’ opened apropos the petitioner and the purported proposal

declaring him as 'Bad Character' and the entry of the name of the petitioner in the Surveillance 'Register-X, Part- II, Bundle 'A' at P.S. Jamia Nagar, South-East and also for seeking directions to initiate legal/departmental action against the delinquent police officials for exercising powers under Punjab Police Rules, 1934 (hereinafter referred to as the Rules) in a *mala fide* and perverse manner with material irregularities and impropriety.

2. In a social welfare State like India large number of administrative/local authorities are being created to carry out welfare activities and these authorities are vested with discretion. The discretion when coupled with word '**Administrative**' reflects that choosing from various available alternatives but with reference to the rules of reasons and justice and not according to personal whims and exercise of discretion should not be arbitrary, vague or fanciful. The administrative discretion is latitude given to the governmental agencies to interpret and implement the public policies. The suitable control over exercise of discretion is necessary otherwise, administrative authority may abuse or misuse the conferred power and may convert in arbitrary body. The discretionary power conferred on an administrative authority is not absolute and must be exercised within the legal parameters.

2.1 The judicial review is a tool by which legality or lack of it can be examined in exercise of administrative discretionary power or any administrative action. The judicial review ensures that an individual is given fair treatment by the authority and is designed to prevent excess and abuse of power by any administrative authority and any probability of favouritism. Judicial review is a suitable tool within the powers of the judiciary to set aside any action taken by any public or administrative authority stated to be

inconsistent or in conflict with law. It was held in the case of **Chief Constable of North Wales Police V Evans**, (1982) 3 All E R141 that the purpose of judicial review is to ensure that the individual receives fair treatment. In **Laker Airways Ltd. V Department of Trade**, (1977) 2 All E R 182, it was observed that discretionary power is to be exercised for the public good and this exercise can be examined by the Courts. Lord Diplock in **Council of Civil Service Unions V Minister for the Civil Service**, (1984) 3 WLR 1174, observed that administrative action is subject to judicial review on the grounds which are “**Illegality**”, “**Irrationality**” and “**Procedural Impropriety**”.

2.2 In India, negation of arbitrariness in exercise of public power is considered a cardinal component of the Rule of Law. The Courts in India have invalidated arbitrary exercise of administrative power. Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. The decision making process should be reasonable and rational and should not be arbitrary and violative of Article 14 of the Constitution. The Supreme Court in **E. P. Royappa V State of Tamil Nadu**, AIR 1978 SC 555 observed that Article 14 of the Constitution embodied a guarantee against arbitrariness. The Supreme Court in **Maneka Gandhi V Union of India**, AIR 1978 SC 597 observed that Article 14 of the Constitution strikes at arbitrariness in State action and ensure fairness and equality of treatment. The power of judicial review is considered to be an integral part of constitutional system and is described as basic and essential feature of the Constitution of India. It was also observed in **S. R. Bommai V Union of India**, AIR 1994 SC 1917 that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority

and is basic feature of the Constitution.

2.3 The power of judicial review has certain inherent limitations and is not without restrictions. Judicial review is concerned with legality rather than merits of the case. The Courts cannot substitute its own view in exercise of power of judicial review. The judicial review is not an appeal against the decision taken by the concerned authority. Judicial review is stated to be a protection and not a weapon. The power of judicial review cannot be exercised to administer law but to ensure that the government carries its function in accordance with legal and constitutional principles. The Supreme Court in **State of Punjab V Gurdial Singh**, (1980) 2 SCC 471 observed as under:-

The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the Executive and judicial circumspection keeps the court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.

The Supreme Court in **Tata Cellular V Union of India**, (1994) 6SCC651 observed that judicial review is concerned with reviewing and not with the merits of the decision. It was observed as under:-

The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

The Supreme Court in **State of N.C.T. of Delhi & another V Sanjeev @ Bittoo**, Criminal Appeal bearing no. 498/2005 decided on 04.04.2005 also observed that the scope of judicial review of administrative orders is limited to the legality of decision making process and not legality of the order and mere possibility of another view cannot be a ground for interference.

3. The facts as mentioned in the present petition are that the petitioner is a Member of the Delhi Legislative Assembly from Okhla Constituency and as such, he is representing the will of the people of his Constituency. The petitioner is a popular leader of the masses and is enjoying his second term as Member of Legislative Assembly (MLA). The petitioner has been the Chairman of Minority Welfare Committee, Delhi Legislative Assembly and is holding third term as Chairman of the Delhi Waqf Board. The petitioner in the capacity of Chairman of Delhi Waqf Board is doing various charitable functions including financial aid for medical treatment, education, house construction, marriage, etc. to the needy and destitute persons across the religions. The petitioner is also very active in providing shelter and provisions to the victims of riots and natural calamities/pandemic.

3.1 The respondent no.1 being the Commissioner of Police is responsible for the acts of his subordinate officers and to initiate legal/departamental action against his delinquent subordinate police officials as contemplated in Delhi Police Act, 1978.

3.2 The South Delhi Municipal Corporation (SDMC) on 12.05.2022 has brought bulldozers/JCB Machines to tear down houses of the poor. The petitioner being elected MLA from Okhla Constituency on 12.05.2022 and in the capacity of the elected representative of the people and also in exercise of

his Fundamental Rights guaranteed under Articles 19(1)(a), 19(1)(b) and 21 of the Constitution was protesting in peaceful manner and without arms at Kanchan Kunj falling within the jurisdiction of Police Station (PS), Kalindi Kunj against the demolition drive undertaken by SDMC in that area. The petitioner being representative of will of the people has taken stand that no house of any poor should be demolished. The right to protest being covered under Article 19 of the Constitution has a special place in a democracy and the Supreme Court of India has held that the right to assembly and peaceful agitations are basic feature of a democratic system. The imposition of Section 144 of the Code is falling within the ambit of reasonable restriction but the concerned authority on 12.05.2022 has not imposed prohibitory orders under Section 144 of the Code. The protest of the petitioner on 12.05.2022 was only in the interest of the local public.

3.3 The Delhi Police led by Additional Commissioner of Police (ACP), Sarita Vihar and accompanied by the personnel from Para Military Armed Forces without any provocation and without giving any prior notice resorted to the baton charge on the protestors. The ACP, Sarita Vihar punched and pushed the petitioner but the petitioner was protected by his unarmed bodyguards. The petitioner was detained by the police along with other persons and was taken to PS, Kalkaji at about 02:15 pm where he was unlawfully detained till late in the evening. The police registered FIR bearing no 246/2022 under sections 147/148/149/186/353/332/153 IPC against the petitioner and 4-5 persons including his unarmed bodyguards. The petitioner was remanded to the judicial remand till 13.05.2022. The Police has brazenly trampled upon the fundamental, human and statutory rights of the petitioner and also flouted the guidelines as laid down by the Supreme Court in **Dilip K. Basu V State**

of **West Bengal & others**, (1997) 7 SCC 169 and did not follow the directions given by the Supreme Court in **Arnesh Kumar V State of Bihar**, (2014) 8 SCC 273 at the time of registration of FIR bearing no.246/2022. The petitioner was arrested by the Delhi Police in violation of directions given by the Supreme Court in **Arnesh Kumar**. The respondent no.2 did not take any action to protect the precious rights of the petitioner despite an e-mail sent to the respondent no.2 by the Former Vice Chairman of Delhi Bar Council.

3.4 The petitioner on 13.05.2022 was to be produced before the Metropolitan Magistrate and his bail application was to be considered. The petitioner on 13.05.2022 had learnt from social media that SHO, PS Jamia Nagar i.e. the respondent no.4 on 28.03.2022 had submitted a dossier to the Assistant Commissioner of Police (ACP), New Friends Colony/respondent no. 3 (hereinafter referred to as “**the respondent no. 3**”) and Deputy Commissioner of Police (DCP), South East i.e. the respondent no.2 (hereinafter referred to as “**the respondent no.2**”) along with proposal of opening History Sheet of the petitioner and to place his name as ‘Bad Character’ (BC) in ‘Register-X, Part-II, Bundle A’ to keep a close surveillance on his activities and said proposal also accompanied a list of total 18 cases stated to be pending/registered against the petitioner. The petitioner has already been discharged/acquitted/offences compounded/FIR quashed in 14 cases. The said proposal besides referring the petitioner as Bad Character (BC) also alleged that the petitioner has made a group consisting of persons from his village and neighbouring villages and is indulging in land grabbing and illegal constructions besides creating terror in general; most of the cases against the petitioner are related to intimidation, threatening, hurt, riots, causing hindrance and discharge of duties of public servants and

causing enmities between two groups/communities; and the petitioner has become a habitual and desperate criminal of the area with no respect for the law and he is repeatedly indulging in serious criminal activities. It was also alleged that the petitioner has failed to deter himself from criminal activities as such his activities need to be kept under surveillance. However, there was no material to support these allegations.

3.5 The approval was sought from the respondent no.3 and the respondent no.2 on basis of above-mentioned allegations for opening of criminal history of the petitioner. The respondent no.3 has approved the proposal on 29.03.2022 and the respondent no.2 has also approved the proposal on 30.03.2022 in mechanical manner without recording definite reasons and application of mind, which is in contravention of the Rule 23 of the Punjab Police Rules, 1934. The Surveillance Register no. X is provided in Volume III, Chapter XXIII of the Rules. The Rule 23.5 deals with entries in and cancellation from Surveillance Register which clearly stipulates that 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. The said Rule further stipulates that if from the entries in the History Sheet, the Superintendent is of the opinion that such person should be subjected to surveillance, he shall enter his name in Part II of the Surveillance Register but provided that the names of persons who have never been convicted or placed on security for good behavior shall not be entered until the Superintendent has recorded definite reasons for doing so. The said Rule further provides that the record of such reasons shall be treated as confidential and the person concerned shall not be entitled to a copy thereof. However no definite reasons have been provided by the respondent no. 2

prior to according approval on the purported dossier and the proposal of the petitioner. The Surveillance Register has to be written by the Officer In-charge of the police station and entry in Part-I can only be made by the order of the Gazetted Officer. The Superintendent has further to record reasons for doing so before entering the name of a person in Part II of the Register. The History Sheet can be prepared under Rule 23.8 and said Rule clearly prescribes that it requires great care in doing so. The aforesaid Rules have been enacted to ensure that the bad character or suspects thereto are kept under surveillance and check. The Circular dated 21.09.2000 issued by the Deputy Commissioner of Police (Hqrs.) provides that the Deputy Commissioner of Police must record reasons to keep the person's name in a Surveillance Register.

3.6 The Supreme Court in **Malak Singh V State of Punjab**, AIR 1981 SC 760 held that the police do not have the license to enter the name of whosoever they like in the Surveillance Register. The Deputy Commissioner of Police under Rule 23.5 is not bound to open the History Sheet of an offender. The expression “**Ordinarily**” used in said Rule leaves discretion with the concerned officer to apply his mind and look at the conduct of the accused in this regard.

3.7 The purported dossier along with the proposal and the official noting at the foot of the aforesaid proposal was supposed to be confidential as per Rule 23.5 of the Rules but it was circulated in a pre-planned manner on 13.05.2022 at around 12.30 pm i.e. before the consideration of bail application of the petitioner at Saket Courts. The copies of the said dossier were deliberately leaked by the Delhi Police to the print and social media. The reputation of the petitioner was deserved to be preserved by the

concerned authorities and cannot be allowed to be sullied with the passage of time. The dossier and the proposal have been leaked by the police deliberately in a public domain as the same has not been placed before the concerned Metropolitan Magistrate who heard the Bail Application on 13.05.2022.

3.8 There was no proximate cause or immediate ostensible justifiable reason which triggered SHO, PS Jamia Nagar/respondent no.4 (hereinafter referred to as “**the respondent no.4**”) to prepare the purported dossier and proposal of the petitioner on 28.03.2022 as the last case which was stated to be registered against the petitioner in 2021 whereas the purported proposal was sent for approval on 28.03.2022 which was consequently approved by the respondent no 2 on 30.03.2022 without recording the special reasons and application of mind. The *mala fide* conduct of the Delhi Police is also manifestly apparent from the fact that the entire dossier and the purported proposal has been deliberately leaked in the media. The petitioner was also subjected to inhuman and degraded treatment by ACP, Kalkaji without any provocation on 12.05.2022 during the demolition drive in contravention to his fundamental rights as guaranteed under Article 21 of the Constitution. The petitioner sent a legal notice dated 21.05.2022 whereby to call upon respondent no.1 to revoke the proceedings in question but no response or action was taken on the said legal notice.

3.9 The petitioner sought quashing of opening/approval of the History Sheet declaring him as bad character and consequential entries in the Surveillance Register being exercised by the respondent nos.2 to 4 on the grounds that it was being exercised with irregularity and impropriety in a *mala fide* manner and in contravention of the Rules as applicable to NCT of Delhi. The

proposed exercise of powers by the respondent nos.2 to 4 was devoid of any application of mind and in brazen defiance of the Rules. The purported approval accorded on petitioner's proposal of 'History Sheet' and 'Bad Character' by the respondent nos.3 and 4 was done in a mechanical manner and without recording any special or definite reasons. The respondents have acted in a perverse and *mala fide* manner and without applying their minds as no reasons were given by them and was in violation of circular dated 21.09.2000 issued by the DCP (Hqrs.). The last case was registered against the petitioner on 03.04.2021 vide FIR bearing no.59/2021 and was also a counterblast to the FIR lodged by the petitioner. The petitioner has already been discharged/ acquitted/the cases have been compounded in 14 cases out of the 18 cases and the remaining 04 cases are pending for the investigation/trial. The petitioner also raised other grounds as detailed in the petition. The petitioner feeling aggrieved prayed as under:-

- a. Quash the 'History Sheet' opened apropos the petitioner, the purported proposal declaring him as 'Bad Character', and the Entry in the name of the petitioner, if any, in the Surveillance 'Register-X, Part-II, Bundle A' at P.S. Jamia Nagar, District: South-East; and**
- b. Direct the respondent no.1/Commissioner of Police to initiate apposite legal/departmental action against the delinquent police officials, viz. DCP-South East/respondent no.2 herein, ACP-NFC/respondent no.3 herein, and SHO, P.S. Jamia Nagar/respondent no.4 herein for exercising their powers under the Punjab Police Rules, 1934 as applicable to the NCT of Delhi, in a malafide and perverse manner with material irregularity and impropriety, and**
- c. Grant any further relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.**

4. The respondent no.1 filed Status Report dated 27.07.2022 under the

signature of the respondent no 4 (hereinafter referred to as “**Status Report**”). It is stated in the Status Report that the petitioner is involved in 22 criminal cases and out of which 03 cases which were registered at Police Stations Usmanpur, Anti-Corruption Bureau, Delhi and Parliament Street are under investigation and the final reports in these cases shall be filed in the concerned courts shortly. The 04 cases registered at PS Shaheen Bagh, Kalindi Kunj, Civil Lines and Jamia Nagar are pending for trial before the concerned courts. The investigating agency filed the supplementary charge sheet in FIR bearing no. 302/2017 registered at PS Jamia Nagar before the concerned court on 15.07.2022 after further investigation, recording of statement of witnesses and collecting other material witnesses for the offences punishable under sections 147/148/149/323/341/356/379/506/34 IPC & 27 of the Arms Act. The petitioner along with other persons has also assaulted the then Chief Secretary, Delhi for which FIR bearing no. 54/2018 was also registered as P.S. Civil Lines and the charges have already been framed by the trial court against the petitioner on 11.08.2021. The cases at PS Shaheen Bagh and PS Kalindi Kunj, were also registered against the petitioner in the month of May 2022 for assaulting, causing hurt and obstructing public servants.

4.1 The Delhi Police at the level of ACP after considering and appraisal of the material/information available against the petitioner regarding his activities forwarded a proposal for keeping the petitioner under surveillance for necessary approval and it was decided to maintain surveillance of the petitioner after following the due procedure under the Rules.

4.2 The respondent no. 4 through the respondent no.3 sent a formal proposal to the respondent no.2 on 28.03.2022 for opening History Sheet of the

petitioner under the Rules. The respondent no.4 has approved the opening of the History Sheet of the petitioner on 30.03.2022 and entry of name of the petitioner in Surveillance Register No. X Part -II after careful review based on the pertinent information and justification specified in the proposal, the name of the petitioner was entered in Register No. X, Part-II under Rule 23.4 after following the due procedure was subjected to the Surveillance. The petitioner is not entitled to any information as to the Surveillance as per Rule 23.5.

4.3 The petitioner and his supporters on 09.05.2022 has obstructed the SDMC staff from discharging their official duty during an Anti Encroachment Removal Programme on Road Number 13, Shaheen Bagh for which an FIR bearing no. 182/2022 under sections 186/353/34 IPC was got registered at P.S. Shaheen Bagh against the petitioner and other persons and the case is pending before the Trial Court. The SDMC also conducted a demolition programme in the vicinity of PS Kalandi Kunj on 12.05.2022 and the petitioner and his supporters arrived and attempted to impede the SDMC workers from conducting the demolition and also pelted stones at the SDMC staff and police officials. Accordingly, FIR bearing no. 246/2022, under sections 147/148/149/186/353/332/153 IPC, was got registered at P.S. Kalandi Kunj. The petitioner along with his supporters was taken into custody and arrested after following due process of law.

4.4 The petitioner was found to be involved in 22 criminal cases for offences such as hurt, molestation, assault on public servants, obstructing police officials from discharging their duties, criminal intimidation and corruption. The Delhi Police has not circulated the History Sheet pertaining to the petitioner on social media on 13.05.2022. It is prayed that the present petition

be dismissed.

5. Sh. M. Sufian Siddiqui, Advocate, the learned counsel for the petitioner and Sh. Sanjay Jain, the learned Additional Solicitor General of India for the respondents heard. Record and File bearing H.S.No 89A produced from office of DCP, South East/ the respondent no 2 are perused.

6. The learned counsel for the petitioner advanced oral arguments and also submitted the written arguments. He argued that the approval accorded by DCP was devoid of recording of definite reasons and Status Report is silent on this legal issue. The Delhi Police has leaked the confidential documents pertaining to the petitioner to the rival political party and the spoke person of the rival political part has circulated entire file pertaining History Sheet of the petitioner to the social media. The purported order of the respondent no 2 was not part of the entire file pertaining to the History Sheet of the petitioner and there was no whisper about the approval being granted by the respondent no 2 after recording definite reasons or that vide separate order, definite reasons have been recorded.

6.1 The case of the petitioner does not fall under clauses (a), (c) and (d) of Sub-rule (3) of Rule 23.4. The clause (b) would be applicable to the petitioner. The Rule 23.5(1) lays down that no entry shall be made in Part II except by the order of the Superintendent, who is strictly prohibited from delegating his authority. The Rule 23.5(2) provides for opening of History Sheets prior to a person's name being put on the Surveillance Register. The Rule 23.8 provides that History Sheet may be opened under the written orders of a Police Officer who is not below the rank of the Inspector.

6.2 He further argued that the questions of law which requires the adjudication by this Court are that **i)** whether the police authority who has

initiated action had reasonable ground or sufficient material for believing that the petitioner is a desperate character, a habitual offender or a person habitually addicted to the crime, **ii)** whether the involvement of petitioner in 18 cases out of which he has been discharged/compounded/acquitted in 14 cases, 02 cases are pending for the investigation and charge sheets have not been filed, and 02 cases are pending for trial, could be construed as a reasonable ground or sufficient material for preparing the History Sheet by the respondent no 4, and according to approval by the respondent no 2 under the Rules, **iii)** whether the statutory provisions as envisaged in Rules have been strictly followed while preparing the History Sheet and granting purported approval thereon, **iv)** whether the purported opinion of the Police Authority is based on evidence on record or on reasonable grounds or formulated its opinion on the basis of conjectures, surmises and predilections, **v)** whether the Delhi Police has acted in a *mala fide* manner by deliberately leaking confidential documents and thereafter, no action was taken by the Police on the leakage of strictly confidential documents besides raising other legal and factual issues.

6.3 The concerned authorities have violated Rules 23.8 (3) & (4) in preparation of the purported History Sheet which was required to be prepared with great care but was prepared in blatant disregard of the dictum of the law laid down by the Division Bench of this Court in **Sarjeet Singh V Commissioner of Police & Others**, 2022 (62) DRJ 644 (DB) case as well as the law laid down by the Supreme Court. The powers under the Rules are required to be exercised with great care and caution and in conformity with law as laid down in various judgments passed by this Court as well as by the Supreme Court.

6.4 He further argued that proposed History Sheet is an example of the non-application of mind and *mala fide* exercise of powers. There was no proximate cause for opening the purported History Sheet and according approval thereon by the respondent no 2. The Delhi Police never initiated any proceedings as per Section 110 of the Code. The counsel for the petitioner argued that the proposed action in opening the History Sheet and subsequent approval by the DCP be quashed and the writ petition be allowed. The learned counsel for the petitioner relied on **Amarendra Kumar Pandey V Union of India & Others**, 2022 Live Law (SC) 600; **Deepak Solanki @ Sansar V The State & Others**, Writ Petition (Crl.) 14/2005 decided on 03.07.2009; **Amrik Singh V Commissioner of Police**, Criminal Writ Petition No. 300/1985 decided on 06.04.1987; **Mohd. Anis V The Commissioner of Police and Others**, 1993(25) DRJ (DB); **Peter Samuel Wallace V Inspector General of Police New Delhi & Others**, (1981) 20 DLT 333 and **Sarjeet Singh V Commissioner of Police & Others**, 2022 (62) DRJ 644 (DB).

7. The learned Additional Solicitor General of India assisted by Ms. Nandita Rao, Additional Standing Counsel for the respondents advanced oral arguments and written arguments have also been submitted on behalf of the respondents. It is argued that the petitioner can be reasonably believed to be the habitual offenders whether he has been convicted or not and the non-conviction of the petitioner is not a disqualification for entering his name in the Surveillance Register. The Rule 23.5 further provides the procedure for making entries in the Surveillance Register and the record produced from the office of DCP, South East before this Court reflects that there was a complete procedural compliance in this regard.

7.1 It is further argued that as per Rule 23.5(2) before the name of any person is entered in Part II of the Surveillance Register, a History Sheet should be opened for such person and if from the entries in the History Sheet, the Superintendent of Police is of the opinion that such person should be subjected to Surveillance, he shall enter his name in Part II of the Surveillance Register provided that he shall record the definite reasons for doing so, if the person so proposed to be entered in the Register, has never been convicted nor placed on security for good behaviour. The Competent Officer has recorded the definite reasons regarding the justification of the petitioner's name being placed in Part II of the Register.

7.2 It is further argued that the Rule 23.8 deals with the preparation of History Sheets and submitted that the History Sheet qua the petitioner was prepared in accordance with the letter and spirit of Rule 23.8. The learned Additional Solicitor General of India after referring the list of 21 cases registered against the petitioner during the period from 2016 to 2022 argued that most of the cases registered against the petitioner are in and around Jamia Nagar from where the petitioner is an elected representative and mere compounding of few cases, discharge in few other cases and acquittal in a couple of other cases can not dilute factors required in the assessment of the element of habitual offender.

7.3 There is no violation of Rules 23.8(4) or any provisions of the Code and every decision was taken on careful analysis of the cogent material which comprised of the complaints made against the petitioner and lodging of several FIRs etc. It is argued that the present petition be dismissed. The learned Additional Solicitor General of India for the respondents also relied upon case law as referred by the learned counsel for the petitioner

8. It is reflecting from the combined reading of the petition filed by the petitioner and the Status Report submitted on behalf of the respondents that the petitioner is Member of Legislative Assembly of Delhi from Okhla Constituency and is enjoying second term as Member of the Legislative Assembly (MLA). The petitioner was arrested on 12.05.2022 in pursuance of FIR bearing no.246/2022 registered under sections 147/148/149/186/353/332/153 IPC at P.S. Kalkaji and was produced before the concerned Metropolitan Magistrate on 13.05.2022. The petitioner on 13.05.2022 came to know about submissions of dossier on 28.03.2022 by the respondent no 4 to the respondent no 3 who has approved the proposal on 29.03.2022 and subsequent according of approval by the respondent no 4 on 30.03.2022 for opening History Sheet of the petitioner and to place his name as Bad Character (BC) in R'Register-X, Part- II, Bundle 'A' for keeping close surveillance on the activities of the petitioner. The petitioner was stated to be involved in 18 cases out of which the petitioner was discharged/acquitted/offences were compounded etc. in 14 cases and 18 cases stated to be related to intimidation, threatening, hurt, riots, causing hindrance in discharge of the duties of the public servants and causing enmities between two groups/community. As per the Status Report, the petitioner was found to be involved in 22 criminal cases out of which 3 cases pertaining to Police Station, Usmanpur, Anti Corruption Bureau, Delhi and Parliament Street are under investigation and 04 cases registered at P.S. Saheen Bagh, Kalindi Kunj, Civil Line and Jamia Nagar were pending trial before the concerned courts.

9. The main allegation of the petitioner and as argued by the learned counsel for the petitioner is that the name of the petitioner was entered in Register-X,

Part- II, Bundle 'A' without following due process of law and the Rules and in mechanical manner and without recording definite reasons and application of mind in contravention of the Rule 23 of the Rules and there was no proximate cause or immediate ostensible, justifiable reasons to prepare the dossier and proposal of the petitioner on 28.03.2022 and consequent approval accorded by the respondent no 2 on 30.03.2022 was without recording special reasons and application of mind. As per the respondents and as argued by the learned Additional Solicitor General, the respondent no 4 through the respondent no 3 sent a proposal to the respondent no 2 on 28.03.2022 for opening History Sheet of the petitioner under the Rules and on the basis of subjective satisfaction and after giving proper reasons, the respondent no 2 has approved the opening of the History Sheet qua the petitioner and also the entry of his name in Register-X, Part- II, Bundle 'A' after following due process of law.

10. It is necessary to refer Chapter XXIII of the Rules which are applicable to Delhi to understand and appreciate the real controversy between the petitioner and the respondents. Chapter XXIII of the Rules deals with prevention of offences. The Rule 23.4 deals with Surveillance Register No. X. The Rule 23.5 deals with entries in and cancellation from surveillance register. The Rule 23.8 deals with preparation of History Sheets. The relevant Rules read as under:-

23.4. Surveillance Register No. X. - (1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 23.4(1). (2) In part I of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction 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 Rules of Government made under section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918.

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

(a) persons who have been convicted twice, or more than twice, of offences mentioned in rule 27.29;

(b) persons who are reasonably believed to be habitual offenders or receivers of stole property whether they have been convicted or not;

(c) persons under security under sections 109 or 110, Code of Criminal Procedure;

(d) convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions

Note. - This rule must be strictly construed, and entries must be confined to the names of persons falling in the four classes named therein.

23.5. 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 II except by the orders of the Superintendent, who is strictly prohibited from delegating this authority. No entry shall be made in part I except by the order of gazetted 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. If, from the entries in the history sheet, the Superintendent of opinion that such person should be subjected to surveillance he shall enter his name in Part II of the surveillance register; provided that the names of persons who have never been convicted or placed on security for good behaviour shall not be entered until the Superintendent has recorded definite reasons for doing so. The record of such reasons shall be treated as confidential and the person concerned shall not be entitled to a copy thereof.

23.8 Preparation of history sheets. - The initial preparation of a history sheet requires great care, and should invariably be done by the officer in charge 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 distances 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 recognisance 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 chiefly frequented, weapons or instruments, used etc.

When these particulars have been carefully and concisely entered, the initial entry on the reverse side of the form should be made in

the form of a summary of the individual's criminal career up to the date of his history sheet being prepared, and should include the particular reasons and authority for its being prepared. Copies of history sheets prepared and published by the Criminal Investigation Department and published in the Criminal Intelligence Gazette shall be filed with the history sheets of the persons concerned in their home police stations. The police station history sheets in all such cases will be endorsed with the letters C.I.D. and the criminal's provincial numbers in red ink. The activities of all such criminals subsequent to the publication of their provincial history sheets must be communicated promptly to the Criminal Investigation Department through the District Central Investigating Agency. Duplicate of the sheets of criminal known or suspected to operate on the railway shall be supplied to the nearest railway police station and the originals of such sheets shall be endorsed with the letter 'R' in red ink. The District Police shall also supply the Railway Police Station with copies of all subsequent entries made in such History Sheets, so that the Railway Police copies may be kept strictly up to date.

11. The combined reading of the above Rules reflects that the following facts are required to be considered before entering name of a person in 'Register-X, Part- II, Bundle 'A' as provided under Rule 23.4:-

- (i) In every Police Station other than Railway Police, a Surveillance Register shall be maintained in Form 23.4 (1).**
- (ii) The name of the persons in Part-II of Surveillance Register may be entered at the discretion of the Superintendent (DCP in case of Delhi) who are reasonably believed to be habitual offenders.**
- (iii) 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.**
- (iv) The entry in Part-II can only be made by the orders of Superintendent (DCP in case of Delhi) who is strictly prohibited from delegating his authority.**
- (v) Ordinarily a History Sheet is required to be opened in respect**

of the person before his name is entered in Part-II of the Surveillance Register.

(vi) The names of persons who have never been convicted or placed on security for good behaviour shall not be entered until the Superintendent has recorded definite reasons for doing so. The record of such reasons shall be treated as confidential and the person concerned shall not be entitled to a copy thereof.

(vi) The History Sheet initially required to be prepared with great care and should invariably be done by the Officer In-charge, Police Station himself or by a through experienced Assistant Sub Inspector under specific orders.

12. The Rules have been enacted to prevent commission of offence but these Rules must be exercised with utmost care and caution as these Rules have impact on curtailing liberty of effected person. These Rules cannot be invoked on fancy and surmises of concerned police officer. The Supreme Court in **Dhanji Ram Sharma V Superintendent of Police, North District, Delhi Police and others**, AIR1966SC1766 observed that the provisions under Rules have been enacted to prevent commission of offences and collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers have been empowered by the Punjab Police Rules to open the history sheets of the suspects. The powers have to be exercised with caution and in strict conformity to the Rules and that a police officer must satisfy that the condition precedent has been satisfied. The Supreme Court in **Malak Singh V State of Punjab**, AIR 1981 SC 760 observed that the principle that a person must be given an opportunity of being heard will not be applicable in case of history sheeters and surveillance register. The enquiry was held to be confidential and the said principle of natural justice is clearly excluded. The observance of the principles of natural justice may defeat the very object of the rule providing for surveillance. It was reiterated

that these provisions relate to maintenance of history sheets and surveillance register for purposes of prevention of crimes. It is purely an administrative and non-judicial act.

12.1 The Supreme Court in **Malak Singh** also held that the police does not have the license to enter the name of whosoever they like in the surveillance register and if names of the persons are entered in the register in violation of Rule 23.4 of the Punjab Police Rules indeed that would be mala fide. In other words, the High Court would be well within its powers to quash such an order. It was observed as under:-

9. But all this does not mean that the police have a license 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 R. 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 unobtrusive and within bounds.

12.2 The Division Bench of this Court in **Sarjeet Singh V Commissioner of Police & others**, 2002(62) DRJ 644 DB and also referred by the counsel for

the petitioner also referred above referred decisions of the Supreme Court.

13. The History Sheet file pertaining to the petitioner bearing HS No.89A was produced from the Office of the respondent no 2 was carefully perused. The perusal of History Sheet file bearing HS No.89A reflects that 22 cases were got registered against the petitioner vide different FIRs and out of which 18 cases were got registered against the petitioner before preparation of the dossier and proposal by the respondent no. 4 on 28.03.2022. The details of these cases as submitted by the respondents are reproduced as under:-

Sl. No.	FIR No. & Date	Section of law & Police Station	Present Status of Case (Decided/PI/PT (In case of P.T., Name of court & Next Date of Hearing be mentioned/updated))
1.	14/95 09.01.95	U/s147/148/149/323/324/34 IPC PS: Sri Niwas Puri	Acquitted on 22.03.06 by Ravinder Bedi, MM, Patiala House Court, ND
2.	221/08 18.10.08	U/s 323/341/427/34 IPC PS: Jamia Nagar D.O.A:- 18.10.2008	Discharged on 30.06.10 by Sh. Naveen Arora, MM Patiala House Court, New Delhi.
3.	237/08 27.10.08	U/s 3 West Bengal Act P.S. Jamia Nagar D.O.A:- 21.12.08	Court observed that merely installing banner at electric pole does not cover in the definition of defacement. Hence, Discharged on 12.02.13 by Smt. Somya Chauhan, MM, Patiala House Court, ND
4.	380/10	U/s 353/363/186/506/34 IPC & 23/26 J.J. Act,	Discharged on 03.05.18 by ACMM-II, Sh. Samar

	01.11.10	PS: Jamia Nagar D.O.A.:- 05.01.11	Vishal, Patiala House Court, ND Grounds for discharged: Cognizance, declined for offence u/s 186 IPC in the absence of complaint u/s 195 Cr.P.C. The children were employee of the accused hence 363 IPC not made out. Section 186/353/506 IPC time barred
5.	726/16 19.07.16	U/s 308/195A/509/506/34 IPC PS: Jamia Nagar D.O.A.:- 24.07.16	Discharged on 16.01.19 by ACMM-II, Arun Bhardwaj, New Delhi Court, ND Grounds for discharged: Contradictory statements of the complaint in the FIR and statement u/s 164 Cr.P.C. Don't even make it a case of suspicion for framing the charge the accused.
6.	767/16 28.07.2016	U/s 506 IPC	Case is compounded as the matter is settled between the parties vide order dated 23.01.2019
7.	798/16 04.18.16	U/s 186/353/153 IPC PS: Jamia Nagar Charge-sheet (Without arrest)	Application of condonation of delay was not allowed by the Court. Cognizance by ACMM Shri Samer Vishal Court Rouse Avenue, New Delhi
8.	879/16	U/s 307/323/341/506/34 IPC & 27 Arms Act, 1959	Charge Sheet has been filed against Wazid Khan

	25.08.2016		which is pending at Saket Court. Charges not framed yet. Case is pending trial.
9.	952/16 10.09.16	U/s 354/509/506/498A & 120B IPC PS: Jamia Nagar D.O.A.:- 21.09.16	FIR quashed by Delhi High Court On 25.09.2019 on settlement between the parties
10.	1148/16 25.10.16	U/s 325/341/506/34 IPC PS: Jamia Nagar (Without arrest)	Acquitted by the Court of Sh. Samar Vishal ACMM-II, Patiala House Court on 23.03.2019 Grounds Complainant turned partly hostile and public witnesses turned completely hostile during trial.
11.	185/17 05.17.19	U/s 323/342/354/354A(1)/509/34 IPC PS: Civil Line (Without arrest)	Contradiction in the complaint and statement u/s-164 Cr.P.C. of the complainant. Contradiction in the complaint and statement u/s 161 Cr.P.C. of public witness. Court found no grave suspicion. Hence, Discharged on 19.01.2021 by the Hon'ble Court of CMM Rouse Avenue, New Delhi

12.	302/17 19.04.17	U/s323/341/506/379/356/34 IPC PS: Jamia Nagar (Without arrest)	Case is pending trial
13.	26/18 27.01.18	U/s 141/142/147/323/341/506/34 IPC PS: Jamia Nagar (Without arrest)	Discharge/Compounded by the Court of Sh. Samar Vishal, ACMM-II, Patiala House Court on 17.01.19 Grounds of Acquittal : <ul style="list-style-type: none"> • Section 141/142/147 IPC not made out and mere threat does not constitute offence u/s 506 IPC • Section 323/341 IPC made out. Compounded, Hence acquitted. (Court Order attached)
14.	54/18 20.02.18	U/s186/332/353/120B/504/ 342/506(I)/323/34 IPC PS: Civil Line (D.O.A 21.02.2018)	Pending Trial <ul style="list-style-type: none"> • Conditional Bail by Delhi High Court vide order Dt. 12.03.2018 7 (c). the above noted FIR being the third FIR against the petitioner for assault on a public servant, in case the petitioner indulges in any such illegal

			<p>act in future, the bail granted to the petitioner would be liable to be cancelled.</p> <p>11 out of 13 accused persons have been discharged. Court observed that the case is made out against the petitioner and Prakash Jarwal vide order dated 11.08.2021.</p> <p>Complainant had moved an application for revision of order of discharge of co-accused persons.</p>
15.	231/18 10.08.18	U/s 323/341/504/506 IPC, PS: H. N. Din (Without arrest)	Compounded DT 10.09.2020 by ACMM Sh. Vishal Pahuja, Rouse Avenue Court
16.	901/18 06.11.18	U/s 308/323/341/506/34 IPC PS: New Usmanpur New Delhi (begin investigated by STAR-2 Crime Br. Shakarpur)	Pending Investigation
17.	88/19	U/s 323/341/50/6/34 IPC	Settlement between the parties and hence

	12.05.19	PS: Jamia Nagar Bound down U/s 41A Cr.P.C.:-19.05.2019	Compounded on DT 22.10.2020 by ACMM Sh. Vishal Pahuja, Rouse Avenue Court
18.	842/19 22.12.19	U/s155/295A/298/505(1)B/120B IPC & 16 IT Act, PS. Kotwali (Ghaziabad UP)	Final Report prepared on 09.02.2022. Pending with CO, Ghaziabad UP
19.	05/2020	U/s 7 Prevention of Corruption Act & 120-B IPC PS Anti-Corruption Bureau Delhi	Pending Investigation
20.	59/2021 06.04.2021	U/s 153A/506 IPC PS: Parliament Street	Pending Investigation
21.	182/2022 09.05.2022	U/s 186/353/34 IPC PS: Shaheen Bagh	Pending Investigation
22.	246/22 12.05.22	U/s 147/146/149/186/353/332/153 IPC PS: Kalindi Kunj	Pending Investigation • The petitioner arrested on 12.05.2022. Granted bail by Court on 13.05.22.

13.1 It is further reflected that in the proposal dated 28.03.2022 the name of the petitioner and his parentage, native village, number of cases are mentioned as per requirement of Form No. 23.4(1) beside reference of his family history and his involvement in land grabbing and illegal constructions. It is also mentioned that most of the cases out of the 18 cases are related to threatening, hurt, riots, causing hindrance in of duties of public servants etc. and he was found to be the habitual criminal of the area. It was recommended for approval by the respondent no 4 after considering requirement of surveillance of activities of the petitioner that a History Sheet may be opened and his name be entered in 'Register-X, Part- II, Bundle 'A'. The respondent no 3 vide proceedings 29.03.2022 scrutinised the criminal record and career history of the petitioner who is found to be involved in 18 cases including attempt to murder, riots, hurting religious sentiments, causing hurt, eve teasing, threat, obstructing government servants etc. The respondent no 3 was convinced that the petitioner needs continuance surveillance by the police and recommended according of approval for opening of the History Sheet in respect of the petitioner in Bundle 'A'. The respondent no 2 after perusing the record and the reports given by the respondent no 4 and the respondent no 3 was convinced that the petitioner is a habitual criminal and his activities must be kept under surveillance and thereafter he accorded approval for entering name of the petitioner in 'Register-X, Part- II and History Sheet be placed in Bundle 'A'.

14. The learned counsel for the petitioner primarily argued that the respondent no 2 has accorded the approval on 30.03.2022 without giving definite and justifiable reasons and without application of mind. The learned Additional Solicitor General for the respondents argued to the contrary. The

administrative authority which is vested with power to determine questions affecting the rights of individuals must exercise power in conformity with the rules of natural Justice requirement of passing reasoned orders by the administrative authorities is one of the important aspects of natural justice. Due to expanding horizon of judicial review, requirement to give reasons has become an indispensable part of judicial review. The Privy Council in **Minister of Natural Revenue V Wright's Vanadian Ropes Ltd.**, (1947) AC 109 held that a Minister who had failed to give reasons for a special tax assessment had not shown that it was correct and that the taxpayer's appeal must be allowed. In **R V Civil Service Appeal Board exp Cunningham**, (1991) 4 A AIER 310 an award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons was quashed by the court of Appeal by holding that natural justice demanded the giving of reasons both in deciding whether dismissal was unfair and in assessing compensation. In England, in a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law. (See also **Nortan Tool Co. Ltd. V Tewson**, [1973] WLR 234.

14.1 It is suitably established in India that an adjudicatory authority is required to give reasons for its decision. The Supreme Court in **Siemens Engineer and Manufacturing Co. V Union of India**, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic principle of natural justice, which must inform the quasi-judicial process. It should be observed in its proper spirit and "mere pretence of compliance with it would not satisfy the

requirement of law". It was observed in **Maneka Gandhi V Union of India**, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further crystallized in **S.N. Mukherjee V Union of India**, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi-judicial functions irrespective of fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy.

14.2 The Supreme Court in **Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney & others**, (2009)4SCC496 held that the purpose of disclosure of reasons is that people should have confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the

authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

14.3 The Supreme Court in *The Supreme Court in the case of Namit Sharma V Union of India*, (2013) (1) SCC 745 regarding duty to give reasons held as under:-

It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers* [(2010) 4 SCC 785].

14.4 Any authority when conferred with a discretionary power must exercise that power after applying its mind to the facts and circumstances of the case. The authority should not act mechanically in exercise of discretion. The Supreme Court in *East Coast Railway V Mahadev Appa Rao*, (2010) 7 SCC 2794 observed that every order passed by a public authority must

disclose due and proper application of mind by the person making the order.

15. The petitioner is not convicted in any criminal case registered against him vide different FIRs as such it was mandatory for the respondent no 2 to give adequate reasons before according approval on 30.03.2022. The Division Bench of this Court in **Sarjeet Singh** observed as under:-

Consequently it is not necessary therefore for the court to consider whether the person as such has been convicted or not but there necessarily has to be a proper satisfaction of the concerned officer before the name of a person is entered in the history sheet. This is for the reason that under Rule 23.5 (2) if from the entries in the history the Superintendent of the Police is of the opinion that such person should be subjected to surveillance he shall enter his name in Part II of the register provided that name of the person who has never been convicted or placed on security for goods behaviors shall not be entered until the Superintendent has recorded the definite reasons for doing so. In this process before making a departure in cases where there is no conviction recorded special reasons has to be recorded.

15.1 In **Jarnail Singh V State of Haryana and another**, 1997 (2) All India Criminal Law Reporter 834 name of the person was entered in the surveillance register but he was already acquitted from charge of criminal conspiracy and was not a habitual offender. There was no warrant for showing along with him history sheeters and as such order was quashed. In **Kanwarjit Singh V State of Haryana and others**, 1997 (3) All India Criminal Reporter 494 the Superintendent of Police had not recorded any reason nor the petitioner in that case was shown to be a previous convict for offences contemplated under Rule 23.9 of the Rules. The Punjab and Haryana High Court had set aside the said order by holding that there was no reason recorded by the Superintendent of Police nor was the petitioner

shown to be convicted twice for offences contemplated under Rule 27.29 of the Rules as such there was no justification in the said order.

16. The perusal of the History Sheet file pertaining to the petitioner bearing no.89A reflects that initially the respondent no. 4 has applied his mind before making proposal and lastly the respondent no. 2 after considering the report of the respondent no 4 and the respondent no. 3 has accorded the approval after due application of mind. The perusal of History Sheet file No. 89A further reflects that the concerned authorities have given definite, appropriate and adequate reasons before processing and according approval for entering the name of the petitioner in 'Register-X, Part- II, Bundle 'A'. It cannot be said that the approval which was given by the respondent no 4 on 30.03.2022 was without application of mind and any reasons. The approval was accorded by the respondent no2 on recommendation of the respondent no 4 and the respondent no 3 after due compliance of the Rules. There is no force in the argument advanced by the learned counsel for the petitioner that the approval was accorded by the respondent no 2 without giving definite, justifiable and adequate reasons.

17. The learned counsel for the petitioner argued that the petitioner was never convicted in any criminal case and 14 cases out of 18 cases stated to be registered against the petitioner were resulted in acquittal/compounding/discharge/quashing and as such there was no occasion for the respondent no 2 to accord approval on 30.03.2022. He further argued that the petitioner is not a habitual offender and there was no reason to believe that the petitioner is a habitual offender and referred **Sarjeet Singh**. The learned Additional Solicitor General for the respondents argued that cases which were registered against the petitioner were got registered in years

from 2016 to 2022 and pertains to area of Jamia Nagar from where the petitioner is an elected representative. He argued that the petitioner is habitual offender.

17.1 A habitual criminal offender can be refer to a person who has been previously convicted of one or more crimes in the past and is currently facing new charges. A coordinate Bench of this court in **Amrik Singh V Commissioner of Police**, 1987 (13) DRJ 206 in respect of expression habitual offender observed as under:-

15. 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 these rules. However, mere belief is not sufficient. The belief must be reasonable and based on reasonable grounds (Dhanji Ram Sharma v. Superintendent of Police, North District, Delhi Police and ors. , 1766).

16. Applying the said principles to the facts of the present case it can safely be said that the respondents acted in haste and slipped badly in bringing the name of the petitioner on bundle 'A' and in the Surveillance Register. Along with the counter affidavit, the respondent has filed the list of 15 cases in which the petitioner was involved. These cases relate to the period from 2-4-1962 to 19-8-1985. In the first 12 cases, the petitioner has either been discharged or acquitted after trial. Except in one case of 1977 where on his confession he was directed to pay a fine of Rs. 100 under Section 114 Ir Act, the remaining four cases are pending trial. At this stage, it will be relevant to note that in between the first two cases there is a gap of more than 5 years and in succeeding three cases, there is another gap of 3 years preceding every case. Till March, 1975, he faced charges in 8 cases which resulted in his discharge in six cases and acquittal in the remaining two.

17.2 A Division Bench of this court in **Mohd. Anis V Commissioner of Police and others**, 1993(1) Chandigarh Criminal Case 545 which is also referred in **Sarjeet Singh** concluded that order of opening of a History Sheet and surveillance is precautionary measure and has to be based on the past conduct in the light of the surrounding circumstances. The past conduct must be of such a nature that inference can be drawn that person concerned is habitually addicted to crime. The expression 'habitual' was held to be meaning repeatedly or persistently creating any of such ingredients were not satisfied. The order was quashed by observing as under:-

We fail to see how one solitary case registered almost six years before the passing of the impugned order could possible persuade any reasonable person to reach the satisfaction that the petitioner was habitually addicted to crime. There being no material to show that the petitioner was persistently engaged in a series of criminal acts and the cases in which he was involved being too remote in matter of time and having ended in acquittal or discharge, no inference of habit can be justifiably raised.

17.3 Another Division Bench of this Court in **Sarjeet Singh** after drawing conclusions observed that it is not necessary that person concerned must be convicted of certain offences but in that event reason must be recorded specifically to bring the name of such a person in the registers.

17.4 The learned counsel for the petitioner also referred **Deepak Solanki @ Sansar V The State & Others**, Writ Petition (Crl.) 14/2005 decided on 03.07.2009 by the coordinate Bench of this Court wherein it was held as under:-

It is easy to label a person a "habitual offender" or a person "addicted" to crime but when such a decision is challenged in court, the authorities will have to satisfy the court that such decision was based on relevant materials and that any such

relevant material was not excluded from consideration when such a decision was taken. The following observations of the Supreme Court in *Gopalan Chari v. State of Kerala* (1981) 1 SCR 1271 though in the context of Section 110 CrPC are relevant in this context:

6..... We have not the slightest doubt that expressions like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous; to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor man, the man without political clout the person without economic stamina, who in practice gets caught in the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the casualty. After all the judicial process must not fail functionally as the protector of personal liberty.

17.5 It is correct that the petitioner is not a previous convict and in most of the cases registered against him, the petitioner is discharged/acquitted/offences are compounded/FIR is quashed. However perusal of recommendation dated 28.03.2022 proposed by the respondent no

4 and dated 29.03.2022 made by the respondent no 3 are duly and appropriately coupled with adequate and sufficient reasons. Subsequently the respondent no 2 accorded approval on 30.03.2022 after proper application of mind. There is no legal and factual force in arguments advanced by the learned counsel for the petitioner that the petitioner is not a previous convict and due to this reason, the petitioner cannot be put under surveillance after entering his name in Register X, Part II, Bundle 'A'.

18. The learned counsel for the petitioner also argued that the petitioner pleaded that he was arrested on 12.05.2022 by the Police in pursuance of FIR bearing no.246/2022 registered under sections 147/148/149/186/353/332/153 IPC registered at P.S. Kalkaji and he was to be produced before the concerned Court of Metropolitan Magistrate on 13.05.2022 and on that day his bail application was fixed for hearing. The petitioner on 13.05.2022 came to know from social media that the respondent no.4 on 28.03.2022 has already submitted a dossier to the respondent nos.3 and 4 along with proposal for opening History Sheet qua the petitioner and to place his name in Register X, Part II, Bundle 'A' for keeping close surveillance on his activities. The proposal on the basis of dossier dated 28.03.2022 was required to be confidential as per Rule 23.5 but it was circulated and leaked in pre-planned manner on 13.05.2022 before consideration of his bail application in FIR bearing no. 246/2022 to the print and social media and the spokesperson from the rival political party also referred the dossier dated 28.03.2022 on social media. The respondents in the Status Report have refuted these allegations as levelled by the petitioner.

18.1 The learned counsel for the petitioner also argued that the reputation of the petitioner was deserved to preserved by the police and the police has

pleaded the dossier and proposal deliberately in public domain as the said facts were not placed before the Court of concerned Metropolitan Magistrate at the time of consideration of bail application on 13.05.2022 in FIR bearing no.246/2022. The learned counsel for the petitioner relied upon **Peter Samuel Wallace V Inspector General of Police New Delhi & Others**, (1981) 20 DLT 333 wherein a coordinate Bench of this Court observed as under:

The complaint of the petitioner that the police has leaked out the information of his being a bad character which has also been published by the press (vide news-item, Annexure 'A') which allegations is unrebutted, leads me to the conclusion that continuation of petitioner's history sheet is also improper.

18.2 Rule 23.5 deals with entries to be made in surveillance register it further provides that ordinarily a History Sheet shall be open for such person before his name is entered in Part II of the Surveillance Register. The Superintendent of Police is required to record definite reasons once a person is subject to surveillance on the basis of the entries made in the history sheet if such person is not convicted in the past. It further provides that the record of the reason shall be treated as confidential and concerned person shall not be entitled to a copy of the reasons. Rule 23.5 mandates confidentiality in recording of the reasons for subjecting a person to surveillance. It may be true that the dossier and recommendation/proposal dated 28.03.2022 and subsequent approval accorded by the respondent no.2 may not be placed before the Court of concerned Metropolitan Magistrate on 23.05.2022 at the time of the consideration of the bail application of the petitioner in FIR bearing no.246/2022 and these might be leaked in public domain but there is no evidence or material on record which can indicate that the dossier and the

subsequent approval was leaked by the Delhi Police or through Delhi Police. The arguments advanced by the learned counsel for the petitioner as referred hereinabove are without factual basis.

19. It was observed by the Division Bench of this Court in **Sarjeet Singh** that the principle of judicial review is one of the basic structures of the Constitution. If the order is violative of the Rules and the Act is without application of mind or *mala fide*, the court would not hesitate to set aside such an order. The Supreme Court in **Amarendra Kumar Pandey V Union of India & Others**, 2022 Live Law (SC) 600 and also referred by the learned counsel for the petitioner observed as under:-

29. The action based on the subjective opinion or satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.

30. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See **Director of Public Prosecutions v. Head**, (1959) AC 83 (Lord Denning)].

31. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that

in effect there is no evidence whatsoever to form or support the opinion.

19.1 It is apparent from the record that the respondent no.4 at the time of making the recommendation for opening of the History Sheet, making entry of the name of the petitioner in 'Register-X, Part- II, Bundle 'A' and keeping surveillance on his activities has followed the Rules and have given sufficient reasons in support of his recommendation. The respondent no.3 also forwarded the recommendation made by the respondent no.4 to the respondent no.2 for approval after applying his mind and considering the necessary facts. The respondent no.2 also considered and recorded sufficient and adequate reasons before according approval for entering the name of the petitioner in Register X Part II and to place his History Sheet in Bundle 'A'. The concerned authorities have followed due procedure of law and have complied with the mandatory requirements of the Rules in a reasonable manner. The approval was accorded by the respondent no.2 on the basis of material provided by the History Sheet. The approval given by the respondent no.2 was just, fair and reasonable and was not based on any personal prejudice or predilections. The opening of the History Sheet qua the petitioner and subsequent according of approval by the respondent no.2 was not based on conjecture or surmises but was accorded on application of mind and was not contrary to the strict provisions of the Rule. There was no *mala fide* exercise of discretion on the part of the respondent no.2 while according the approval on 30.03.2022.

20. The petition filed by the petitioner and the Status Report submitted by the respondents and the arguments advanced on behalf of the petitioner and the respondents along with referred case law were considered in right

prospective. The present petition is devoid of any merit, hence dismissed. However, the petitioner shall be at liberty to make a representation for deletion/cancellation of his name from Surveillance Register X in accordance with Rules and Law which shall be decided by the respondents in accordance with law without any delay.

21. The present petition along with pending applications, if any, stands disposed of.



(SUDHIR KUMAR JAIN)

JUDGE

JANUARY 19, 2022/j/sd