

At the Supreme Court sitting as High Court of Justice

H CJ-VR<sup>13</sup> 336/96  
(H CJ 7964/95)

Before: Justice G. Bach  
Justice M. Heshin  
Justice Y. Zamir

Appellant: 'Abd al-Halim Bilbeisi

v.

Respondent: The General Security Service

Petition for Annulment of Interim Injunction

Date of Session: 11.1.96

Counsel for Appellant: Adv. Andre Rosenthal

Counsel for Respondent Adv. Shai Nitzan

Decision

1. This is a request by the Respondent to annul the interim injunction issued by this Court (by Justices Matza, Heshin and Dorner), within the petition under discussion, on 24.12.95.

The Appellant is a detainee, who was detained on suspicion of involvement in security offences, and following his petition an *order nisi* was issued, by which the Respondent was directed to show reason why it tortures the Appellant and why it uses the method of shaking during his interrogation.

The Court also ordered "that an interim injunction be issued from it directed at the Respondent and requiring it to refrain from making use of physical force pending a different decision in this petition."

The Court added, further, in the decision of 24.12.95, that "the Respondent has leave to request a hearing on the continued application of the interim injunction, and should such a request be made, it will immediately be brought for a hearing in front of a panel."

2. The situation envisaged as a theoretical possibility, as mentioned in the last passage *supra*, actually took shape, and yesterday, the 10.1.96, the Respondent approached us requesting an immediate reconsideration of the said interim injunction, and its annulment.

This owing to a significant development which took place regarding the interrogation of the Appellant following the issuing of the *order nisi* and the interim injunction.

In an additional affidavit presented by the Respondent on 10.1.96, the following was stated in this context:

In the meantime extremely significant developments have occurred in the interrogation of the Appellant. Thus, for example, the Appellant admitted a few days ago that it was he who had planned the bloody terrorist attack that took place at Beit Lid junction, in which two suicide bombers blew themselves up on 22.1.95, killing twenty-one Israeli citizens.

The Appellant admitted, *inter alia*, that three explosive devices had been prepared in his home, intended to be used in that terrorist attack; that he had transferred the devices to the hiding place, then led the two suicide bombers, gave them the explosive devices and led them to the site of the attack; and more.

The Appellant explained, that since a third suicide bomber who was meant to participate in the terrorist attack had not arrived on the day of the attack, one explosive device was left at the hiding place without being used. The Appellant disclosed the location of the hiding place where the device was, and based on the information provided by him, the device was located on 6.1.96 and neutralized.

It was further established, from additional information gathered during the interrogation, that a very clear probability exists that the Appellant possesses information regarding the planning of serious terrorist attacks in Israel in the near future.

The Respondent informed us that, for reasons of State security, it would be impossible to expose details of the latter information gathered during the interrogation, and a document of confidentiality in this matter was presented to us, signed by the Prime Minister and Minister of Defence. It was nevertheless noted, that the Respondent agrees to present the confidential material to the Court Judges alone.

It was further stated in the Respondent's affidavit:

As noted, in the past few days we have received additional information evident of a high rise of terrorist attacks in Israel in the near future.

Having considered the new information which reached us in the past [sic], we have reached the conclusion that in this case there exists a clear and present danger of harm to human lives.

Following is the conclusion that the Respondent reached from the above:

In these circumstances, and for reasons of professional considerations, the Respondent has decided that there exists a vital and urgent need to immediately continue the interrogation of the Respondent without the needs of interrogation being subjected to the restrictions placed in the interim injunction.

3. The learned Counsel for the Appellant has informed us during the hearing of the Respondent's request, that the Appellant does not see a need for the Judges of the panel to examine the confidential material. Advocate Rosenthal stated before us that he is prepared to accept as true and correct, for the sake of this request, all the factual statements made in the affidavit presented to us by the Respondent.

Nevertheless, he requested not to annul the interim injunction, although he is prepared to limit it to the Respondent's refraining from the use of the method of shaking, mentioned in the Appellant's original petition.

4. In view of the statements made to us by the learned Counsels of the two sides, and considering the circumstances as a whole, we have decided to grant the Respondent's request.

This, noting the following remarks and points:

- (a) The interim injunction was issued on 24.12.95 based on a general, undetailed claim by the Respondent that the Appellant was suspected of terrorist activity. Against that claim, the Appellant made a written and signed statement that he was not involved in any illegal activity and there is no basis to the claim that he was responsible for killing Jews.

This situation changed fundamentally following the development in the interrogation whereby, according to the Respondent's affidavit, the Appellant

admitted to being responsible for the terrorist attack in Beit Lid where many civilians had been killed, and he does not deny this responsibility before us.

- (b) Since, as noted, Counsel for the Appellant accepts as true the contents of the Respondent's affidavit, according to which the Appellant has additional information regarding the planning of serious terrorist attacks in Israel in the near future, we have to assume that revealing this information by the Respondent may save human lives.
- (c) In these circumstances we no longer find justification for the continued application of the interim injunction. Nevertheless, it is obvious that the annulment of the interim injunction does not constitute permission to take during the interrogation of the Appellant steps which are not in accordance with the law and with the regulations binding in this matter. We would especially like to draw attention to all the restrictions accompanying the defence of necessity as it is stipulated in Article 34(11) of the Penal Code, in addition to all the restrictions stemming from the binding regulations. The Respondent is indeed aware of these restrictions, as it has stated before us, and no doubt it will act in this instance, as in any instance, within the law.
- (d) Our decision concerns only the interim injunction issued in this case, and it does not constitute a final statement of our position regarding the question of principle raised by the Appellant in the petition for an order nisi, which we have refrained from discussing today, in deference to the request made by Counsel for the Appellant.

We therefore decide to annul the interim injunction issued on 24.12.95, subject to all that has been stated above.

Given today, 11.1.96

Justice

Justice

Justice