

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.609 OF 2019

Sagar Motilal Chaudhary,
Age 31 yrs., Occ. Business,
R/o Shani-peth, Chougule Plot,
Jalgaon, Tq. & Dist. Jalgaon.

... Petitioner.

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2 The District Collector,
Jalgaon.
- 3 The Superintendent of Police,
Jalgaon.
- 4 The Divisional Commissioner,
Division-Nashik, Nashik.

... Respondents.

...

Mr. B.S. Deshmukh, Advocate for petitioner

Mr. A.R. Kale, APP for respondent Nos.1 to 4

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 19th DECEMBER, 2019.

PRONOUNCED ON : 27th JANUARY, 2020.

JUDGMENT :

1 Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 Present petition has been filed invoking the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order passed by respondent No.2-Collector, Jalgaon dated 15.05.2018, thereby re-confirming his order dated 17.07.2017 for revocation of Arms Permit/Licence of the petitioner and also to challenge the order passed by the Divisional Commissioner, Nashik Division, Nashik, dated 13.02.2019 in Appeal No.7/2018.

3 In the present petition, it is contended that the petitioner is a businessman involved in the business of supplying building material. He has obtained necessary Permit and Licence. He is carrying out the said business under the name and style as “Yash Building Material Supplier” at Jalgaon. The present petitioner was the informant in case No.117/2014, which was lodged against one Ganesh Sapkale and others, which was in respect of murder of one Shamkant Gawali. The family members, particularly, sisters of Ganesh Sapkale were trying to pressurize the petitioner and his family members by giving threats to him, so that he can give a suitable statement in the Court of Sessions at Jalgaon. At the instigation of Ganesh Sapkale his

sister lodged a complaint under Section 354 of the Indian Penal Code against the petitioner. The threat, to the life of the petitioner and his family from Ganesh Sapkale and his family member, came to be true, as said Ganesh Sapkale and others attacked the brother of the present petitioner, in order to take revenge. In the said assault the brother of the petitioner Kishor sustained multiple injuries and ultimately succumbed to the same. The father of the petitioner lodged report vide Crime No.17/2016 against Ganesh Sapkale and others on 10.03.2016. After investigation case was tried against Ganesh Sapkale and others and he has been acquitted. The petitioner has filed Criminal Appeal No.405/2016 before this Court and the said appeal has been admitted. Ganesh Sapkale and others have been released on bail. The appeal is waiting for its turn to be decided. It has also been contended that on 08.11.2016 Ganesh Sapkale and others had tried to pressurize and assaulted the petitioner on 08.11.2016. But he was fortunately saved only due to the licenced revolver with him. Again the petitioner and his father made representation giving details about what had happened, to the appropriate authorities. The petitioner contends that the said threats to his life is still persisting from Ganesh Sapkale and his friends.

4 It has been further contended that the petitioner had lodged criminal case against one Ashok Sadare, who was Police Inspector in Jalgaon

City. The said complaint was sent for investigation under Section 156(3) of Cr.P.C.. After registration of the said First Information Report, the Superintendent of Police and another Police Inspector of Crime Branch were pressurizing him for the withdrawal of the complaint. However, Ashok Sadare, against whom the First Information Report was lodged, committed suicide and on the basis of Suicide Note, informant and others have been booked under Section 306 read with Section 34 of the Indian Penal Code. The petitioner has been released on anticipatory bail. The matter was investigated and the investigation agency has filed 'C' Summary Report. The said report was not accepted by the learned Judicial Magistrate First Class, Nashik, and therefore, one of the accused had preferred Criminal Revision application No.70 of 2018 before Sessions Court at Nashik. The learned Additional Sessions Judge, Nashik relegated the matter to learned Judicial Magistrate First Class for deciding the matter afresh. Accordingly, the learned Magistrate has heard all the persons concerned and accepted the said report, as there was nothing brought in the investigation, which would show involvement of the petitioner and others, in the alleged crime. No crime was registered against the petitioner after 2015. Petitioner had made several representations against illegal excavation made in Jalgaon district. It was supported by the Revenue Authorities also. However, the authorities got annoyed due to filing of complaints by the petitioner and the point raised by

the petitioner against the Revenue corrupt officials. At the instance of those officers, notice was issued under Section 144 (2) of Cr.P.C. to the petitioner. He replied the same. However, order of issuing detention was passed against the petitioner. The said detention order was challenged by the petitioner before the Committee and the Committee opined that there is nothing on record to show that the detention was necessary, and therefore, ultimately he has been released. On the request of the petitioner, Arms Licence was given to him vide licence No.AJL, 10/2016. The initial period was from 17.09.2016 to 31.12.2016. Thereafter, the said licence has been renewed and on the date of the petition, it was till 31.12.2019. At the time of renewal also the petitioner had contended, that there is still threat to his life as well as to the life of his family members. When the licence was renewed, then abruptly in the middle the respondent No.2 cannot have any jurisdiction to cancel the said licence and permit. The order of revoking his Arms Licence is illegal, as there was no offence against the petitioner regarding the misuse of the weapon. The renewal was in his favour and therefore, when there exists no such circumstance, which can be said to be covered under Section 17(2) of the Arms Act, then the concerned authority was absolutely not justified in cancelling the licence granted to the petitioner. Opportunity for hearing was not given to the petitioner before cancelling the licence and therefore, he had approached this Court by way of filing Criminal Writ Petition No.1781 of

2017. It came to be decided on 20.04.2018 and the matter was relegated again to the District Magistrate, Jalgaon to hear the petitioner and then to pass the order. After re-hearing of the matter, once again the cancellation of the licence given to the petitioner for possessing Arm, has been confirmed.

5 It is contended that there was no subjective satisfaction by the learned District Magistrate and further he failed to see, that at the time of renewal there was no offence pending against the petitioner. Hence, this writ petition has been filed for the aforesaid prayers.

6 Heard learned Advocate Mr. B.S. Deshmukh for petitioner and learned APP Mr. A.R. Kale for the respondent Nos.1 to 4.

7 It has been submitted on behalf of the petitioner, that he was the informant in Crime No.117/2014 registered with Jalgaon Taluka Police Station on 11.10.2014, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and it was against Ganesh Sapkale and two others. It was in respect of murder of one Shamkant Gawali. There was pressure and threats from Ganesh Sapkale's family to the petitioner, and therefore, he made a representation-cum-complaint on 13.10.2015 with Superintendent of Police, Jalgaon, stating that he has been falsely involved by the sister of Ganesh Sapkale. Again 2-3 representations were made on the

same ground. Though he was shown to be an accused in an offence under Section 354 of the Indian Penal Code, it was the result of the plot hatched up by Ganesh and his sister. Thereafter, Ganesh and his friends committed murder of the brother of the present petitioner on 10.03.2016. Father of the present petitioner lodged report about the same. Even after the said offence was registered the threats continued, and therefore, again a complaint was lodged by the present petitioner on 03.12.2016. In the said complaint, it was stated that the incident had taken place on 08.11.2016, which was against Mahesh Wani, Pintu Koli, Ganesh Sapkale, stating that they have tried to kill him. A complaint application was given to Superintendent of Police. Taking into consideration the threat to his life he has taken licence for the Arm, which he wanted to possess and it was given to him on 13.12.2016. The Arm is 0.32 bore revolver. It was valid up to 31.12.2019 with effect from 01.01.2017. In the meantime, on the complaint lodged by the present petitioner regarding the harassment by the Police Officer Ashok Sadare, Sadare committed suicide, in which other police persons were also involved. On the basis of the Suicide Note left by Mr. Sadare, the investigation had started. The investigation was done by Crime Investigation Department and then the Investigating Officer had submitted 'C' Summary before the learned Magistrate. When it was not accepted, co-accused persons had filed revision and in the said revision directions were given to the learned Magistrate to

consider the Summary as per law. Thereafter, the learned Magistrate had considered the arguments of the informant as well as the prosecution and had perused all the investigation papers. It was concluded that the proceedings are dropped by accepting 'C' Summary. Therefore, when the Arm was given, no offence was pending against the petitioner. The reports from various Departments as well as Police Authorities were called. Therefore, no occasion arose for Collector, Jalgaon to cancel the licence. When initial order of 17.07.2017 was passed, it was only on the basis of surmises of the Collector that he may use the Arm for threatening the Revenue Officers and staff, as he is indulged in transportation of sand business, illegally. It was also contended that he has a criminal background, which was not then supported at all. Even after the matter was relegated to the Collector, the reasons given are on the basis of some assumption, for which there was no support. The threat to the life of the present petitioner is subsisting. The learned issuing authority did not consider, as to whether any ground as contemplated under Section 17(3)(b) of the Arms Act exists. Therefore, the impugned orders need to be set aside.

8 In order to buttress his submissions, the learned Advocate for the petitioner has relied on the decision in **Ajay Jayawant Bhosale vs. Commissioner of Police and others**, 2016 (5) Mh.L.J. (Cri.) 68, wherein it has

been observed that -

“It is significant to note that section 17(3)(b) authorises the licensing authority to cancel or revoke the licence for the security of public peace or for public safety. The provisions indicate that in case the licensing authority is subjectively satisfied that in a given case if continuation of licence endangers public peace or public safety then the Licensing authority is empowered to cancel or revoke the licence.”

Further, it has been observed -

“The right to life and liberty are guaranteed under Article 21 of the Constitution of India. Arms licence is granted for personal safety and security after due enquiry by the authorities in accordance with provisions contained in the Arms Act, 1959. The provisions of Arms Act with regard to suspension or cancellation of Arms licence cannot be invoked lightly in an arbitrary manner. The provisions of the Arms Act particularly section 13 to 17 indicate that once a licence is granted under the Act, the same shall be renewed from time to time unless there exists a ground of refusal as enumerated under Section 14 of the Act.”

Further relying upon the said decision, this Court in Criminal Writ Petition No.1618 of 2017 in the matter of **Sunil Ramnarayan Mantri vs. The District Magistrate, Jalgaon and others** on 20.12.2017 quashed the order passed by the learned District Magistrate, Jalgaon cancelling and revoking the Arms licence.

9 Affidavit-in-reply has been filed by Dipmala Jaypal Chaure, Sub Divisional Officer, Jalgaon i.e. on behalf of the respondent No.2 and one

Ganesh Sukhdeo Chavan, Assistant Police Inspector, Jalgaon Taluka Police Station has filed affidavit-in-reply on behalf of the respondent No.3 and objected the petition. They have contended that the present petitioner is carrying out activity of excavation, illegally. He is having criminal background, taking into consideration the criminal cases, which were against him. Further, the said licence was granted to him, taking into consideration the case, which was filed against Ganesh Sapkale, in case of murder of brother of the present petitioner. However, said Ganesh Sapkale and others have been acquitted by the competent Court and since the acquittal there is absolutely no grievance by the present petitioner, that still the threat to his life persists. The present petitioner was involved in agitations against revenue officers and had even gone to the office of Collector at mid night to stage Dharna. Chart has been given, as to which offences were against the present petitioner. It is reproduced here for the sake of convenience.

Sr. No.	Police Station	Crime No.	Act
1	Jalgaon City Police Station	141/2015	354(A) of Indian Penal Code
2	Jilhapeth Police Station	3035/2015	Essential Commodities Act. - 3/7
3	Jilhapeth Police Station	3012/2015	Essential Commodities Act. - 3/7
4	Jalgaon City Police Station	Non cognizable 655/2014	504, 506 of Indian Penal Code
5	Jalgaon Taluka Police Station	Non cognizable 108/2014	323, 504, 506 of Indian Penal Code

Even a preventive action was taken against the petitioner and the report was submitted by the Police Authorities to the District Magistrate

for cancellation of Arms Licence of the petitioner. Based upon the said report and after hearing the parties, the licence has been cancelled. It is cancelled for the public safety and public peace, as contemplated under Section 17(3) (b) of the Arms Act.

10 Learned APP has made submissions on the same line of these affidavits-in-reply and further submitted that when the incidents of threatening the life of Revenue Officers who are objecting to the illegal sand excavation are on rampant for the public safety and for public peace, such steps are necessary. There was subjective satisfaction of the District Magistrate, on the report of the Police Authorities, and therefore, the licence has been rightly cancelled.

11 At the outset, the charge, that has been given in the affidavit filed on behalf of respondent No.3, which has been reproduced in the earlier paragraph, would show that all those details about the crime against the petitioner were available to the competent authority when the Arms Licence was granted to the petitioner. In spite of those crimes, it appears that on the submissions made by the Police Authorities as well as Tahsildar, stating that in view of the threat to life to the petitioner as his brother was killed earlier, they had no objection to give Arm Licence to him. When admittedly, the respondents or any other authority had not come with a case that there was

any misuse of the licence by the present petitioner, it is hard to believe that merely because he is in a business of supplying the building material, he would use the said Arm against the Revenue Authority, cannot be a ground to cancel the licence which was granted to him. In his order dated 17.07.2017 as well as subsequent order after hearing the petitioner on 15.05.2018 those old cases are mentioned again to state that there is criminal background of the petitioner. It appears that neither the learned District Magistrate nor the Divisional Commissioner, Nashik Division, Nashik (order dated 13.02.2019) have considered that the learned Magistrate has accepted the "C" Summary report in respect of Crime No.450/2015 registered with Panchwati Police Station, Nashik. At the most "as the copy of any Judgment has not been produced, it can be said that offence under Section 354 of the Indian Penal Code is pending against the petitioner. As aforesaid and at the costs of repetition, it can be said, in respect of this case that the said case was also then pending, when the licence was granted by the appropriate authority to the petitioner. Therefore, pendency of that case, cannot be the ground for cancellation of the licence. The subjective satisfaction was there, at the time of issuance of licence, though that case was pending against the petitioner. As regards the offence punishable under Section 3, 7 of the Essential Commodities Act are concerned, in both the cases the petitioner has been acquitted by the competent authority, way back in the year 2008 itself. The

respondents have not stated that after the grant of licence the present petitioner is involved in any serious offence, which would be dangerous to the public safety or public peace.

12 There is absolutely no support to an allegation that the petitioner is involved in transportation of sand illegally. There was no hurdle for authorities to lodge any report and take action against the petitioner, if he would have been involved in such an offence. Without taking action, merely on the basis of some suspicion, it cannot be stated that there is danger to the public from the present petitioner, if he is allowed to continue to have a said Arm. Even in respect of action of preventive detention taken against the petitioner, it is to be noted that by order dated 19.08.2017, the Government had revoked the detention order passed against the present petitioner under Section 12(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981. The Advisory Board had taken that decision that there was no sufficient cause for the detention of the petitioner. Therefore, now, both the authorities on the point of cancellation of Arms cannot bank upon the same action for detention of the petitioner. Perusal of the impugned orders and the report, that was submitted by the Police

Authorities, would show that merely because some illegal activities are being carried by some other persons, it cannot be protracted, that the petitioner would be involved in such activity. Cancellation of licence cannot be on the basis of surmises of the authority. In other words, the subjective satisfaction, which is the basic activity or ingredient for cancellation of the licence, cannot be based on surmises and conjectures of the authority. There has to be a concrete evidence.

13 As regards the acquittal of the accused, against whom the father of the petitioner had lodged report in respect of murder of the brother of the petitioner is concerned, though those accused persons have been acquitted, the appeal is still pending before this Court. The apprehension of the petitioner regarding threat to his life and also the satisfaction, that was arrived at, by Tahsildar and the Police Authorities, when the licence was granted to him, was required to be considered. The respondents have not produced inquiry report in respect of allegation about threat to life of the petitioner, after the acquittal of those accused persons. Therefore, when fresh inquiry has not been done, after the acquittal of those accused persons, there was no reason for the respondents to say that, that threats on the basis of which the licence was granted, is not in existence. The ratio laid down in **Ajay Bhosale's** case (supra) will have to be taken a note of another fact, that

is required to be seen, that the learned District Magistrate appears to have taken a drive in respect of cancellation of Arms in his district. The order, which was challenged in **Sunil Mantri's** case (supra), was also passed by the same District Magistrate, Jalgaon on 17.07.2017 and in this case also the original order of cancellation/revocation of licence has also been passed on 17.07.2017. No doubt, each case will have to be considered on its own merits, yet, the fact is required to be considered, that under the presumption of maintaining public peace there shall not be an encouragement and go by to the provisions of law, when such action for cancellation/revocation of licence is undertaken.

14 In the light of the above said observations, the impugned orders are required to be set aside, on the ground of non application of mind and subjective satisfaction of the authorities in revoking/cancelling the licence and confirmation thereof by the superior authority.

15 In this case, as it appears from the photo copy of the licence, that has been produced, that the licence was in operation till 31.12.2019 and it has been mentioned in one of the orders, that the present petitioner has surrendered Arm, in view of the said order. In view of these facts, directions are required to be issued to the competent authority for taking note of the observations of this Court in the present Judgment and then to take a

decision in respect of renewal of licence, if application to that effect is made by the petitioner. If the authority renews the licence, then the Arm is required to be given back to the petitioner. With these observations, following order is passed.

ORDER

- 1 The writ petition stands allowed.
- 2 The impugned order dated 15.05.2018 by respondent No.2 re-confirming his own order dated 17.07.2017 regarding revocation of Arm Permit/Licence of the petitioner being Arm Licence/Permit No.AJL, 10/2016 and the order passed by the Divisional Commissioner, Nashik Division, Nashik dated 13.02.2019 in appeal No.7 of 2018 are hereby quashed and set aside.
- 3 The competent authority to take note of the observations of this Court. In the present Judgment, in case, the petitioner files an application for renewal of licence, the renewal of licence be as per the provisions of law and in case, the licence is renewed, the respondent authorities to return the Arm to the petitioner.
- 4 Rule is made absolute in above terms.

(Smt. Vibha Kankanwadi, J.)