

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1122 OF 2020

Devendra s/o Jagdish Khattar,
Age 31 years, Occupation Trader
And Agriculture,
R/o Balaji Bhavan, Talreja Nagar,
Opp. Missin Hospital, Jalna
Tq. And Dist. Jalna.

...Petitioner.

VERSUS

- 1) The Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 2) The District Magistrate / Collector,
Jalna Tq. And Dist. Jalna.
- 3) The Additional District Magistrate,
Additional Collector, Jalna
Tq. And Dist. Jalna.

...Respondents

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Advocate for Petitioner : Mr. S. S. Thombre.
APP for Respondent-State : Mr. S. W. Munde.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-10-2020.

JUDGMENT :

1. Present petition has been filed for invoking the Constitutional Powers of this Court under Article 227 and 226 of the Constitutional of India to challenge the order passed by learned Additional Commissioner, Aurangabad, Division Aurangabad, in Appeal No.06 of

2020, dated 17-08-2020, thereby dismissing the appeal and confirming the order passed by learned Additional District Magistrate / Additional Collector, Jalna dated 06-01-2020, by which the learned Additional District Magistrate had rejected the application filed by the present petitioner for grant of licence to hold arm.

2. Heard learned Advocate Mr. S. S. Thombre for the petitioner and learned Additional Public Prosecutor Mr. S. W. Munde for respondents- State.

3. It has been vehemently submitted on behalf of the petitioner that, the father of the petitioner is a wholesale dealer in Country Liquor and also Foreign Liquor for the area of Jalna District, Kolhapur District and Aurangabad District. He is also having permit rooms at Hasnabad and Rajur in Jalna District. The petitioner himself is a trader and agriculturist. His family runs 'Deepak Wine Shop' at Jalna. The petitioner is taking care of all the businesses which are standing in the name of his father. A country liquor shop is also in the name of his mother. He is required to go for collection for outstanding dues and also to visit several companies for placing orders. Many times he is also required to travel by night. There are about thirty to forty persons working under him. He is a regular

income tax payer and he is in need of a weapon which will protect him which may be in the nature of pistol or gun. The petitioner is running his business smoothly, however there is huge risk involved in the travelling especially at the nighttime. He is required to carry huge cash which is bound to create possibility of threat to his life. He is, therefore, in need of such arm and, therefore, to have a licence for the same, he applied to District Magistrate, Jalna on 01-09-2018. All the necessary documents were submitted along with the affidavit. He has also submitted copy of certificate issued by authorised licensee M/s. A. R. Shinde from Aurangabad stating that, the petitioner has knowledge of relevant provisions of the Acts and the Rules, and he has capable of handling necessary arm. The paternal aunt of the petitioner is also having a country liquor shop. His aunt has permanently shifted to Mysore and, therefore, the petitioner is taking care of her business also. The petitioner had disclosed about the physical attack on him and stealing of cash as well as gold from his person. Offence vide Crime No.266 of 2008 for the offence punishable under Section 392 of the Indian Penal Code was registered with Police Station, Sadar Bazar, Jalna. Thereafter, again in 2017 his Manager by name Sandeep Kharat @ Kadya was threatened for extracting ransom. Offence under Section 385, 387

read with 34 of the Indian Penal Code has been registered with Police Station, Kadim Jalna vide Crime No.234 of 2017. Under such circumstance, there is threat to the life of the petitioner. After the petitioner had filed the said application, report from Superintendent of Police and other authorities was called. Accordingly all the authorities have submitted their reports in favour of the petitioner stating that, they do not have any objection. When the application was for hearing, notice was issued to the petitioner stating that to remain present before respondent No.2 on 01-01-2020, accordingly he remained present. Respondent No.2 heard the matter, however surprisingly respondent No.3 has passed the order on 06-01-2020 rejecting the said application. No opportunity was given by the respondent No.2 to address him. In fact respondent No.3 i.e. Additional District Magistrate had no authority to issue licence or deal with the application for grant of licence filed by the present petitioner. As per the provisions of Section 13 (2-A) of the Arms Act, the licensing authority is under obligation to consider the reports received under Section 13 (2) of the said Act. Further, only District Magistrate is the appropriate authority either to grant or reject the application for licence. In spite of all the circumstances shown to respondent No.2, which required issuance of licence to the

petitioner, yet the said application has been rejected. All these facts were pointed out to the learned Divisional Commissioner, Aurangabad, Division Aurangabad, yet he did not consider that proper opportunity to put forth the say has not been given. The order that has been passed by the learned Additional District Magistrate is without any reason and without any application of mind. Both the orders are therefore illegal and deserve to be set aside. Directions are therefore required to be issued to the respondent No.2 i.e. District Magistrate to issue licence in favour of the petitioner for arm under the Arms Act by allowing his application dated 01-09-2018.

4. Per contra, the learned Additional Public Prosecutor submitted that, proper procedure has been adopted. Hearing was given to the petitioner, he could not establish reasonable ground and, therefore, his application has been rejected. There was no merit in the appeal and therefore the appeal has been dismissed.

5. At the outset it can be seen that, the petitioner who is at present aged 31 is claiming issuance of licence to hold revolver/pistol and gun/rifle. He has given copy of his application which he had submitted to the licensing authority. If we consider

the contents of application of the petitioner then it says that, for self protection/ crop protection, he needs "Revolver/Pistol and Gun/Rifle." It is giving an impression that, one application has been made for two arms as word "And" is used after describing one weapon. Whether one application can be filed for two arms, is a question. But we may not go into the said details as it appears that, that point was not raised before the learned Divisional Commissioner. It can be seen from the other documents that, there is reference to only two cases, which according to the petitioner, was a cause for need for an arm. Even in the present petition there is reference to two offences only and it is stated that the offence which was involving the petitioner as informant, was Crime No.266 of 2008 under Section 392 of Indian Penal Code. The petitioner has not explained as to how the incident of 2008 could create a threat to his life in 2017 i.e. after nine years. He might be 21 year old at that time and it can be seen from the present petition that he has intentionally not given the approximate year or date from which he started looking after the business of his father. The final outcome of the said case which was filed in 2008 has not been produced. It is less likely that, the case of 2008 would be still pending before learned Judicial magistrate, First Class. The petitioner appears to be

not fair enough in putting all the facts on record. The second reason is the case in 2017 i.e. Crime No.234 of 2017, under Section 385, 387 read with 34 of the Indian Penal Code. It is stated that, the Manager of the petitioner was threatened for extracting ransom. The said FIR of offence in 2017 has not been produced again with some intention by the petitioner. We cannot presume that, the said incident with the Manager of the petitioner, was against the petitioner or involving threat to his life. The incident could have been in the individual capacity of the Manager. Just to rule out that possibility and to give support to his say that he need the arm for self protection as there is threat to his life; the petitioner ought to have produced that FIR on record. When a question to that effect was asked, then the learned Advocate appearing for the petitioner had shown willingness to produce those documents on record. However, it is to be noted that, those documents were not produced before the licensing authorities, especially in the appeal. No such document was produced by the petitioner to show that, in the recent past some such incident had happened which created fear in his mind that there is threat to his life. That satisfaction is important and not the desire to have a weapon. The law of Arms Act and the Rules thereunder do not expect that the arm should be possessed as

sign of status. Section 13 of the Arms Act deals with grant of licence. The said Section requires filing of an application for grant of licence under the prescribed rules. Thereafter, the licensing authority to consider the report of the officer in charge of the nearest police station, and then after considering all the rules, reasons given, report, the licensing authority may either grant or refuse to grant the licence. Together with Section 13 of the Arms Act we must consider Rule 12 of the Arms Rules 2016. Rule 12 deals with obligations of licensing authority in certain cases. *Sub-rule (3)* provides thus ;

“Rule 12 (3) :- For grant of a licence for the permissible arms or ammunition specified in category III in Schedule I, and without prejudice to the provisions contained in clause (a) of sub-section (3) of section 13, the licensing authority, based on the police report and on his own assessment, may consider the applications of—

(a) any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/ or property; or.....”

The conjoint reading of the above said provisions would show that, if a person who by the very nature of his business has genuine requirement to protect his life then the licensing authority may consider issuance of grant of licence to him. Thus, the said provision

is discretionary and not mandatory. Further, there is no such provision in the Act or the Rule which states that, the report submitted by the nearest police station should be considered and the licensing authority shall issue the licence of the arm to the applicant. It is discretionary for the licensing authority to consider the report given by the police authorities. Therefore, the petitioner herein cannot submit that, since the report was in his favour, the licence should have been granted to him.

6. One of the main objection to the order passed by the learned Additional District Magistrate, Jalna on 06-01-2020 is that, the said authority had no authority to issue the licence or refuse to grant licence. If we consider the second schedule of the Arms Rules, 2016 then for acquisition/ possession/ carrying and use for protection of the arm, the licensing authority for the district is District Magistrate. Here, the order dated 06-01-2020 has been issued by Additional District Magistrate and not by Assistant District Magistrate. Additional District Magistrate will have all the powers of a District Magistrate and, therefore, he cannot be said to be the subordinate in strict sense. According to the petitioner the hearing had taken place and submissions were made before District Magistrate, but order is

given by Additional District Magistrate. However, the order dated 06-01-2020, then it specifically says that, parties were heard by learned Additional District Magistrate. The same point has been upheld by the learned Divisional Commissioner in the appeal. Even in the appeal, reference is made regarding the directions/instructions given by the Central Government on 31-03-2010, wherein it has been stated that, *“the licence of any arm should be given to that person only who has serious threat to his life or there is possibility of serious threat.”* It has been specifically then stated that, the Superintendent of Police, Jalna gave vague report as to how the alleged threat to the life of petitioner can be said to be serious in nature and those parameters of the circular issued by the Central Government are fulfilled. As aforesaid, only two incidents have been quoted, one is of 2008 with the petitioner and another is with the Manager in 2017. The alleged threat in 2008 cannot be said to be serious in nature after a gap of ten years. The learned Advocate appearing for the petitioner had tried to submit that, there was another incident in the year 2017 and an offence had taken place. With respect to the learned Advocate it can be seen that, there is absolutely no reference to this offence in the petition as well as in his application or at any point of time in the entire process, and that cannot be

looked into at this stage of writ petition.

7. Again turning to the point which has been raised that, the Additional District Magistrate had no power to decide the matter. It can be seen that, *Section 20* of the Code of Criminal Procedure provides for the appointment of Executive Magistrates, and it has been provided that,

“Section 20 (1)- In every district and every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrate and shall appoint one of them to be the District Magistrate.”

Sub-section (2) of Section 20 of the Code of Criminal Procedure provides that,

“Section 20 (2)- The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force and as may be directed by the State Government.”

Though *Section 23* speaks about subordination of Executive Magistrates and it provides that,

“Section 23 (1) - All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every”

Sub-section (2) of Section 23 of Code of Criminal Procedure provides that,

“The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.”

Therefore, when the allocation has been provided and Additional District Magistrate is not the subordinate of the District Magistrate, then no fault can be found with the impugned order passed by the learned Additional District Magistrate.

8. At the cost of repetition it can be said that, the petitioner could not place on record the reasons as to how he is in need of licence to possess arm. Merely because he is dealing in liquor business and / or he is carrying huge amount of cash, we cannot presume that there is threat to his life. If this analogy is adopted then there would be many businessmen who would require licences. As per the Rule 12 of the Arms Rules, 2016 one of the additional factor that can be considered by the licensing authority is the, the nature of the business carried out by the applicant is such requires him to possess licence of arm. The question of discretion will only arise when the background is led and here the petitioner has failed to show the

same. There is no lacunae in the order that has been passed. The order need not have been very much elaborate. The reasons those have been given are sufficient. No case is made out for this Court to exercise its powers under Constitution of India, hence the petition stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.