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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.375 OF 2020

Jignesh D. Patel
Age about 41 years,
Occupation: Business,
Having address at-40/A,
Ghelwad Falia,
Dhabel, Nani Daman,
(Holding Arms License
No.240/2002 DMN)

... Petitioner

Vs

1 The Licensing Authority,
Daman & Diu, Daman

2 The Administrator,
The Union Territory of Daman
& Diu,
Daman

3 The State of Maharashtra ... Respondents

...

Mr. Vikram R. Sutaria for the Petitioner.
Mr. H.S.Venegavkar for Respondent Nos.1 and 2.
Mr. A.R. Patil , APP for the Respondent No.3-State.

CORAM : SANDEEP K. SHINDE J.
DATE : NOVEMBER 22, 2021.

Oral Judgment :

Rule.

2 Rule made returnable forthwith. With consent of the learned counsel for the parties, matter is taken up for final hearing forthwith.

3 The District Magistrate, Daman in exercise of the powers under Section 17(3)(b) of the Arms Act, 1959, revoked the petitioner's arm license, vide order dated 8th October, 2018. In appeal, Administrator, Union Territory of Daman and Diu confirmed the order of the District Magistrate.

4 These two orders are assailed in this petition.

5 Heard Mr. Sutaria, the learned counsel for the petitioner and Mr. Venegavkar, the learned counsel for the respondent nos.1 and 2. Perused the impugned

orders and reply of the Collector, Daman.

6 Facts in this are that, on report dated 26th September, 2018 moved by the Sub-Divisional Officer, District Magistrate, Daman after hearing the petitioner, revoked the petitioner's license on the ground that in view of the offences registered against father and brother of the petitioner, under the Indian Penal Code, 1860 and Official Secret Act, 1923, it would be in the interest of public to cancel the license and accordingly, it was cancelled on 8th October, 2018. In the result, petitioner was directed to deposit arm at Nani Daman Police Station. Accordingly, petitioner deposited the arm.

7 Mr. Gaurav Singh Rajawat, Collector, Daman filed affidavit-in-reply to state that petitioner, son of ex-MP, Dahyabhai Patel, was held as accused in Nani Daman police station in the following offences:

“3. I state that, the Petitioner, son of ex MP Dahyabhai Patel was held as an accused in Nani Daman Police Station in the following cases:

i. FIR No.183/2003

u/s 143, 147, 148, 149, 323, 506, 427 of IPC, 1860.

ii. FIR No.64/2009

u/s 143,147,148,149,323,427 of IPC 1860 and Section 25 of Arms Act, 1959.

iii. FIR No.61/2010

u/s 143,147,148,149,341,325,356,506(2) of IPC, 1860.”

. In paragraphs 4 and 5 of the affidavit, collector stated as under:

“4 I further state that, the Petitioner was actively involved in unlawful assembly, rioting with deadly weapon, voluntarily causing hurt, mischief, criminal intimidation, wrongful

restraint, theft of property and insult with intent to promote breach of peace.

5 I further submit that, the arms license of the father and brother of the Petitioner was also cancelled by District Magistrate, Daman vide order dated 08.10.2018 stating that both the license holders were involved in several criminal cases and FIR No.104/18 dated 11.09.2018 u/s 386, 120B, r/w 34 of IPC, 1860 and was also registered against them and also FIR No.106/18 dated 14.09.2018 was registered against Ketan Dahyabhai Patel u/s 468, 471 of IPC and Section 6(1)(c)(e) of Official Secret Act, 1923. In the interest of public, license bearing no.203/1997 DMN of Ketan Dahyabhai Patel and license bearing no.138/1998 DMN of Dahyabhai Vallabhbbhai Patel was cancelled and thereafter, 3 licensed guns of Ketan Patel and 2 licensed guns of Dahyabhai Patel were directed to be deposited in safe custody. (Hereto marked and annexed as Exhibit A is the copy of order no.8546 and 8547 dated 08.10.2018 passed by Ld. District Magistrate, Daman)”

8 Relying on the affidavit of the Collector, Mr. Venegavkar argued that the orders cannot be faulted with since in the back-drop of the petitioner and his family’s past criminal records, satisfaction reached by the District Magistrate that it was necessary in public

interest to cancel the license, cannot be said to be arbitrary and, therefore, interference is not called for.

9 Licensing Authority under the Arms Act, 1959 is empowered to revoke license under Section 17(3) of the Act and one of the grounds is;

“Clause (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or”

10 Thus, Licensing Authority, if seeks to revoke the license under Clause (b) recording satisfaction, that revocation of license was necessary for the security of the public peace or for public safety is *sine-qua-non*. However, in this case, District Magistrate has simply accepted the report of the Sub-Divisional Police Officer dated 26th September, 2018 without disclosing its' contents and proceeded to cancel the license only on the ground that several offences have been registered against petitioner's brother and father. In fact, there is

no material on record to establish necessary connection between the petitioner and his brother and father qua offences registered against them. Therefore, simply because offences have been registered against the family members of licensee, without there being something more than that by itself was not sufficient to revoke the license of the petitioner, taking recourse to the Sub-section (3) of Section 17 of the Arms Act, 1959.

11 Now, let me advert to the affidavit of the Collector and consider the offences registered against the petitioner, which were pressed into service by Mr. Venegavkar to support the impugned orders. The last offence registered against the petitioner was in the year 2010. Since thereafter petitioner's license was renewed from time to time. In this fact situation, Licensing Authorities ought to have placed on record material wherefrom it could be inferred that necessity for cancelling the license. Neither District Magistrate

nor Appellate Authorities have taken into consideration provisions of Section 17 of the Arms Act, 1959 at all. Their orders gave impression of having being made in mechanical manner. District Magistrate and Appellate Authorities ought to have fairly considered facts of the case. In fact, neither the order of the District Magistrate nor of the Appellate Authorities refer to or deal with the offences registered against the petitioner, which Collector has disclosed for the first time before this Court.

12 The order of the District Magistrate, Daman and of the Administrator, Union Territory of Daman and Diu are quashed and set aside.

13 Rule is made absolute in the aforesaid terms.

14 Petition is allowed and disposed off.

(SANDEEP K. SHINDE, J.)