

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19035 of 2021

Sanjay Kumar Arya S/o - Dr. Vidya Sagar Gupta Resident of Mohalla - Kashi
Bazar, P.S. - Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Home (Special) Department, Government of Bihar, Patna.
2. The Principal Secretary Home (Special) Department, Government of Bihar, Patna.
3. The Commissioner, Saran Division, at Chapra.
4. The District Magistrate, Saran, at Chhapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nagendra Prasad Yadav No.1, Advocate Mr. Onkar Nath, Advocate
For the Respondent/s	:	Mr.Manish Kumar (GP-4) Mr. Ajay Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 06-12-2022

The present writ petition has been filed for quashing the order dated 06.08.2021 passed by the Divisional Commissioner, Saran Division, Chapra in Arms Appeal Case No. 99 of 2019, whereby and whereunder the appeal of the petitioner has been rejected on the ground that there is no imminent threat perception to the petitioner and he has not been able to produce any evidence to the effect that his life and liberty is in danger.

2. The learned counsel appearing for the petitioner has submitted that mere non-existence of any threat perception would not dis-entitle an applicant from grant of arms license and moreover, though the earlier writ petition filed by the petitioner bearing CWJC No. 7204 of 2018 was disposed off by the



learned Lok Adalat, held at Hon'ble Patna High Court, Patna, by a consent award dated 13.07.2019, whereby the petitioner was granted liberty to file fresh Appeal before the Divisional Commissioner, Saran Division, Saran at Chapra, within a period of four weeks, which was in turn directed to be disposed off within a period of three months in light of the order passed in the case of ***Manish Kumar & others vs. The State of Bihar & others***, reported in ***(2015)4 PLJR 212***, however, the said judgment has nowhere been considered by the Commissioner, Saran Division, Saran at Chapra, while passing the aforesaid order dated 06.08.2021.

3. At this juncture, it would be apt to reproduce paragraphs no. 20 and 22 of the aforesaid judgment rendered in the case of ***Manish Kumar & others*** (supra), herein below:-

“20. Similarly, Section 14 of the Act lays down that, notwithstanding anything contained in Section 13, the licensing authority may refuse to grant the arms license, on certain grounds. Section 14 of the Act nowhere discloses that lack of any evidence regarding threat perception upon the applicant may also form a ground for refusal of the arms licence.

22. Indeed, the subjective satisfaction of the licensing authority on the reasons set forth in Section 13 or 14 of the Act would form a condition precedent for grant of licence or refusal to grant licence but the so-called evidence regarding threat perception does not find specific place either in Section 13 or 14 of the Act. So



far Section 14(1)(b)(i)(3) of the Act is concerned, that is only applicable in case the applicant is found to be unfit on any reason provided under the statute but so-called threat perception, not being any ground either in Section 13 or Section 14, one would wonder as to how it can form a ground for refusal of licence. Similarly, even the directive of the Central Government or any authority for such consideration would also not be meaningful in the absence of any statutory provision in that regard. The letter dated 31.03.2010 issued by the Ministry of Home, Central Government, has been considered by a Single Bench of this Court while considering the issue of threat perception for refusal of licence in C.W.J.C. No. 2503 of 2013 (Ram Bachan Rai vs. The State of Bihar and others). While disposing of the aforesaid writ application vide order dated 25.08.2014 the learned Single Judge has opined as under:-

“Even the circular relied upon by the District Magistrate issued by the Government of India does not create any bar. Paragraph ii(a) of the circular in fact merely provides that applications from persons who have perceived threats may be considered. Such requirement in no manner would exclude such persons who do not face any such treat and for the simple reason that any such condition being imposed in a circular issued by the department, would be contrary to the statutory provisions.”

4. The learned counsel for the petitioner has further contended that it is a well settled law that an application for grant of arms license cannot be rejected on the ground that the applicant is not having any threat perception inasmuch as



Sections 13 and 14 of the Arms Act, 1959, though stipulates the parameters for grant of arms license, however, the same does not stipulate such classification as a pre-condition that the license can only be granted to a person who has threat perception. The learned counsel for the petitioner has further raised an additional ground to assail the aforesaid order dated 06.08.2021 to the effect that as per Rule 12(3) (c) of the Arms Rule, 2016, the licensing authority is required to consider the application of an applicant taking into account the nature of business, profession, job or otherwise, leading to the genuine requirement of such applicant to protect his life and/or property. It is submitted that this aspect of the matter has totally been ignored, by the Appellate authority, while rejecting the Appeal of the petitioner.

5. The learned counsel for the petitioner has submitted that the petitioner is an Advocate and couple of civil/criminal cases are going on and as far as the criminal case is concerned, the same has been filed by the petitioner which is still pending, hence it is submitted that he has fear to his life on account of the hazards of the profession of advocacy. In this regard, the learned counsel for the petitioner has referred to a judgment referred to by the learned Division Bench of this Court in the



case of **State of Bihar vs. Deepak Kumar**, reported in **2019(1) PLJR 664**, paragraph no. 12 whereof is reproduced herein below:-

“12. The order of the District Magistrate, as communicated, does not indicate the existence of any valid reason, but, at the same time, the order in appeal passed by the Commissioner indicates that there was no mention of any specific security threat or danger to the appellant in the police report. Such a ground, in our opinion, would be contrary to the intent of grant of license inasmuch as it is not necessary that a person should have an actual threat or imminent threat perception, but it would suffice if the applicant is able to persuade the authority to take into consideration the nature of his trade, profession and calling for the purpose of grant of license which situation has now been taken care of under Sub-Rule (3) (a) of Rule 12 of the 2016 Rules. In this view of the matter, the question of grant or refusal of license will have to be revisited by the licensing authority where the licensing authority will have the power to make an assessment as per the aforesaid Rules, keeping in view the police report or such other factors which may be necessary for the said purpose. The Advocate General is, therefore, right in his submission to the extent that there cannot be an omnibus declaration in respect of a reason which can also possibly form part of the refusal or grant of license, namely the possibility or probability



of any threat or imminent danger to the life or property of an individual. Such factors, in our opinion, are admissible factors, especially in the light of the 2016 Rules which now take care of the situation.”

6. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above as also considering the law laid down by this Court in the case of **Manish Kumar** (supra) and **Deepak Kumar** (supra), apart from the fact that the Divisional Commissioner, Saran Division, Saran at Chapra while passing the impugned order dated 06.08.2021, has not considered the law laid down in the case of **Manish Kumar** (supra), I deem it fit and proper to quash the order dated 06.08.2021, passed by the Commissioner, Saran Division, Chapra and remand the matter back to him to reconsider the aforesaid aspect of the matter and after granting an opportunity of hearing to the petitioner, pass appropriate orders, in accordance with law, within a period of 12 weeks of receipt/production of a copy of this order.

7. The writ petition stands allowed.

S.Sb/Saurav-

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	N/A

(Mohit Kumar Shah, J)

