

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 918 OF 2022

Ganesh Changdeo Khade

.. Petitioner

Versus

The State of Maharashtra
through Police Inspector and another

.. Respondents

Mr. Rajendra G. Hange, Advocate for the Petitioner.

Mr. P. N. Kutti, APP for Respondent No. 1.

Mr. P. P. Kalaskar, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 10th NOVEMBER, 2022.

P. C. :-

1. Heard learned advocate for the petitioner.
2. The petitioner is Ex-Army man and thus has licence to hold pistol. He requires pistol as he is working as Armed Guard. However, one FIR came to be registered in which he is implicated by the informant. On the basis of information, now the offence has been registered against him for the offence punishable under Sections 25, 3 of the Arms Act and also for the offence punishable under Sections 364-A, 392, 504, 506 r/w Section 34 of the Indian Penal Code in which pistol of the petitioner is seized by the prosecution.

3. The petitioner, therefore, moved the Court of learned Judicial Magistrate First Class, Patoda by filing Criminal Miscellaneous Application No. 30/2022. This application came to be rejected by order dated 10.02.2022 mainly on two grounds. First, that the verification of truthfulness of licence in the abovesaid pistol was not verified and secondly, that if interim custody is handed over to the petitioner, he may use the said pistol in any other crime and that during the trial pistol should be available. The petitioner thereafter preferred Criminal Revision Application No. 24/2022. The same also came to be rejected by the judgment and order dated 15.06.2022 by the learned Additional Sessions Judge, Beed. The learned Additional Sessions Judge also assigned the same reasons while rejecting the criminal revision application. It is further observed that the petitioner is involved in very serious crime.

4. It is thus, the petitioner has approached this Court. This Court by order dated 18.08.2022 had issued notice to respondents. By order dated 08.09.2022, in view of query raised by the learned A.P.P, this Court had directed the petitioner to produce original arms licence. The learned A.P.P invited my attention to this order dated 08.09.2022.

5. Today, learned advocate for the petitioner shown original licence under the Arms Act issued in the State of Jammu and Kashmir which is in force till 19.03.2024. Thus, so far as first ground of objection is concerned, it does not carry any force. So far as second objection that the petitioner will not produce pistol during the course of trial is concerned, care can be taken by imposing suitable conditions on the petitioner.

6. The petitioner has shown readiness to file an undertaking in this Court to the effect that he will not tamper with the pistol and he will produce the same during the course of trial as and when required by the Court. He shall not change the nature and ownership. Further condition can be imposed that if he is found indulged in any other criminal activity henceforth with the use of pistol, the prosecution will be at liberty to make suitable application in the Trial Court.

7. The informant has also appeared through his advocate and he has filed affidavit on record giving no objection to hand over pistol to the petitioner.

8. Considering the above, the following order.

ORDER

(I) The criminal writ petition is allowed.

(II) The Investigating Officer to hand over the custody of pistol along with five cartridges to the petitioner on filing of an undertaking by the petitioner within a period of one (01) week from today in this Court in the above terms and by giving one copy of the same to the Investigating Officer.

(III) The petitioner shall not tamper with pistol or shall not deal with in any matter and shall retain the possession.

(IV) The petitioner shall produce pistol as and when required for the purpose of trial or for any other purpose by the Investigating Officer. The prosecution will be at liberty to make proper application if the petitioner is found to have indulged into any criminal activity.

9. The criminal writ petition is disposed of.

(KISHORE C. SANT, J.)

P.S.B.