

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.22639 of 2020 (O&M)

Date of Decision.30.03.2022

Anwar Khan

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Samridhi Sarin, Advocate
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

By way of instant writ petition, petitioner seeks setting aside of order dated 12.03.2018 passed by Commissioner of Police, Faridabad whereby arms licence of the petitioner has been cancelled and the appeal preferred against the said order has also been dismissed by the Commissioner, Faridabad Division, Faridabad vide order dated 07.12.2018.

In brief the facts are that the petitioner is an arms licence holder of NPB 32 Bore Pistol No.RP-109648 and 12 Bore D.B.B.L Gun No.40494 under Licence No.54/FBD/JAN/01 & Renewal No.280-R/JCP-FBD/2010, which was valid till 22.01.2016. An FIR No.132 dated 06.04.2014 came to be registered against the petitioner under Sections 498-A, 304-B IPC at Police Station Sector 7, Faridabad, in which he stood convicted by the court of Additional Sessions Judge vide judgment dated 21.08.2015 and sentenced to undergo rigorous imprisonment for 10 years. Against the aforesaid judgment, the petitioner preferred a criminal appeal before this High Court wherein vide order dated 08.03.2017, sentence of the petitioner

has been suspended. However, the petitioner received a show cause notice dated 24.08.2017 as to why his arms licence be not cancelled with immediate effect. The petitioner replied to the aforesaid show cause notice but vide order dated 12.03.2018, respondent No.3 cancelled the arms licence of the petitioner solely on the basis of conviction of the petitioner under the afore-mentioned FIR and appeal preferred against the same has also been dismissed.

Learned counsel appearing for the petitioner would contend that the cancellation of arms licence of the petitioner solely on the ground of his conviction under FIR No.132 dated 06.04.2014 is not sustainable. It is argued that in the appeal preferred against the order of cancellation of his arms licence, respondent No.3 filed a reply stating therein that arms licence of the petitioner has been cancelled, in view of the communication received from the Chief Minister, Haryana dated 31.08.2018 announcing immediate suspension of facilities like social pensions, scholarships and arms licences in respect of every person against whom charges are framed by the Court for a sexual crime against a woman or child. The said announcement was made on 31.08.2018 whereas the impugned order has been passed by respondent No.3 on 12.03.2018. It is further argued that an arms licence can only be suspended or revoked in terms of provisions contained under Section 17(3) of the Arms Act and the impugned orders are passed without assigning any reasons that the weapons possessed by the petitioner were used by the petitioner in commission of any offence or the petitioner by his conduct or by omission had posed any threat to the security of the public peace or public safety. In support of his arguments, he relies upon a judgment rendered by a Coordinate Bench of this Court in CWP No.10816 of 1998

titled as *Mahender Singh Vs. State of Haryana and others* decided on 04.07.2011 wherein it has been held that conviction in a criminal case could be relevant if there is also an observation or a finding that on account of such conviction there is a danger of misuse of licence by the petitioner, which could pose a threat to the security of public peace or for the public safety and without a definite finding to said effect as contemplated under Section 17(3)(b), there could be no suspension or revocation of the licence. It is further argued that delay of nine months in submitting the application for renewal of the licence was caused only on account of the fact that licence was valid upto 22.01.2016 and during that period the petitioner was incarcerated as had been convicted vide judgment dated 21.08.2015 and he came out after 08.03.2017 when his sentence was suspended by this High Court in criminal appeal preferred by him.

Notice of motion.

Mr. Vishal Malik, DAG, Haryana who is present in Court, accepts notice for the respondents and supports the impugned orders by contending that arms licence of the petitioner has been cancelled primarily on two grounds; (i) there was a delay of 9 months in moving application for renewal of the licence and (ii) petitioner stood convicted for offence of dowry death under Section 304-B IPC. It is further contended that the impugned orders have been passed after due deliberation of all facts and circumstances and therefore, prays for dismissal of the instant petition.

I have heard learned counsel for the parties and have perused the paper book. Section 17(3) of the Arms Act deals with the provisions of suspension or revocation of an arms licence, which is reproduced as under:-

“17.(3) The licensing authority may by order in writing

suspend a licence for such period as it thinks fit or revoke a licence—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(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

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

A bare perusal of the aforesaid provisions of Section 17(3)

would reveal that an arms licence can be suspended or revoked primarily in following circumstances:-

(a) if the holder of the licence is disqualified from acquiring/possessing or carrying any arms by this Act or by any other law for the time being in force; or is of unsound mind or unfit for any reason for a licence under this Act;

(b) for the security of public peace or for public safety;

(c) obtained licence by suppressing material information or on the basis of wrong information;

(d) conditions of licence contravened or the holder of the licence failed to comply with notice under sub-section (1) requiring him to deliver up the licence.

Admittedly, there is no finding given in the impugned orders that the fire arms owned by the petitioner were ever used or misused in the criminal case registered against him or there is any threat extended by the petitioner to the public peace or public safety on the strength of said fire arms or the petitioner is disqualified by any provisions of the Arms Act or

of any law for the time being in force from acquiring/possessing/carrying any firearm. Conviction in a criminal case may be a matter for consideration by the authorities regarding threat to the security of public peace or public safety but cannot be a sole ground while ordering cancellation of arms licence, without rendering a finding qua threat to such peace or safety in the manner enunciated under Section 17(3)(b) of the Arms Act. The delay of nine months in submitting the application for renewal of the licence was only on account of the fact that the licence was valid till 22.01.2016 and petitioner remained incarcerated as he stood convicted in the aforesaid criminal case on 21.08.2015 and his sentence was suspended by this Court vide order dated 08.03.2017. Therefore, in any eventuality, he could apply for renewal of the licence after 08.03.2017.

In view of the aforesaid finding, the instant petition is allowed and the impugned orders suffering from the perversity as noted above are set aside. The matter is remitted back to respondent No.3, Commissioner of Police, Faridabad for fresh consideration in view of the provisions of Section 17(3) of the Arms Act and decide the same as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this Court.

Needless to say, that the petitioner shall be afforded an opportunity of hearing before taking a decision by respondent No.3.

March 30, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No