

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11291 of 2019

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Suresh Kumar Sah @ Suresh Sah Son of Punpun Sah Resident of Village-Satua, Police Station-Baniyapur District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Special) Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Home (Special) Department, Govt. of Bihar, Patna.
3. The Commissioner, Saran Division, Saran at Chapra.
4. The District Magistrate, Saran at Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Station Head Officer, Baniyapur, Police Station, Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kashyap, Adv.
For the Respondent/s : Md. Sahbaj Alam, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 16-05-2023

Heard Mr. Prashant Kashyap, learned counsel for the petitioner and Md. Sahabaj Alam, learned AC to GP-5 for the State.

2. The writ petitioner by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeks quashing of the order dated 04.07.2017 passed by the District Magistrate, Saran at Chapra, whereby the application for arms license of the petitioner has been rejected. The petitioner also prayed for quashing of the order dated 28.12.2018 passed by the Commissioner, Saran Division,



Chapra in Arms Appeal No. 150 of 2017, whereby and whereunder the Arms Appeal preferred by the petitioner has been dismissed and the order of the District Magistrate, Saran at Chapra has been confirmed.

3. The petitioner had been *Mukhiya* of Gram *Panchayat* Raj, *Satua* and his wife, the present *Mukhiya* having found the necessity of arms because of the threat to his life and property, applied for grant of Arms License for N.P. Bore Rifle on 21.12.2015.

4. It is the case of the petitioner that he has also lodged FIRs, including, Baniyapur P.S. Case No. 257 of 2014 on 05.11.2014, Baniyapur P.S. Case No.130 of 2017 dated 03.05.2017 and Baniyapur P.S. Case No.148 of 2017 dated 16.06.2017 against various known and unknown persons, who were found indulge in bungling of government money in MANREGA Scheme in his Block and *Panchayat* and they have been trying to eliminate the petitioner and his family.

5. Due to the aforementioned pending cases, the petitioner and his wife have always been apprehending threat to their life and property at the hands of the accused persons.

6. It is submitted that on the application, filed by the petitioner for his arms license the Licensing Authority, the



District Magistrate, Saran at Chapra sought a police report from the Superintendent of Police, Saran, who in turn submitted his report. However, the Licensing Authority considering the inquiry report, has rejected the application of the petitioner vide his order dated 04.07.2017 (Annexure-2 to the writ petition) on the sole ground of having no threat perception reported in the police report.

7. Being aggrieved, the petitioner preferred Arms Appeal No.150 of 2017, however, the said appeal also met to the same fate and the order of the licensing authority has been confirmed vide order dated 28.12.2018 (Annexure-3 to the writ petition).

8. Submission has been made on behalf of the petitioner that the rejection of the application of the petitioner on the ground of not having any threat perception is per se illegal and against the mandate of the law. The provision dealing with grant of license does not create a category or classification as a precondition that such grant will be made to only those, who has/have threat perception.

9. In support of the aforesaid submission heavy reliance has been made on a judgment rendered by this Court in the case of *Siya Ram Rai vs. State of Bihar, 2015 (2) PLJR*



303. Further reliance has also been made upon a judgment dated 12.07.2018 passed in CWJC No.9413 of 2016 by the learned Co-ordinate Bench of this Court.

10. *Per contra*, learned counsel for the State while confronting the submissions made on behalf of the petitioner submits that the order of rejection of application for Arms License of the petitioner is based upon police verification report, which clearly demonstrates that there is neither any threat perception to the petitioner nor his family members as required by Memo No. 3026 dated 13.04.2010 of the Home (Police) Department, Government of Bihar, Patna. Apart from this the petitioner had been allowed proper opportunity of hearing to place his case, showing any apprehension of threat to life, but he failed to do so. Moreover, the impugned orders passed by the Licensing Authority as well as the Appellate order are reasoned and justified in law as well as on facts.

11. Having heard the learned counsel for the parties, this Court *prima facie* finds that the petitioner had earlier been *Mukhiya* of the Gram *Panchayat* and now his wife is an elected *Mukhiya* of the same *Panchayat*. He has also lodged FIRs against some known and unknown persons.

12. It would be worth mentioning here that Sections



13 and 14 of the Arms Act, 1959, respectively, deal with grant of Arms Licence and refusal of the same. The provision contained in Section 13 of the Act discloses that the Licencing Authority upon consideration of verification report of the Competent Authority can grant a licence after being satisfied that the person by whom the licence is required has a good reason for obtaining the same.

13. Further, Section 14 of the Arms Act stipulates that notwithstanding anything contained in Section 13, the Licencing Authority may refuse to grant Arms Licence, on certain grounds. However, from a conjoint reading of both the aforementioned provisions, it nowhere discloses that lack of evidence regarding threat perception upon the applicant may also form a ground for refusal of the Arms Licence.

14. Learned counsel for the petitioner has rightly relied upon the judgment rendered by this Court in the case of **Siya Ram Rai (Supra)**, wherein the learned Court while dealing with an identical issue, has been pleased to consider the guidelines of the Government of India in its Ministry of Home Affairs dated 31.02.2010 and in uncertain terms, held as follows:

“Section 13 of the Arms Act provides for grant of license and creates no such categories or



classification as a pre-condition to filing of such application that the applicant should be facing imminent danger to his life. Section 13 is a legal right vested in a citizen of this country to apply for a license without any pre-conditions and even when the discretion is vested in the District Magistrate under Section 14 of the Act to refuse the same, the field is clearly described therein. The provisions of Section 14 makes it eloquent that absence of perceived threat is no condition to refuse a license. Even the circular dated 31.3.2010 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 mean or can be interpreted to exclude such persons who do not face any such threat for the simple reason that any such condition being imposed through a circular of the department, would be contrary to the statutory provisions.

Thus where neither Section 13 creates any pre conditions that an applicant should establish imminent danger to his life or perceived threat before he can apply for grant of license and in absence of any such provision in Section 14 which would disentitle any such applicant having no imminent danger to life to grant of arms



license, the order impugned rejecting the prayer of the petitioner cannot be upheld and is accordingly set aside. In fact this issue already has been deliberated before this Court and stands answered in the judgment reported in 2007 (4) BBC) 244 (Amrendra Kumar Singh v. State of Bihar).”

15. Further, the Division Bench of this Court in the case of **State of Bihar vs. Deepak Kumar, 2019 (1) PLJR 664**, has been succinctly held that since the Section does not incorporate within itself, the ground of imminent danger or actual threat perception as a ground of refusal, nonetheless, the Licencing Authority cannot refuse to grant licence on such ground amounts to trenching upon the discretion to be exercised by Licencing Authority, who can certainly after examining police report and other materials proceeds to refuse to grant licence. However, 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 profession, trade or calling for the purpose of grant of licence in view of Rule 12(3)(a) of the Arms Rules, 2016.

16. This Court deems fit and appropriate to quote para-12 of the judgment rendered above:



“(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.”

17. Without referring so many judgments on the issues involved in the writ petition, now coming to the facts of the present case.

18. Admittedly, the petitioner had been Mukhiya of Gram Panchayat Raj, Satua and his wife has also been elected as Mukhiya, had applied for grant of Arms Licence of N.P. Bore Rifle on 21.12.2015, who were facing threat at the hands of the accused persons against whom the petitioner lodged FIR(s).

19. Thus, coming to the conclusion by the respondent-Licencing Authority that there is no threat perception at all is not sustainable, apart from the fact that the petitioner being elected representative of the people, holding the post of Mukhiya, *prima facie*, his requirement to protect his life and/or property cannot be brushed aside so casually.

20. Having given anxious consideration to the submissions made on behalf of the parties and the materials available on record as also the settled legal position that neither Section 13 creates any pre-conditions that an applicant should establish imminent danger to his life or perceived threat before he can apply for grant of licence and in absence of any such provision in Section 14 which would disentitle any such



applicant having no imminent danger to life to grant of arms licence vis-a-vis the obligation of the Licencing Authority to consider the claim of the applicant, after taking into consideration the very nature of his business, profession, job or his genuine requirement to protect his life and/or property, the order impugned dated 04.07.2017 passed by the District Magistrate, Saran at Chapra as also the order dated 28.12.2018 passed by the Commissioner, Saran Division, Chapra in Arms Appeal No. 150 of 2017, are hereby, set aside.

21. Licencing Authority i.e. District Magistrate, Saran at Chapra, is directed to consider the case of the petitioner afresh and pass appropriate reasoned order in accordance with law within three months from the date of receipt/production of a copy of this order bearing in mind the observations made hereinabove.

22. The writ application stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-05-2023
Transmission Date	

