

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

**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1821 OF 2022

BHALCHANDRA PRAKASH KHOSE

VERSUS

THE DIVISIONAL COMMISSIONER, AURANGABAD AND OTHERS

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Advocate for Petitioners : Mr. Deshmukh Ramraje A.

APP for Respondents/State : Mr. S.R. Yadav-Lonikar

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**CORAM : KISHORE C. SANT, J.**

**DATE : 19<sup>th</sup> APRIL 2023.**

**Per Court :**

Heard.

1. This is a petition challenging the order 01.09.2022 passed by the learned Divisional Commissioner, Aurangabad, whereby he has dismissed the appeal of the petitioner by confirming the order dated 06.01.2022 passed by the learned Collector, Osmanabad, thereby refusing to grant licence under the Arms Act.

2. It is the submission of the petitioner that he had applied for a licence under Arms Act as there is danger to his life because he happens

to be a Contractor and he takes contracts at various places in the entire Maharashtra and for that purpose, he is required to travel a lot. While travelling, he has to keep cash with him for payment of labors etc. He is having irrigated land and have planted sandalwood in the land. He submits that to protect his property, he requires the licence. After his application, an enquiry was held. The superintendent of Police submitted positive report stating that looking at the personality of the petitioner, there is apprehension of danger to his life. After considering the report, the Collector recorded that no apprehension of danger to life is seen and there is no supporting evidence to the case of the petitioner that there is danger to his life etc. The Collector further considered Section 14(1)(b)(ii) of the Arms Act, which is reproduced below and in view of the said Section, refused the licence of the petitioner.

**"Section 14 of Arms Act 1959 : Refusal of licences**

**(1) Notwithstanding anything in section 13, the licensing authority shall refuse to grant-**

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

**(b) a licence in any other case under Chapter II,-**

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be 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  
(2) to be of unsound mind, or  
(3) to be for any reason unfit for a licence under this Act; or

**(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.**

3. The said order was challenged by the petitioner by filing an appeal. However even the Appellate Authority rejected the application. The learned Advocate submits that both the authorities though have referred to the report submitted by the Superintendent of Police, they have not assigned any reason as to why the said report is not acceptable and why contrary finding is recorded by the authorities.

4. The learned Advocate submits that it was necessary for both the authorities to discuss the reasons in detail for not accepting the report of the Superintendent of Police. He submits that there was no material to show that there would be danger in public place if the licence is granted in favour of the petitioner. He thus submits that when petitioner had made out a case for grant of licence and when the same was supported by the Superintendent of Police, still that was refused by assigning the reason as Section 14(1)(b)(ii). There is no case made out

to reject the licence on this count. The order therefore suffers from non-application of mind.

5. The learned APP submits that in fact both the authorities have properly applied their mind. There is a reference of the report of the Superintendent of Police in both the orders. The authorities always have to apply their mind independently. The reports are only taken to the authorities while coming to conclusion. Such report is not a determinative factor but it is only one of the considerations. He further submits such report cannot be taken to be conclusive and prays for rejection of the petition.

6. This Court on going through the orders finds that it was necessary for both the authorities to discuss as to why the report of Superintendent of Police is not accepted and for recording different conclusion. Looking to the conclusion contrary to the report submitted by the Superintendent of Police, this Court finds that a case is made out to remand the matter to the District Collector to consider the application of the petitioner afresh by assigning the reasons in

accordance with law. Thus the Criminal Writ Petition stands partly allowed in the above terms.

7. With this, the Writ Petition is disposed off.

[ KISHORE C. SANT, J.]

*Najeeb.*