

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2021 OF 2022

Sangharsh Divakar Petkar

Age – 42 years,
Occupation – Business,
Residing at Kalabadevi,
Fadajiwadi No.1,
Taluka District Ratnagiri

... Petitioner

V/s.

- 1. The State of Maharashtra**
through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-400 032
- 2. The Divisional Commissioner,**
Kokan Division, Old Secretariate Bldg,
1st floor, Extension Bhavan, Near
Elphinstone College, Kalaghoda, Fort,
Mumbai – 400 032
- 3. The Collector,**
Ratnagiri, District Ratnagiri,
Maharashtra

... Respondents

Mr. Bal R. Patil with Mr. Saurabh Desai, Mr. Archit
Manurkar for the petitioner.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : 28 APRIL, 2023

PRONOUNCED ON : 25 JULY, 2023

JUDGMENT.:

1. The challenge in this petition is to the order dated 10th August 2021 passed by the Divisional Commissioner Kokan Division, Mumbai in Appeal No.17 of 2021, confirming order dated 24th December 2020 passed by the Collector, Ratnagiri, District Ratnagiri rejecting petitioner's application for grant of arms licence for possession of rifle in "Form II, III and IV of Rule 11 and Schedule III of Part II of Form A-I of the Arms Act, 1959. The reason for possessing a firearm was to protect himself and his family members and consider the nature of his business as an estate agent, which requires carrying cash to facilitate day-to-day transactions. Another reason for holding a firearm is for crop protection of his agricultural land.

2. Respondent No.3, by order dated 24th December 2020, refused to grant a licence to the petitioner on the following grounds:

- i. Offence bearing C.R. No.83 of 2011 under sections 379 and 34 of the Indian Penal Code, 1860, for theft of sand was registered against the petitioner.
- ii. The petitioner can carry on business through online banking or any other secured mode of payment.
- iii. From the material on record, the turnover, as claimed by the petitioner, is not born out.

3. Respondent No.2, by order dated 11th August 2021, confirmed the order of respondent No.3. Therefore, the petitioner

has filed the present petition.

4. Learned advocate for the petitioner submitted that the impugned order is not based on subjective satisfaction as contemplated under section 13(3)(b) of the Arms Act, 1959. The ground of pendency of criminal offence is factually incorrect as the petitioner has been acquitted from the said offence. The impugned order is based on non-existent fact and, therefore, is liable to be set aside. The financial turnover of the applicant is not a valid ground as contemplated under section 14(2) of the Arms Act, 1959. The expression "good reason" in the Act needs to be considered in the context of sections 13 and 14 of the Arms Act, 1959. Learned advocate for the petitioner relied on the following judgments:

- a) Sheshrao Alias Vijay Bhikaji Salve vs. State of Maharashtra; The Police Commissioner, Aurangabad of the Hon'ble Bombay High Court, Aurangabad Bench.
- b) Ram Manohar Lohia vs. State of Bihar and Ors. reported in MANU/SC/0054/1965 of the Hon'ble Supreme Court.
- c) State of U.P. and Ors. vs Mahipat Singh reported in MANU/UP/0096/2014 of the Allahabad High Court.
- d) Ved Singh vs. Addl. Commissioner of Police Licensing Unit reported in 2019 SCC OnLine Del 6862 of the Hon'ble Delhi High Court.
- e) The South India Corporation (P) Ltd. vs The Secretary, Board of Revenue Trivandrum and Ors., reported in

MANU/SC/0215/1963 of the Hon'ble Supreme Court.

f) Tribhuvandas Purshottamdas Thakur vs. Ratilal Motilal Patel reported in MANU/SC/0345/1967 of the Hon'ble Supreme Court.

g) Anuj Kumar Gupta vs. Commissioner of Police, Navi Mumbai And Another reported in 2017 (10) CPMH 128 of the Hon'ble Bombay High Court.

h) Jayant Bhimrao Jadhav vs. State of Maharashtra & Anr. in Writ Petition No.4550 of 2021 of the Hon'ble Bombay High Court, Nagpur Bench.

i) Devshibhai Raydebhai Gadher vs. State of Gujrat reported in MANU/GJ/1495/2022 of the Hon'ble Gujrat High Court.

5. *Per contra*, learned APP submitted that the right to hold a firearm is not a fundamental right. It is a privilege. The expression "good reason" mentioned in section 13 of the Arms Act, 1959, needs to be interpreted in the light of the object and purpose of sections 13 and 14 of the Arms Act, 1959 and the absence of a right of a citizen to hold a firearm.

6. *Per contra*, the learned APP relied on the following judgments:

a) Rama Pratap Singh vs. State of Uttar Pradesh reported in 1996 All L.J 301 (Full Bench).

b) Kapildeo Singh vs. State of Bihar And Ors. reported in 1987 Cri. L.J. 960 (Full Bench).

c) State of Uttar Pradesh And Others vs. Mahipat Singh

reported in 2014 (2) ALJ 443.

d) Sunil Ramrao Chaudhari vs. State of Maharashtra reported in 2016 (6) Mh. L.J. 640.

e) Rajat Yadav vs. State of Uttar Pradesh And Others reported in 2022 (2) ALJ 321.

f) Suned Kumar Singh vs. State of Madhya Pradesh reported in 2022 AIR OnLine MP 2211.

7. I have heard learned advocate for the petitioner and considered the material on record. Before dealing with the submissions of the parties, it is necessary to consider the judgment of the Single Judge of this Court, which takes into consideration the earlier Division Bench judgment of this Court in the case of **Khan Abdul Wahab Usman vs. State of Maharashtra** in Criminal Writ Petition No.2688 of 2008 decided on 12th February 2009. Single Judge of this Court, after considering sections 13 and 14 of the Arms Act, 1959 in paragraphs 7 and 8, held as under:

“7. Reading these sections, it would become clear that the licensing authority has to consider the issue of grant of licence or otherwise by following the procedure laid down under section 13 of the Act. This procedure includes calling for the report of the officer in charge of the nearest police station and also making an inquiry, if any, to consider whether the discretion should be exercised in favour of the applicant or not. After following this procedure, sub-section 3 of section 13 mandates that the licensing authority grant a licence where the conditions specified in the sub-sections are fulfilled. In the instant case, the licence was sought to be obtained particularly under section 4 of the Arms Act and, therefore, clause (b) of sub-section 3 of the Arms Act would

be relevant. This clause (b) makes it mandatory for the licensing authority to grant a licence if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. It can be noticed that this section does not say that only when there is a favourable recommendation by the police authority that the licence be granted. This section, on the other hand, lays down that the licence can be issued for any good reason. Now, what can be the good reason has not been clarified anywhere in the Act? An insight into what constitutes a good reason for the grant of a licence could be had by considering the provisions of section 14 of the Arms Act.

8. Section 14 is about refusal of licence. It delineates the situations where the licence is to be mandatorily refused. These situations are as under :

- 1 Where licence under section 3, or 4 or 5 is required in respect of any prohibited arm or prohibited ammunition;
- 2 Where the licensing authority is satisfied that the person requiring a licence is prohibited by Arms Act or by any other law from acquiring or possessing, or carrying any arms or ammunition.
- 3 Where the person requiring a licence is of unsound mind;
- 4 Where the person desirous of having a licence is unfit for holding the licence under the Arms Act;
- 5 Where the licensing authority considers it necessary for the security of the public peace or public safety to refuse the licence.

These are the only grounds on the basis of any one or more of which the licence could be refused. It is also worthwhile to note that under this section, there is no such ground as the absence of any threat to the life or property of a person to refuse the grant of licence. It would then mean

that the presence or absence of a threat to the life or property of a person from the perspective of police authority cannot be a good ground for refusal within the meaning of the section

14. It would then follow that a police report saying there is no threat to the life or property of a person is not relevant for either refusing or even granting a licence under section 14 and section 13, respectively. Relevant rather a criterion would be the genuineness of the need of the person, examined from the individual's own perception and his security wants in the light of his mental and physical make-up and factors serving as express disqualifications for a person to hold the licence under section 14 of the Arms Act. This is what constitutes the "good reason" for grant of licence under section 13(3)(b), Arms Act. The authority, however, must be wary of those needs which are fanciful or simply pretentious or purely fired by a desire to flaunt or parade in public the firearm as a fashion trend. This is not to say that a need felt by a person to possess a firearm is false only because police do not think it to be real. As said earlier, an individual's own feeling of insecurity is an important factor. So, it needs to be respected and considered on the touch-stone of his own psyche, physical and mental makeup and other factors contained in section 14 of the Arms Act. After all, it is now a settled law that as possession of a non-prohibited firearm helps effectuate a person's right to protect himself, the right is considered as a part of a fundamental right under Article 21 of the Constitution of India, subject, of course, to reasonable restrictions. Therefore, generally speaking, granting a licence should be the rule and refusal an exception, for reasons be recorded in writing."

8. Reading of judgment of the Single Judge of this Court in the case of **Pawan S/o Ashok Bora vs. State of Maharashtra** reported in 2017 (4) Mh.L.J 619, it appears that one of the relevant factors for

exercise of discretion under section 13 is a genuineness of need of person, examined from his own perception and his security wants in the light of mental and physical makeup and factors serving as express disqualification for a person to hold licence under section 14 of the Arms Act, 1959. However, fanciful or pretentious or purely fired by a desire to flaunt or parade the firearm in public is also a relevant factor. The Single Judge thereafter, in paragraph 9, has observed as under:

9. This view is consistent with the legislative intent discernible from section 14(2) of the Act. This provision of law creates an embargo upon the power of the authority to refuse a grant of licence by laying down that it shall not refuse a licence merely on the ground that such person does not possess sufficient property. The Legislature intends that possession of the property would have no bearing on the exercise of the power to refuse a grant of licence. It would also then mean that the absence of a threat to the property is no criterion for refusal of the licence. So, if the absence of a threat to the property is not a criterion for refusal of a licence, it can also be found inferentially that the absence of a threat to the person of the applicant would be no criterion for refusal of the licence. This is what has been held consistently by the learned Judges, as the Honourable Judges then were, in the cases relied upon by the petitioner.....

.....I fully agree with the views expressed by the learned Single Judge of Delhi High Court. In the present scenario, where crime is ever on the rise, one can never know as to when and where the evil will strike him or his near and dear ones. This is the reason why in the matter of granting of licence for a non-prohibited firearm, the applicant's own perception of the threat to his life or property is very relevant and is required to be given due

consideration and respect. In a disturbed society, an individual may, without being armed with a weapon, feel very insecure and helpless to protect himself and his family members. Enabling such a person to possess the firearm, if not otherwise disqualified to hold it, would be like boosting his confidence to protect himself and his family members on one hand and busting the morale of criminals casting an evil eye on him on the other. Therefore, due consideration is required to be given to the perception of the person interested in acquiring and possessing the firearm. Of course, there are other conditions that are referable to the provisions of sections 13 and 14 of the Act, which must also be considered while granting or refusing a licence. This view finds support in other cases as well, which are discussed in the foregoing paragraphs....."

9. On perusal of the material on record, it appears that the reasons for rejection of the licence are not based on the factors held to be relevant by the Single Judge of this Court. On perusal of the police report, it appears that the applicant is acquitted in a criminal case. However, Respondent No. 3 considered the application as if a criminal case was pending against the petitioner. Therefore, the licensing authority must consider the effect of an acquittal. Apart from the aforesaid factor, it is necessary to consider whether the grounds given by the petitioner for issuing a licence are reasonable and consistent with the purpose for which he intends to procure a firearm. It needs to consider whether the petitioner's physical and mental condition is suitable for acquiring and possessing the firearm. It is also required to consider whether the petitioner resides in or anywhere near the wildlife sanctuary or national park. It is also necessary to consider that the type of

firearm for which the petitioner has sought a licence is consistent with the purpose for which he desires to keep a firearm. It also needs to be recorded a satisfaction that if a firearm is issued to the petitioner, there is a guarantee that he would not misuse it.

10. Unfortunately, reading of orders passed by authorities below, it appears that no relevant factors have been considered by authorities below in passing the impugned orders. Therefore, it is necessary that respondent No.3 shall reconsider the petitioner's application under section 13 afresh in the light of the parameters referred to in aforesaid paragraphs. Hence, the following order:

- a) Rule is partly made absolute.
- b) The impugned orders passed by the Divisional Commissioner, Kokan Division, Mumbai on 10th August 2021 and Collector, Ratnagiri, District Ratnagiri, on 24th December 2020, are set aside.
- c) The matter is remanded back to respondent No.3 for a decision afresh in the light of parameters laid down in aforesaid paragraphs and in the light of sections 13 and 14 of the Arms Act, 1959.

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11. The criminal writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)