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

WRIT PETITION NO.2138 OF 2019

Gitiesh Tanaji Bankar,

Age- 35 years, Occupation-Advocate,

R/o :- Pimpalgaon Baswant,

Taluka - Niphad, District - Nashik

... Petitioner

V/s.

1. The State of Maharashtra

through Secretary,

Department of Home, Mantralaya,

Mumbai-400 032

2. Divisional Commissioner,

Nashik Division, Nashik

3. Collector, Nashik,

District-Nashik.

4. Superintendent of Police,

Nashik Division, Nashik

... Respondents

Mr. Amitkumar Sale with Mr. Tukaram Shendge for the petitioner.

Mr. Arfan Sait, 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 4th February 2019 passed by the Divisional Commissioner, Division Nashik, confirming the order passed by respondent No.3-Collector, Nashik refusing to grant a licence to the petitioner to possess a firearm for self-protection.

2. The facts and circumstances giving rise to the petition are as under:

The petitioner applied for a firearm licence with respondent No.3. respondent No.3, on 8th January 2017, called for reports from the concerned police station. On 12th May 2017, police inspector Pimpalgaon Basvant submitted a report to respondent No.3. On 3rd June 2017, Sub-Divisional Officer submitted its report to respondent No.3. respondent No.3, by order dated 10th September 2018, refused to grant a licence to the petitioner based on the following reasons:

- i. The reason for the acquisition of a firearm is not justifiable.
- ii. On perusal of the police report, a threat to the petitioner's life or his family is not born out.
- iii. There are no previous theft or robbery incidents in the petitioner's house.
- iv. The petitioner has not received either threat, or there is no previous untoward incident.

3. The petitioner filed appeal No.10 of 2018 before respondent No.2. respondent No.2 dismissed the appeal by order dated 4th

February 2019. Hence, the petitioner has filed a present writ petition.

4. Learned advocate for the petitioner submitted that the reasons in the impugned order do not fall within the factors referred to under section 14 of the Arms Act, 1959. The absence of a threat to the petitioner's life and family is not a ground to be considered by the authority under the Act. The right to hold a firearm is a fundamental right. The expression "good reason" in section 13 of the Arms Act, 1959, needs to be interpreted in the light of the legislation intent and object of sections 13 and 14 of the Arms Act, 1959. He, therefore, prayed for setting aside the impugned orders. Learned advocate for the petitioner relied on the following judgments:

- a) Pawan S/o Ashok Bora vs. State of Maharashtra reported in 2017 (4) Mh.L.J 619.
- b) Khan Abdul Wahab Usman vs. State of Maharashtra of this Court in Criminal Writ Petition No.2688 of 2008.
- c) Vinod Kumar vs. The State And Ors. of the Delhi High Court in Writ Petition (c) No.1631 of 2012.
- d) Sahil Kohli vs. The Additional Commissioner of Police of the Delhi High Court in Writ Petition (c) No.5959 of 2013.

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. Per contra, 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.

6. 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 must grant a licence where the conditions as 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 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 the good reason for grant of 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 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 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 absence of any threat to life or property of person, to refuse the grant of licence. It would then mean that presence or absence of threat to life or property of a person from the perspective of police authority, cannot be a good ground for refusal within the meaning of section

14. It would then follow that a police report saying there is no threat to life or property of a person is not relevant for either refusing or even granting 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 individuals 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 make up 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 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.”

7. Reading of judgment of the Single Judge of this Court in the case of **Pawan S/o Ashok Bora** (supra), 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 fire arm in public is also 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 grant of licence by laying down that it shall not refuse licence merely on the ground that such person does not possess sufficient property. The Legislature intends that possession of property would have no bearing on exercise of the power to refuse grant of licence. It would also then mean that absence of threat to the property is no criteria for refusal of the licence. So, if absence of threat to the property is not a criteria for refusal of licence, it can also be found inferentially that absence of threat to the person of the applicant would be no criteria 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 grant of licence for a non-prohibited firearm, the applicant's own perception about 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 as are referable to the provisions of sections 13 and 14 of the Act, which must also be considered while granting or refusing licence. This view finds support in other cases as well, which are discussed in foregoing paragraphs.....”

8. 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 a criminal case is pending against the petitioner. Therefore, the licensing authority must consider whether such a case is pending, the nature and allegations made in

the criminal case against the petitioner, and the role attributed to the petitioner. 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 is desirous of keeping 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.

9. 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, Nashik Division, on 4th February 2019 and Collector, Nashik, on 10th September 2018, 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

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the Arms Act, 1959.

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

(AMIT BORKAR, J.)