

2023:PHHC:120518

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-25785-2018 (O&M)
Date of Decision:-13.9.2023

Anil Malik

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate for the petitioner.

Mr. Samarth Sagar, Additional Advocate General, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner herein assails order dated 17.7.2018 (Annexure P-4) passed by Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh vide which an appeal filed by the petitioner assailing order dated 4.7.2014 (Annexure P-3) passed by Joint Police Commissioner of Police, Gurugram declining his application for renewal of arms license, has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that petitioner's brother namely Sunil Malik was murdered on 15.1.2006 in respect of which FIR No.52 dated 15.1.2006 at Police Station City, Gurugram

under Sections 302 and 120-B of Indian Penal Code came to be registered. The petitioner – Anil Malik was cited as an eye-witness to the said murder. The petitioner was issued an arms license in the year 2006 itself as he apprehended threat to his life being a star witness of the murder case. The said license was renewed subsequently in the year 2010. Thereafter, in the year 2012, the petitioner again applied for renewal of the arms license but the same was not renewed and ultimately, the arms license of the petitioner, was cancelled vide order dated 4.7.2014 (Annexure P-3). Although the petitioner preferred a statutory appeal against the aforesaid order, but the same also came to be dismissed vide impugned order dated 17.7.2018 (Annexure P-4).

3. Learned counsel for the petitioner submitted that the petitioner was never associated with the proceedings of cancellation of license and that even when he filed an appeal, the same was dismissed in his absence in violation of provisions of Section 18(5) of Arms Act, 1959, which mandates that the Appellate Authority is to give reasonable opportunity of hearing to the appellant.
4. Learned counsel for the petitioner further submitted that, in any case, both the authorities have not appreciated the fact that the arms license had been issued to the petitioner for a very valid reason as the petitioner being a star witness in the murder case of his brother, apprehended serious threats to his life and as a matter of fact it was mainly on account of his testimony that some of the accused were convicted, who are undergoing sentence. It has been submitted that the said accused sometimes are released on parole and that some of the co-accused, who had been acquitted, do pose threat to the life of petitioner.
5. Opposing the petition, learned State counsel submitted that arms license of the petitioner had been cancelled while noticing that the petitioner himself

was involved in two cases i.e. in FIR No.326, dated 7.5.1999 registered at Police Station City Gurugram, under Sections 148, 149, 332, 353, 307 of Indian Penal Code and in FIR No.34 dated 15.1.2000 registered at Police Station City Gurugram, under Sections 323, 506 and 34 of Indian Penal Code and that although he stands acquitted by the Court of learned Chief Judicial Magistrate, Gurugram vide judgment dated 5.4.2000 in one case i.e. in FIR No.34 dated 15.1.2000 but in the other case i.e. in FIR No.326, dated 7.5.1999 he was convicted for having committed offences punishable under Section 148, 149, 332, 353, 186, 447 of Indian Penal Code. Learned State counsel submitted that there is other evidence to show that the petitioner has not been obeying law inasmuch as on several occasions warrants of arrest had been issued for securing his presence in respect of the aforesaid cases.

6. This Court has considered the aforesaid submissions.
7. While it is not disputed by learned counsel for the petitioner that the petitioner stands convicted in one case i.e. in FIR No.326, dated 7.5.1999 registered at Police Station City Gurugram, under Section 148, 149, 332, 353, 186, 447 of Indian Penal Code but it has been submitted that upon an appeal filed by petitioner, Hon'ble the Supreme Court vide judgment dated 12.1.2016 (Annexure P-5) reduced the sentence of imprisonment of 5 months to a fine of Rs.10,000/- only.
8. While it is correct that the involvement of an applicant in any criminal case is a fact to be taken into account but in the present case the nature of offence when examined with the nature of apprehension that the petitioner could be having is such that his conviction may be overlooked. In the present case, it is not disputed that the petitioner's real brother had been murdered in the year 2006 and it was in the year 2006 that the petitioner had been issued an arms

license as he apprehended threat to his life being the star witness in the said murder case. Infact, it was on the basis of testimony of the petitioner that the accused got convicted. Since, the accused, who are presently behind bars, would be coming out on parole and, in any case, some of the co-accused have already been acquitted, the apprehension of petitioner cannot be said to be absolutely unfounded and need to be examined thoroughly. In any case, since the order of Appellate Authority i.e. order dated 17.7.2018 (Annexure P-4) does not indicate that the said order was passed after hearing the petitioner and the appellate authority has not even examined/noticed the apprehensions of petitioner, the impugned order dated 17.7.2018 (Annexure P-4) passed by Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh as well as order dated 4.7.2014 (Annexure P-3) passed by Joint Police Commissioner of Police, Gurugram are hereby set aside. The matter is remanded back to respondent No.3 - Commissioner of Police, Gurugram, Haryana to examine the matter afresh particularly taking into account the alleged apprehension of petitioner and to pass a speaking order after giving proper opportunity of hearing to the petitioner. The instant petition stands disposed off in above mentioned terms.

13.9.2023

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No