

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21129 of 2018

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Tabish Sharfuddin Son of Qaiser Sharfuddin, Resident of Mohalla Noor Compound Near Civil Line Thana, P.S.- Civil Line, District- Gaya, At present Residing at Mohalla- Indirapuri Colony, Flat No 12, Tata Steel Officers Enclave, Raja Bazar, P.S. Shastri Nagar, District Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Patna.
2. The District Magistrate, Gaya
3. The Superintendent of Police, Gaya.
4. The Arms Magistrate, District Collectorate, Gaya.
5. The Sub Divisional Officer, Gaya, District- Gaya at Gaya.
6. The Officer in Charge, Civil Line Police Station, Gaya, District- Gaya.
7. The Divisional Commissioner, Magadh Division, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mahtab Alam , Adv. Mr.Rashid Izhar, Adv.
For the Respondent/s	:	Mr.Prabhat Kumar Verma, AAG-3 Mrs.Divya Verma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 12-12-2024

1. The present writ petition has been filed for quashing the order dated 04.06.2015, passed by the District Magistrate, Gaya in Arms Case No.82 of 2015, whereby and whereunder the application filed by the petitioner for grant of arms license has been rejected. The petitioner has also assailed the appellate order dated 08.05.2018, passed by the Ld. Divisional Commissioner, Magadh Division, Gaya, in Arms Appeal Case No.19 to 2018, whereby and whereunder the appeal has been



rejected.

2. The brief facts of the case, according to the petitioner are that the petitioner is an advocate, who was/is in need of arms license, hence he had filed an application for grant of arms license before the District Magistrate, Gaya, in the year, 2015, in the prescribed format, whereafter, the same was though considered by the District Magistrate, Gaya, but he has rejected the application of the petitioner for grant of arms license by an order dated 04.06.2015, on account of absence of any threat perception. The petitioner had then challenged the said order dated 04.06.2015, before the Ld. Commissioner, Magadh Division, Gaya, by filing an appeal bearing Arms Appeal No.19 of 2018, however, the same has also stood rejected by the impugned order dated 08.05.2018 on the ground that the petitioner is not having any threat perception.

3. The learned counsel for the petitioner submits that absence of threat perception cannot be a ground for rejecting the application of the petitioner for grant of arms license. Reference in this connection has been made to a judgment, reported in **2008 (1) PLJR 151 (Amrendra Kumar Singh vs. State of Bihar & Ors.)** as also to a judgment, reported in **2015(4) PLJR 212 (Manish Kumar & Others vs. The State of Bihar & Ors.)**.



4. Per contra, the learned counsel appearing for the respondent-State has submitted that the apprehension of the petitioner is hypothetical and presumptive in nature, however, the facts remains that he is not having any threat perception, thus there is no infirmity in the impugned order dated 04.06.2015/08.05.2018, thus the present writ petition is fit to be dismissed.

5. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that the application of the petitioner for grant of arms license has been rejected solely on the ground that the petitioner is not having any threat perception, however, this Court finds that the learned Division Bench of this Court, by a judgment dated 21.1.2019, passed in **LPA No. 758 of 2018 (*The State of Bihar & Ors. vs. Deepak Kumar*)**, reported in (2019) 1 PLJR 664 has clearly held that absence of any specific security threat or imminent danger to an applicant cannot be a ground for rejection of the application of an applicant for grant of arms license inasmuch as, the same would be contrary to the intent of grant of license, as postulated by the Arms Rules, 2016. The learned Division Bench of this Court has also held that a person should not 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 and profession for the purposes of grant of license, a situation, which has now been taken care of under Rule 12(3)(a) of the Arms Rules, 2016. In this regard, it would be apt to reproduce the relevant portion of the aforesaid judgment dated 21.1.2019 hereinbelow:-

"This is clearly in consonance with Sub-Rule (3) (a) of Rule 12 extracted hereinabove, where the very purpose of the acquisition of arms has to be assessed by the licensing authority on the basis of a police report or on his own assessment. This, therefore, leaves no room for doubt that there is an obligation cast on the licensing authority now to consider these elements as referred to in the aforesaid Rules for either granting or refusing to grant a license and for that the police report and the own assessment of the licensing authority in terms thereof has to be guided in accordance with the 2016 Rules. It appears that the Rule making authority was aware of such situations that would require an assessment by the officer and, so far as the present case is concerned, the respondent-petitioner had sought the license keeping in view his profession which was disclosed in paragraph-3 of the writ petition as follows :



“3. That the petitioner is a citizen of India and a business man by Profession dealing in gold business and is invoking the Jurisdiction of this Hon'ble High Court in its writ Jurisdiction.”

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.

Accordingly, the impugned judgement of the learned Single Judge, to that extent, would stand modified, subject to the direction of the learned Single Judge to consider the grant of license to the respondent-petitioner in accordance with the 2016 Rules and take a fresh decision in the matter within the time period given therein.

The appeal stands disposed of, subject to above."

6. Yet another aspect of the matter is that the licensing authority, while considering an application for grant of arms license, has also to take into consideration the nature of trade and profession being carried out by the applicant, as is mandated by the aforesaid judgment rendered by the Hon'ble Division Bench in the case of **Deepak Kumar** (supra). In this regard, it would be relevant to refer to Rule 12(1) and (3) of the Arms Rules, 2016, which is reproduced hereinbelow:-

"12. Obligations of licensing authority in certain cases-(1) Save as otherwise provided in the Act, every licensing authority granting a licence in



Form III to an individual for the restricted or permissible arms or ammunition as specified in category 1(b) and 1(c) or category III respectively in Schedule I, shall have due regard to the application of norms specified in sub-rules (2) and (3).

(3). For grant of a licence for the permissible arms or ammunition specified in category III in Schedule I, and without prejudice to the provisions contained in clause (a) of sub-section (3) of section 13, the licensing authority, based on the police report and on his own assessment, may consider the applications of-

(a). any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/or property; or

(b). any dedicated sports person being active member for the last two years, of a shooting club or a rifle association, licensed under these rules and who wants to pursue sport shooting for target practice in a structured learning process; or

(c). any person in service or having served in the Defence Forces, Central Armed Police Forces or the State Police Force and has genuine requirement to protect his life and/or property.”

7. Having considered the rival submissions, this Court finds that the impugned order dated 04.06.2015, passed by the District Magistrate, Gaya, as also the one dated 08.05.2018, passed by the Divisional Commissioner, Magadh Division, Gaya, have solely rejected the application of the petitioner for grant of arms license on the ground that the petitioner herein is not having any



threat perception, however, this Court finds that absence of threat perception cannot be a ground for rejecting the application of the petitioner for grant of arms license, hence the said orders dated 04.06.2015/08.05.2018 are contrary to the law laid down by the Ld. Division Bench of this Court in the case of **Deepak Kumar** (supra), thus I deem it fit and proper to quash the order dated 04.06.2015, passed by the District Magistrate, Gaya, as also the one dated 08.05.2018, passed by the Divisional Commissioner, Magadh Division, Gaya and remand the matter back to the District Magistrate, Gaya for fresh consideration, who shall after granting an opportunity of hearing to the petitioner, pass fresh orders upon the application of the petitioner for grant of arms license, within a period of eight weeks of receipt/production of a copy of this order.

8. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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