

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

CRIMINAL WRIT PETITION NO. 4498 OF 2017

Shafique Ahmed Mohammed Rafique	]	
Age : 35 years, residing at Survey	]	
No. 43 - H. No. 2, Ganesh Nagar	]	
Malegaon, District - Nashik.	]	...Petitioner

VERSUS

1. The State of Maharashtra	]	
(Through the Home Department,	]	
Mantralaya, Mumbai.	]	
2. The District Magistrate,	]	
Nashik (Arms and Ammunition Branch),	]	
Nashik.	]	
3. The Divisional Commissioner,	]	
Nashik Division, Nashik.	]	...Respondents

.....

Mrs. Aisha M.Z. Ansari a/w. Mrs. Nasreen Ayubi, Advocate for Petitioner.
Mr. A.R. Patil, APP for Respondents/State.

.....

CORAM	: <u>S. S. SHINDE J.</u>
RESERVED ON	: 15th June, 2019.
PRONOUNCED ON	: 23rd July, 2019.

JUDGMENT

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. This petition is filed with following substantive prayer :-

“(b) That this Hon'ble Court be pleased to quash and set aside the order passed by the District Magistrate Nashik dated 03.11.2016 (Annexure “F”) and order passed by Divisional Commissioner, Nashik dated 10.01.2017 (Annexure “G”) rejecting the Arm License to the Petitioner;”

3. Background facts for filing the writ petition are as under :-

It is the case of the Petitioner that, the Petitioner is a businessman and his main occupation is selling and purchasing of old car. Apart from the said business Petitioner is a Social Worker and at present the Duty Chief of Maharashtra State Bharastachar Nirmulan Abhiyan. He has filed complaints in the police stations against the ration shop keeper, who used to do black marketing, and because of his complaint many ration shop keeper's licenses have been cancelled. Petitioner has also lodged complaint against the country liquor shop owners who used to breach conditions on which such permission to run the country liquor shop has been granted in their favour. They used to open their shops for sale of liquor beyond prescribe time limit.

4. It is the case of the Petitioner that, Petitioner has also lodged complaint against the power loom factory owner, who used to take help of child labour. He also made complaints against the person who used plastic

and waste material instead of wood for heating boiler. Petitioner has lodged many complaints against above said people, and therefore they have grudge against him.

5. It is the case of the Petitioner that, the Petitioner is a farmer having his field out side of Malegaon City. He is dealing in sale and purchase of land, and for this he has to carry huge amount of cash. Petitioner is required arms for his self protection, and Petitioner has on 19.08.2015 made an application to the District Magistrate Nashik for granting him permission to possess pistol on 22.10.2015 the Sub-Divisional Police Officer City Sub-Division Malegaon, has sent Police Report in favour of the Applicant to the District Collector and similarly on 28.06.2016, the Sub-Divisional Police Officer City Sub-Division Malegaon sent favourable Police Report to the Superintendent of Police, Nashik Road.

6. It is the case of the Petitioner that, he has been awarded certificates of Honour by various authorities on 03.11.2016 the District Magistrate rejected the application of the Petitioner on the ground that the said District Magistrate received report from the Superintendent of Police Nashik (Rural) on 20.09.2016, in which said Superintendent of Police

Nashik Road has not given recommendation for issuance of license of the fire arm in favour of the Petitioner.

7. It is the case of the Petitioner that the applicant's wife is corporator and therefore he fears for his life due to political rivalry, and he also have business of agricultural land so also he is fighting against corruption and enemies have been created due to said reasons. The Superintendent of Police Nashik (Rural) has stated in his police report that, there is no threat to life of the applicant therefore, he may not be granted license for fire arms. Relying upon report received from the Superintendent of Police, Nashik (Rural) District Magistrate rejected application of the Petitioner.

8. Being aggrieved by order passed by the District Magistrate Nashik, the Petitioner filled an appeal before the Appellate Authority i.e. Divisional Commissioner of Nashik Region, Nashik. On 10.01.2017 the said Divisional Commissioner Nashik Region, Nashik rejected appeal of the Petitioner. Hence, this Petition.

9. Learned counsel appearing for the petitioner submitted that, both the authorities below have not considered the material placed before

them including the Police Report, and came to wrong conclusion that the petitioner has not made out case for issuance of Fire Arm License. It is submitted that, the petitioner is a social worker and has fought against the illegal manufacturing of liquor, child labours use for carrying waste of hazardous material in the Boiler of seizing, of Malegaon City, by which the air pollution occurs. The Petitioner is also dealing in selling and purchasing of properties and have to travel along with huge amount of money. It is further submitted that, both the authorities below have wrongly come to the conclusion that there is no threat to the life of the Petitioner after considering the report submitted by the Superintendent of Police Nashik Rural, which report has been submitted ignoring the Police Report of Ayesha Nagar Police Station Malegaon in whose jurisdiction the Petitioner resides.

10. Heard the learned counsel for the parties at length and with their able assistance perused the pleadings in the Petition, grounds taken therein and annexure thereto. I have also perused the material placed on record. It is an undisputed fact that on 19/08/2015 the Petitioner has made an application before the District Magistrate Nashik for issuance of

arm's license. The District Collector, Nashik called for a report from the concerned Ayeshanagar Police Station, Malegaon. After making an inquiry and, considering the social aspects as well as the nature of business of the Petitioner, the Sub Divisional Police Officer City Sub Division, Malegaon, forwarded a detailed report on 22/10/2015 to the District Collector, Nashik by giving no objection for issuance of arm lincese to the Petitioner for the personal security. Similarly by letter dated 28/06/2016 the Sub Divisional Police Officer, Malegaon City Sub Division, Malegaon has sent a recommendation to the Superintendent of Police, Nashik Rural, for issuing new arm license to the Petitioner. However, the Superintendent of Police, Nashik Rural did not consider the request of the Petitioner, and refused to recommend his case for issuance of new arm license for personal security, and accordingly forwarded a letter dated 20/09/2016 to the District Collector, Nashik. It is on the basis of the said report dated 20/09/2016, that the District Magistrate by his order dated 03/11/2016 rejected the application of the Petitioner for issuance of arm licnese. The Appeal preferred by the Petitioner came to be dismissed by the Divisional Commissioner, Nashik and confirmed the order passed by the District Magistrate. The said order of the Divisional Commissioner, Nashik has been

communicated to the Petitioner by the Tahsildar, Administration, Nashik Division, Nashik by letter dated 10/01/2017. It is required to be noted that whilst passing the said orders, the District Magistrate and the Divisional Commissioner, have not taken into consideration recommendations made by the Sub Divisional Police Officer in the report dated 22/10/2015 submitted to the District Collector as well as in the letter dated 28/06/2016 addressed to Superintendent of Police, Nashik Rural. The reasons mentioned by the Petitioner in his application that he is a social worker and is carrying on social activities for society as well as the activities under Right to Information Act, his wife is a corporator and due to political rivalry there is danger to his life as also he is a businessman dealing with property matters. He also stated in the application that he is fighting against corruption, and therefore there are so many enemies who will cause harm to his life. Looking to the aforesaid reasons, for his personal security, he applied for arm license before the authority. The concerned Police have made an inquiry. However, both the authorities below have not considered the reasons given by the Petitioner and have passed the impugned orders only on the basis of the report dated 20/09/2016 given by the Superintendent of Police, Nashik (Rural) thereby denying recommendation

to the Petitioner for new arm license. Perusal of the report dated 20/09/2016 Superintendent of Police, Nashik (Rural) reveals that there is no specific reason mentioned in the said report as to why new arm license should not be issued to the Petitioner for personal security. The contents of the said report dated 20/09/2016 are contrary to the reports dated 22/10/2015 and dated 28/06/2016 of the Sub Divisional Police Officer, Malegaon City Sub Division, Malegaon. After making detailed inquiry, the Sub Divisional Officer found the case of the Petitioner fit for issuance of new arm license and, accordingly, by report dated 28/06/2016 made recommendation in favour of the Petitioner to issue arm license for his personal security. However, the authorities below did not take into consideration the said report and, passed the orders on the basis of the report of the Superintendent of Police, Nashik Rural dated 20/09/2016 which is a cryptic report, and contrary to the report of the local police. Relying upon this report dated 20/09/2016, both the authorities below have rejected the application of the Petitioner. Prima facie it appears that both the authorities have passed the impugned order without taking into consideration the reasons mentioned by the Petitioner in the application and the recommendations issued by the local police.

11. Though there are recommendations in favour of the Petitioner given by the local police, the Superintendent of Police, Nashik Rural did not recommend the case of the Petitioner for issuance of arm license. In my view, it would be opposite to remit the matter back to the District Magistrate, Nashik for a de-novo consideration, and the interest of justice would be served if, the Petitioner is directed to file a fresh application before the District Magistrate for issuance of arm license.

12. In that view of the matter the impugned orders are required to be quashed and set aside and are accordingly quashed and set aside, and the matter is relegated back to the District Magistrate, Nashik for a de-novo consideration. The Petitioner to apply afresh before the District Magistrate for issuance of arm license within a period of two weeks from today and, the District Magistrate to decide the said application within eight weeks thereafter. If such application is filed by the Petitioner before the District Magistrate, Nashik, the said application would be considered on its own merits and in accordance with law. The District Magistrate, Nashik, would be free to take an appropriate decision keeping in view relevant material, relevant law provisions and after following proper procedure. Needless to

state that the observations made herein above are *prima facie* in nature and confined to the adjudication of the present Writ Petition. With these observations, the Writ Petition is disposed of. Rule is accordingly made absolute to the aforesaid extent.

[S.S. SHINDE, J.]