

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4277 OF 2021**

Istiyak Gulam Gaus Kokani
Age 47 years, Occupation Business,
R/o. Kokani Pura, Bhadrakali,
Nashik.

... Petitioner

V/s.

1. Hon'ble State Minister (City)
State of Maharashtra
Office at 2nd Floor, Head Building,
Madam Cama Road, Mantralaya,
Mumbai – 400 032.

2. Commissioner of Police
Nashik City, Nashik.

3. The State of Maharashtra
Served through Public Prosecutor.

... Respondents

Mr. Tushar N. Sonawane a/w. Ms. Pooja Satpute for Petitioner.
Mr. S.S. Hulke, A.P.P. for Respondents-State.

**CORAM : A. S. Gadkari And
Prakash D. Naik, JJ.**

**RESERVED ON : 8th February 2023.
PRONOUNCED ON : 5th June 2023.**

JUDGMENT (Per- A.S. Gadkari, J.) :-

1) By the present Petition, under Article 226 of the Constitution of India, Petitioner has impugned Judgment and Order dated 21st October 2021 passed by the Respondent No.1 in Appeal No.ALS0919/A-163/POL-

09, rejecting the said Appeal, confirming the Order dated 28th June 2019 passed by the Commissioner of Police, Nashik i.e. Respondent No.2 herein, in Case No. NAPOAA/Desk-4/Arm License/A.L.Cancel/7076/2018, cancelling the arms license issued to the Petitioner by it.

2) Heard Mr. Sonawane, learned Advocate for Petitioner and Mr. Hulke, learned A.P.P. for Respondents. Perused entire record.

3) Petitioner is in the business of dairy and farming at Nashik and running a firm by name '*Kokani Dairy Farm*'. That, on account of land disputes with his relatives, the Petitioner was issued Arms License as contemplated under the provisions of Arms Act, 1959 (for short, "*said Act*") in the year 2000 by the Respondent No.2 . Petitioner thereafter purchased one 0.32 Bore Revolver of Winchster Make and one 0.22 Bore Rifle. The said license has been renewed from time to time and was lastly valid upto 31st December, 2019.

4) Petitioner received a Show Cause Notice dated 22nd January, 2019 issued by the Respondent No.2 under Section 17(3) of said Act, calling upon him as to why his license should not be cancelled. The said Notice refers to six crimes registered against the Petitioner from 2002 till 2018. It is the precise reason for issuing Show Cause Notice by the Respondent No.2 under the said Act. Petitioner answered the said Show Cause Notice by his reply dated 30th January, 2019. Petitioner, apart from other contentions more precisely stated therein that, he has not committed

any breach of the license; there is no breach to the security of the public peace or public safety; the Petitioner never indulged into any activity misusing the said arms and there is no allegation that the Petitioner used the weapons illegally or threatened with it.

The Respondent No.2 after hearing the Petitioner and after taking into consideration his reply, has cancelled his arms license by an Order dated 28th June, 2019.

5) Feeling aggrieved by the said Order dated 28th June, 2019, Petitioner preferred an Appeal under Section 18 of the said Act in the month of October, 2019 before the Respondent No.1. The Respondent No.1 by granting an opportunity of hearing to the Petitioner and Respondent No.2, has passed the impugned Judgment and Order dated 21st October, 2021, dismissing the said Appeal.

6) Mr. Sonawane, learned Advocate for the Petitioner submitted that, the Notice dated 22nd January, 2019 passed by the Respondent No.2 and the impugned Orders passed by both the Authorities below are arbitrary and bad in law. That, the impugned Orders passed by both the Authorities are cryptic and non-reasoned. That, the offences mentioned in the Show Cause Notice are petty in nature and have taken place over property disputes. That, most of the offences have been registered by his cousin brother over property disputes. He submitted that, out of the said six offences, in three offences mentioned at Serial Nos.1 to 3 therein, the

Petitioner has been acquitted by the Trial Court and three other offences are pending for final adjudication. He submitted that, even on earlier occasion, the Respondent No.2 had issued a Notice dated 19th December, 2013 for cancellation of arms license which was subsequently cancelled by its Order dated 25th February, 2014. He submitted that, the Petitioner is having dispute over landed property with one Mr. Mubbashir Kokani and litigation in the Civil Court at Nashik is pending for final adjudication. By relying on a decision of this Court in the case of *Ajay Jayawant Bhosale V/s. Commissioner of Police, Pune City & Ors. reported in 2016 SCC OnLine Bom 5019 : (2016) 3 AIR Bom R (Cri.) 90*, Mr. Sonawane submitted that, merely because a criminal case is pending, the provisions of Section 17 of the Arms Act would not be attracted. That, such provisions would be attracted in case the Licensing Authority finds that, continuance of license is detrimental to public peace or public security and safety. But the Authority concerned will have to record a finding that, how and under what circumstances and which manner the possession of arms license could be contrary to the provisions of Section 17 (3)(b) of the said Act. He submitted that, both the Authorities below have not considered the said point and therefore the impugned Orders be quashed by allowing present Petition.

7) Per contra, learned APP submitted that, both the Authorities below have taken into consideration the entire material placed before it,

including the contentions and pleadings of the Petitioner before passing the impugned Orders. He supported the impugned Orders and prayed for dismissal of the Petition.

8) At the outset, it is to be noted here that, the facts in the case of *Ajay J. Bhosale (Supra)* materially differ from the case in hand. In that case, only one case was pending for adjudication before the Court and ten years prior to filing of application for renewal, no incidence of misuse of firearm or crime was reported. The Court was considering the case of the Petitioner wherein only one case was pending against him. In paragraph No.13 thereof this Court has held that, each case is required to be considered on its own merits.

9) In the present case, the Notice dated 22nd January, 2019 mentions six criminal cases registered against the Petitioner. The Respondent No.2 i.e. Licensing Authority has considered the same to be of serious nature and has reached to the subjective satisfaction that, if the said arms are permitted to be in possession of the Petitioner, there is every possibility of its misuse by him causing breach of public peace and security. The Licensing Authority therefore has recorded a finding that the arms license of the Petitioner needs to be revoked under Section 17(3)(a)(b) and (d) of the said Act. After perusing entire record we are of the view that, the conclusion drawn by the Respondent No.2 and upheld by the Respondent No.1 is proper and right.

10) Even if the contention of the Petitioner is accepted that, he has been acquitted from three cases mentioned at Serial Nos.1 to 3 referred to in the Notice then also, it clearly shows the inclination of Petitioner towards criminality. The possibility of use of firearms by the Petitioner for commission of a crime, breach of public security and peace cannot be ruled out. According to us, both the Authorities below have taken into consideration all the necessary and relevant aspects of the material placed before it and have reached to a conclusion by its impugned Orders. There is concurrent finding recorded by both the Authorities below. Perusal of impugned Orders would clearly indicate that, both the Authorities have not committed any error while passing it.

11) According to us, there are no merits in the Petition and is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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