

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3801 OF 2022

Amritpal Singh Khalsa,
Advocate MAH/6057/2017
R/at 201-2, Pleasure, Park Opp.
Pinto Park, OT Section,
Ulhasnagar - 421003

.Petitioner

Vs.

1. Commissioner of Police,
Thane Police Commissioner, Thane.
2. Deputy Commissioner of Police,
Behind Central Police Station,
Ulhasnagar.
3. Senior Inspector of Police,
Central Police Station, Ulhasnagar
4. District Collector, Thane
Opp. Court Naka, Thane.
5. Home Minister,
Mantralaya, Mumbai - 400 032.
6. Sh. Anand S. Limaye (in his Personal
Capacity Presently Add. Chief Secretary,
Home Department, Mantralaya,
Mumbai - 400 032.
7. State of Maharashtra,
Through Chief Secretary,
Mantralaya, Mumbai - 400 032.
Service on Public Prosecutor,
Bombay High Court.

.Respondents

 Mr. Amritpal Singh Khalsa, party in person is present.
 Mr. A. R. Kapadnis, APP for the Respondent-State.

**CORAM : SUNIL B. SHUKRE AND
 ABHAY. S. WAGHWASE, JJ.**

DATE : 14 MARCH, 2023

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The Petitioner, who appears in person, submits that the impugned order passed by the Appellate Authority is bad in law as it has not considered various points put forward before it by the Petitioner and has also ignored the case law on which reliance was placed by the Petitioner. He further submits that the impugned order also does not take into consideration the directions issued by this Court in Writ Petition No. 4512 of 2021 on 15th March, 2022 to the effect that if delay condonation application is filed, it shall be dealt with positively. In other words, according to the Petitioner, the impugned order is the result of non application of mind.

4. Learned APP, however, disagrees. He submits that although it is true that each and every point has not been separately dealt with in the impugned order, the impugned order does show the application of mind on the part of the Appellate Authority, as it records satisfaction about presence of substance in the points put forward by the Appellate Authority. Therefore, according to him, the impugned order could not be said to be an order which is passed by not properly applying mind to the facts of the case and law applicable to them.

5. On going through the impugned order, we find substance in the submissions of Petitioner and no merit in the arguments of learned APP.

6. The Petitioner has raised several grounds such as, Thane Municipal Commissioner has not granted an opportunity of hearing, has violated principles of natural justice; the threat to own life perceived by the Petitioner being genuine and it was required to be considered mainly from the point of view of the Petitioner and so on. It is also seen that the Petitioner had placed reliance upon various case law, but, neither the grounds raised by the Petitioner, nor the case law relied upon by the Petitioner

were dealt with specifically by the Appellate Authority. It is obvious that the impugned order has to be termed as an order resulting from non application of mind.

7. In Writ Petition No. 4512 of 2021, this Court had directed the Appellate Authority, which would be dealing with the appeal filed by the Petitioner, to consider the delay condonation application in a positive manner, but, that has not been done by the Appellate Authority. The Appellate Authority has also not considered the fact that there was really no delay in filing the appeal as the Petitioner was prosecuting this remedy before this Court when he filed Writ Petition No. 4512 of 2021 against challenging the order dated 17th June, 2021, passed by Thane Municipal Corporation, refusing Fire Arm License to the Petitioner. It is well settled law that when a party prosecutes some other remedy, may be wrongly, the Authority which deals with the appeal filed by such a party, must grant some lee way to such a party and condone the delay, but, the Appellate Authority has not done so. The impugned order is, therefore, not sustainable in the eyes of law and it deserves to be quashed and set aside on this very ground also.

8. In view of above, we find that the impugned order cannot be upheld by us and it deserves to be quashed and set aside by allowing the Petition.

9. Petition is allowed. The impugned order is quashed and set aside. The delay caused for filing of an appeal is hereby condoned. The matter is remanded back to the Appellate Authority for fresh consideration on merits of the appeal after giving due opportunity of hearing to the Petitioner.

10. The Appellate Authority shall decide the appeal in accordance with law, as expeditiously as possible, within a period of three months from the date of appearance of Petitioner before it. The Petitioner shall appear before the Appellate Authority on 27th March, 2023.

11. Rule is made absolute in the above terms.

12. The authenticated copy of the order be furnished to the Petitioner.

Digitally signed
by GANESH
SUBHASH
LOKHANDE
Date: 2023.03.15
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GANESH
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LOKHANDE

(ABHAY. S. WAGHWASE J.)

(SUNIL B. SHUKRE, J.)