



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1016 WRIT PETITION NO. 4396 OF 2024

Shaikh Abdul Salam Abdul Nabi

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

.....

Mr. S. R. Bagal, Advocate holding for Mr. B. N. Gadegaonkar,
Advocate for the Petitioner.

Mr. Adv. R. R. Tandale, AGP for the State.

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 28th AUGUST, 2024.

PER COURT :

1. The Petitioner impugns the order dated 22.12.2023 passed by the Divisional Commissioner, by which, the prayer to condone delay caused in filing appeal under Section 18 of the Arms Act has been rejected.

2. Learned Advocate for the Petitioner submits that the Petitioner received copy of the order passed by the District Magistrate on 11.01.2023, however. Because of illness of his parents and the period of Ramzan, the delay has occurred. However, the Divisional Commissioner refused to condone the delay and foreclosed the

remedy of appeal available to the Petitioner. He would submit that the delay is not intentional and the Petitioner has not derived any disadvantage by making such delay.

3. Learned APP however opposed the prayer. She would submit that the Petitioner has mentioned vague reasons without particulars for each and every day of delay. She submits that the copy of order passed by the District Magistrate was received on 11.01.2023 and thereafter delay of 121 days has caused which is not explained. Therefore, she justifies the impugned order.

4. It appears that the Petitioner is litigating for getting licence under Arms Act. His application was rejected by the District Magistrate vide order dated 15.12.2022, copy of which was made available to him on 11.01.2023. Taking into account the limitation period prescribed for filing appeal under Section 18 of the Arms Act, actually there is delay of about 147 days.

5. The Petitioner has given explanation for delay. Firstly, he contends that his parents are old aged. The period of Ramzan was going on. He was also required to collect the documents and appoint

the Advocate. Petitioner finally submits that due to aforesaid reasons, the delay has occurred. It is true that the explanation for the delay does not prescribe the particulars for each and every day. However, the fact remains that the Petitioner could not have drawn any advantage by causing delay. It is trite that a pragmatic view of the matter needs to be taken in the matter of delay condonation. The length of delay is not material. The reasons are required to be taken into account. Further, when Petitioner has not derived any advantage by causing such delay, normally delay needs to be condoned. It appears that the Divisional Commissioner has taken hyper technical approach of the matter and fore-closed the statutory remedy of appeal available to the Petitioner. In that view of the matter, the impugned order cannot sustain in law. Hence the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 22.12.2023 passed by the Divisional Commissioner, Aurangabad, is quashed and set aside.

(iii) Appeal be registered and decided on its own merits.

(S. G. CHAPALGAONKAR)
Judge

dyb