

GRM

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

CRIMINAL WRIT PETITION NO. 1305 OF 2022

Javed Ismail Ansari ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Swapnil Wagh, Adv. for the Petitioner.

Ms. Anamika Malhotra, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 23, 2023

P.C. :

The challenge in this writ petition is to the order dated 07/02/2022 passed by the Deputy Commissioner of Police, Zone-5, Mumbai, whereby the petitioner has been externed from the limits of Brihanmumbai Commissionerate for a period of one year. Since this order of externment has been upheld by the Appellate Authority, Divisional Commissioner, Konkan Division, Mumbai vide his order dated 07/10/2022, the petitioner is before this Court.

2. Heard.

3. Learned Advocate for the petitioner would submit that there was no live link between the order of externment and the crimes registered against the petitioner. No details of in-camera statements of the witnesses have been given to the petitioner. The same has caused prejudice to the petitioner in his defence.

a. Learned Advocate has relied on the judgment of the Hon'ble Apex Court in the case of **Deepak S/o. Laxman Dongre vs. The State of Maharashtra and Others** reported in **Criminal Appeal No. 139 of 2022 @ SLP(Cri.) No. 9032 of 2021**, to ultimately urge for allowing this petition.

4. Learned APP for the State would, on the other hand, submit that the order of externment was nothing but a sort of administrative order. Judicial review thereof is permissible on limited grounds.

a. Learned APP has relied on the judgment of Hon'ble Apex Court in the case of **State of NCT of Delhi vs. Sanjeev @ Bittoo** reported in **2005 AIR (SC) 2080**. According to her, the concerned authority had arrived at a conclusion on subjective satisfaction. There was material on record to suggest the petitioner to have been involved in number of criminal activities. Some of the victims were even afraid of coming forward to lodge report against him.

b. According to learned APP, the order impugned herein, is passed with sound reasons and therefore, no interference is warranted therewith.

5. Considered the submissions advanced. Perused the order impugned herein.

6. In the case of **Deepak S/o. Laxman Dongre vs. The State of**

Maharashtra and Ors. (*supra*), the Hon'ble Apex Court has held that

"We have given careful consideration to the submissions. Under clause (d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by passing an order of externment must stand the test of reasonableness."

7. For better appreciation, Section 56 of the Maharashtra Police Act, 1951 is reproduced before, which reads thus,

"56. Removal of persons about to commit offence
 – (1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this Section, to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the State Government in that behalf -

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or

(b) that there are reasonable grounds for believing

that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or [XVII of the Indian Penal Code](#), or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance or supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c)

(2)"

8. The show-cause notice was issued on 04/09/2021. The following criminal cases pending against the petitioner herein, were relied on for initiating action for his externment :-

Sr. No.	C. R. Number	Under Sections	C.C. Number	Remark
1	508/2021	324, 506(2), 323 & 114 of Indian Penal Code, 1860	--	under investigation
2	96/2019	324, 504, 506, 143, 147, 549/PW/2020 148, 149 & 144 of Indian Penal Code, 1860		pending trial
3	395/2015	332, 353 & 354 of Indian Penal Code, 1860	671/PW/2016 read	under investigation

with 182, 129, 177 & 176
of the Maharashtra Police
Act, 1951

4 Chapter Case 107 of Code of Criminal No. 55/2019, Procedure, 1973 Court Case No. 165/2019	--	Kurla Police Station executed a bond on 02/03/2019 along with a valid surety of Rs. 5,000/- for one year to keep peace and good behaviour
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In addition of the statements of two witnesses, whose identity has not been disclosed, show-cause notice was issued on 04/09/2021. One of the crimes registered against the petitioner bearing no. C.R. No. 395/2015, dates back to the year 2015. When the notice was issued, the same was pending investigation. The same therefore ought not to have been relied on, moreso, when the time gap between the registration of said crime and issuance of show-cause notice, was of little over six years. Same is the case about C.R. No. 96/2019 and a bond of good behaviour executed by the petitioner herein, way back in 2019. The time gap between the two, on the one hand and the show-cause notice, is of little over two years. The petitioner was therefore justified to contend that there was no live link between the two. Then remained, the crime in C.R. No. 508/2021. When the show-cause notice was issued, the said crime was under investigation.

9. True, when the order of externment came to be passed, a

charge-sheet was filed in connection with the said crime. The allegations in First Information Report, pursuant to which the said crime was registered, formed part of the show-cause notice. Those avements undoubtedly indicate the petitioner to have not assaulted the informant therein. What has been alleged against the petitioner is that, he exhorted (instigated) the co-accused to beat the informant. To be specific, the words allegedly uttered by the petitioner, are as follows :-

“मारो साले को, जान से मारो, दुबारा हमारे रस्ते में नहीं आयेगा,
छोड़ो मत”

10. Less said is the better about the merits of said crime, since the same is pending trial. Presumption of innocence is in favour of the petitioner. As such, in view of this Court, the competent authority ought not to have observed that the petitioner's crime graph was in ascending order and the same therefore is a reason to extern him for a period of one year.

11. Then there are statements of two witnesses. Their identity has not been disclosed. The gist of their statements suggests that in the first and second weeks of August 2021, the petitioner and co-accused intercepted one of them and robbed Rs. 1,870/-. In case of another witness, he was allegedly robbed of his Rs. 2,300/-. The said amount was alleged to have been forcibly removed from the till of his shop. It is true that the Appellate Authority was justified in not disclosing the identity of those witnesses. He however ought to have given some more details, so

that the petitioner could have met the material, on the basis of which he was sought to be externed. The record indicates that the petitioner was in the business of building and construction. The impugned order also indicate that the petitioner had presented witnesses in his defence. It is however not known as to why they were not allowed to be examined. Reference thereto finds place at page 2 of the order of externment. The same is reproduced below :-

"सदर हद्दपार प्रस्तावाच्या अनुषंगाने चौकशी अधिकारी स.पो.आ. कुर्ला विभाग यांनी सविस्तर चौकशी अहवाल सादर केला आहे. आपण चौकशी कामी स.पो.आ. कुर्ला विभाग यांचे समक्ष हजर होता. सदर हद्दपार प्रस्तावाच्या अनुषंगाने आपणास आपले म्हणणे सादर करण्यासाठी आपणास दिलेल्या म.पो.का. कलम ५९ अन्वये नोटीसचे उत्तर सादर केले नसून आपण आपल्या बचावाकरिता साक्षीदार हजर केलेले आहेत."

12. This Court is therefore of the view that the order of externment is not based on subjective satisfaction of the authority concerned. Stale offences were relied on. The crime, wherein the petitioner had not committed any overt act, was relied on. The witnesses produced on his behalf appears to have not been examined. The reason thereto is not forthcoming. As such, the same caused prejudice to the petitioner in his defence. The externment order impugned herein, is therefore liable to be set aside. The petition therefore succeeds. The same is thus allowed in terms of prayer clause (b).

(R. G. AVACHAT, J.)