



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.193 OF 2024

Bhusan Namdev Patil
Age - 32 years, Occ - Agri & Social Work
R/o Kajgaon, Taluka - Bhadgaon
District - Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai
2. The Divisional Commissioner
Nashik Division, Nashik
3. The Sub Divisional Magistrate
Pachora, District - Jalgaon
4. The Sub Divisional Police Officer
Chalisgaon, District - Jalgaon
5. The Additional Superintendent of Police
Jalgaon, District - Jalgaon
6. The Police Inspector,
Bhadgaon Police Station,
District - Jalgaon

RESPONDENTS

.....
Mr. Rajendra N. Chavan, Advocate for the petitioner
Mrs. S. S. Joshi, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 16th APRIL, 2024
PRONOUNCED ON : 24th APRIL, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally.

2. This petition, filed under Articles 226 and 227 of the Constitution of India, takes exception to externment order dated 22nd September, 2023 passed by respondent No.3 – Sub Divisional Magistrate and order dated 18th January, 2024 passed by respondent No. 2 – Divisional Commissioner.

3. Respondent No. 6 – Police Inspector, Bhadgaon Police Station, forwarded a proposal dated 18th April, 2023 under section 56 (1) (A) (B) of Maharashtra Police Act (hereinafter, for short “the said Act”), to Sub Divisional Magistrate, Pachora for externment of petitioner from Jalgaon, Dhule, Nashik and Aurangabad districts for a period of two years. On receipt of said proposal, it was forwarded to respondent No. 4 – Sub Divisional Police Officer, Pachora for inquiry. Respondent No. 4 issued notice dated 10th July, 2023 under section 59 of the said Act to the petitioner. In the said notice, following offences, registered against petitioner and preventive actions taken against him, are relied upon:

Sr. No.	Police Station	CR No.	Offence punishable u/s	Present position
1	Pachora	165/2023	309, 106 IPC	Investigation
2	Bhadgaon	121/2018	354, 354 (A), 452, 448, 506 IPC	Acquitted
3	Bhadgaon	05/2023	354, 354 (A) 34 of IPC with 8 and 12 of POCSO Act	Pending

4	NC	22/2023	506 IPC	Pending
5	Chapter case	101/2021	107 CRPC	--

4. Petitioner replied the said notice. Considering material placed on record, respondent No. 4 – Sub Divisional Police Officer recommended externment of petitioner from Jalgaon, Dhule, Nashik and Aurangabad districts for a period of two years.

5. On receipt of report from respondent No.4 – Sub Divisional Police Officer, respondent No.3 – Sub Divisional Magistrate issued notice dated 17th August, 2023 to petitioner. Pursuant to said notice, petitioner appeared on 6th September, 2023 and submitted his written say. On that day, matter was closed for order and on 22nd September, 2023, respondent No.3 – Sub Divisional Magistrate has passed order of externment of petitioner, thereby externing petitioner from Jalgaon, Dhule, Nashik and Aurangabad districts for a period of two years.

6. Being aggrieved by said order of externment, petitioner filed Externment Appeal No. 94 of 2023 before respondent No.2 – Divisional Commissioner. After hearing the parties and considering material on record, respondent No.2 modified the externment order, by restricting externment of petitioner to entire Jalgaon district for a period of 18 months (one and half years). Hence, the present petition.

7. Heard learned advocate for petitioner and learned APP for the State. Perused the memo of petition, documents annexed thereto, order of externment and police papers.

8. Learned advocate for petitioner has assailed externment order and order passed by respondent No.2 in appeal, by submitting that petitioner is a whistle blower and he has taken up cause of public at large and has filed various complaints to government authorities, which was not liked by government officials as well as persons who are involved in the wrong doings and, therefore, the externment order is passed against him. He submits that only three offences are registered against him; one is of the year 2018 for offences punishable under sections 354, 354 (A), 452, 448, 506 of Indian Penal Code, another is of the year 2023 for offence punishable under sections 354, 354 (A), 34 of Indian Penal Code read with sections 8 and 12 of Protection of Children from Sexual Offences Act and the third offence is of the year 2023 under section 309 and 186 of the Indian Penal Code. One non cognizable offence under section 506 of the Indian Penal Code and one Chapter Case under section 107 of the Criminal Procedure Code is registered against petitioner. Therefore, there is no material to warrant curtailment of the fundamental right of petitioner, by taking drastic action of

externment. He submits that though case in respect of Bhadgaon Police Station Crime No. 121 of 2018 is still pending, in the notice as well as in the order, it is shown that petitioner is acquitted in the said case. This reflects non application of mind. It is submitted that in camera statements of confidential witnesses are not mentioned in the show cause notice. There is dispute between petitioner and complainant in said crime about drainage line. Therefore, petitioner has filed private complaint in the year 2018 and, thereafter the petitioner is falsely implicated in the crime, at the instance of complainant. Complaint is filed after 4 days of issuance of process against complainant by the Trial Court. Petitioner was granted anticipatory bail in said crime. It is submitted that there is no material to justify the externment of petitioner under section 56 (1) and (2) of the said Act. It is submitted that upon filing of charge sheet in Crime No. 121 of 2018, case is numbered as RCC No. 16 of 2019. In this case, evidence of 4 witnesses is recorded by prosecution. Two witnesses out of them are from petitioner's village, therefore, there is no merit in the contention of respondents that witnesses are not coming forward to depose against petitioner. It is, therefore, submitted that order of externment is liable to be quashed and set aside.

9. In support of his submissions, he relied on following

judgments:-

- i. *“Sayyad Mohsin Sayyad Kamroddin V/s Superintendent of Police and Others (Criminal Writ Petition No. 59 of 2024)*
- ii. *Harikesh @ Guddu Madam Kattilwar V/s Deputy Police Commissioner and Others (Criminal Writ Petition No. 908 of 2022)*
- iii. *Imtiyaz Hussain Sayyad V/s State of Maharashtra and Others (Criminal Writ Petition No. 2805 of 2023)*
- iv. *Deepak Laxman Dongre V/s State of Maharashtra and Others (2022 ALL MR (Cri) 761 (SC))*
- v. *Ravi Ramdas Aher V/s State of Maharashtra (2018 DGLS (Bom) 1921*
- vi. *Vishwas Damduji Choudhari V/s The State of Maharashtra and Others (2010 ALL MR (Cri) 123)*
- vii. *Hussainmiya @ Jago Razakmiya Qadri V/s The State of Gujarat and Others (1999 Cri LJ 2401)*
- viii. *Prakash Sitaram Shelar V/s State of Maharashtra and Othes (1989 SCC Online Bom 357)*
- ix. *Rahmat Khan @ Rammu Bismillah v/s Deputy Commissioner of Police and Others (Criminal Appeal No. 912 of 2021)*
10. Learned APP, by relying on reply affidavit filed on behalf of

respondent No.6, has supported the order of externment and the order passed by the appellate authority. She points out that though it is mentioned in the notice that petitioner is acquitted in Crime No. 121 of 2018, however, it is mentioned below, that the case is still pending. She submits that since petitioner is involved in commission of two crimes in the year 2023, against human body, live link is sufficiently established. She submits that all the procedure is followed before passing the externment order and externing authority as well as appellate authority have recorded subjective satisfaction for externing petitioner. She submits that petitioner has attempted to commit suicide after externment order is passed, which shows that petitioner has no regards to law. According to learned APP, externment order is proper.

11. Record indicates that following offences registered against petitioner and preventive actions taken against him, is taken into consideration by externing authority, while passing externment order :

Sr. No.	Police Station	CR No.	Offence punishable u/s	Present position
1	Pachora	165/2023	309, 106 IPC	Investigation
2	Bhadgaon	121/2018	354, 354 (A), 452, 448, 506 IPC	Acquitted
3	Bhadgaon	05/2023	354, 354 (A) 34 of IPC with 8 and 12 of POCSO Act	Pending

4	NC	22/2023	506 IPC	Pending
5	Chapter case	101/2021	107 CRPC	--

12. Record also indicates that from time to time, petitioner has made various complaints espousing social cause and on the basis of complaints of petitioner, appropriate action is taken against the erring officials and others. Therefore, there appears substance in the contention of petitioner that he is whistle blower and as action is taken at his instance against erring official and others and, therefore, present externment order is passed against him.

13. First ground of challenge of petitioner is that in camera statements recorded of confidential witnesses are not given to him along with the show cause notice. Perusal of notice dated 10th July, 2023 shows that there is no reference of any in camera statements of confidential witnesses. It is a matter of record that first offence punishable under section 354, 354 (A), 452, 448 and 506 of Indian Penal Code is registered against petitioner in the year 2018. Thereafter, in 2023, second offence at Crime No. 5 of 2023 punishable under section 354, 354(A) read with 34 of the Indian Penal Code and under sections 8 and 12 of the POCSO Act, is registered against petitioner. The third offence at Crime No. 165 of 2023 is registered under sections 309 and 106 of the Indian Penal Code. In all the crimes, petitioner is released on bail.

Appropriate criminal prosecution is initiated against petitioner and petitioner can be dealt with under the provisions of the Indian Penal Code. Registration of these three offences is not sufficient to warrant extreme measure of externment against petitioner. Non application of mind on the part of externing authority / respondent No. 3 is, therefore, apparent on the face of record, while passing the externment order.

Show cause notice as well as order of externment is silent with regard to execution of bond by petitioner. There is no whisper in the show cause notice as well as in the externment order that there was breach of undertaking and conditions of bond executed by petitioner in chapter case. This aspect is, therefore, totally ignored by respondent No.3 - Sub Divisional Magistrate and respondent No.2 - Divisional Commissioner.

While passing the externment order, in camera statements of two confidential witnesses are referred. However, there is no reference of in camera statements of confidential witnesses in the show cause notice dated 10th July, 2023. The record does not indicate that in camera statements of two confidential witnesses are personally verified by the Sub Divisional Magistrate, however, they are relied upon by respondent No. 3 - Sub Divisional Magistrate while passing externment order. The

impugned order, therefore, vitiates on this ground also.

14. A vague statement is made in the notice that on inquiry with residents, nobody is coming forward to depose against petitioner. Petitioner has placed on record copies of evidence of four witnesses, recorded in RCC No. 16 of 2019 between 18th April, 2023 and 13th February, 2024. Therefore, there is no merit in the contention of respondents that people are afraid to depose against petitioner and nobody is coming forward to give statement against petitioner. Though it is mentioned in the externment order that, the externing authority has recorded satisfaction that witnesses are not willing to come forward to give evidence in public, against externee, by reason of apprehension on their part, as regards safety of their person or property, however, four witnesses have deposed against petitioner in Court and, therefore, the said satisfaction is not justifiable in view of these facts.

15. There does not appear any material on record showing subjective satisfaction of externing authority / respondent No.3 for passing the externment order. Merely because 3 offences are registered against petitioner in respect of human body, that by itself is not sufficient to initiate extreme measure of externment against petitioner.

16. Respondent No. 2 - Divisional Commissioner has failed to appreciate these relevant aspects and has erroneously upheld the externment order, though, by reducing period and area of externment.

17. For the aforesaid reasons, externment order suffers from vice of non application of mind and arbitrariness. Material on record is not sufficient to warrant externment of petitioner.

18. In the result, following order.

ORDER

- A. Writ petition is allowed.
- B. Externment order dated 22nd September, 2023 passed by respondent No. 3- Sub Divisional Magistrate is quashed and set aside.
- C. Impugned order dated 18th January, 2024 passed by respondent No. 2- Divisional Commissioner in Externment Appeal No. 94 of 2023 is quashed and set aside.
- D. Rule is made absolute in above terms.

**[NITIN B. SURYAWANSHI]
JUDGE**