



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 286 OF 2024

Mr. Ashok Bhausahab Wahul,
Age:- 30 years, Occ. Business,
R/o. Sahara Colony, CIDCO,
Waluj Mahanagar-1, Aurangabad

... PETITIONER

VERSUS

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Deputy Commissioner of Police,
Range-1, Aurangabad City,
Dist. Aurangabad
3. The Police Sub Inspector,
MIDC Police Station, Waluj,
Dist. Aurangabad

... RESPONDENTS

....
Mr. Manikrao. L. Wankhade, a/w Mr. Jitendra S. Jain, Advocates
for the Petitioner
Mr. C. V. Bhadane, APP for the Respondents – State
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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 25.11.2024

PRONOUNCED ON : 04.12.2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of both the sides.

2. The Petitioner takes exception to the order dated 01.12.2023 passed by the Respondent No. 1, the Divisional Commissioner, Chhatrapati Sambhajinagar (Aurangabad) in Externment Appeal No.2023/G.A./Desk-1/ Pol-1/Externment/CR-70, thereby confirming the order dated 12.06.2023 passed by the Respondent No. 2, the Deputy Commissioner of Police, Aurangabad in proceeding No. PDC/Range-1/V-2/Externment-01-23/Final order/2023-1940 thereby externed the Petitioner from entire District of Chhatrapati Sambhajinagar, for the period of two years.

3. On perusal of record, it indicates that the concerned Police Authorities sought to invoke Section 55 of the Maharashtra Police Act, 1951 for the purpose of externment of the Petitioner. On 18.02.2023, the Senior Police Inspector of M.I.D.C. Waluj Police Station, submitted a proposal with the Respondent No. 2 for externing the Petitioner. In pursuance of said proposal, the Petitioner was served with first show cause notice under Section 59 of the Maharashtra Police Act on 17.02.2022. Thereafter, again a second show cause notice under Section 59 of the Maharashtra Police Act was served upon to Petitioner on 03.03.2023 on the ground of illegal activities of the Petitioner for committing crimes against the citizens

and extortion, so also, disturbing the peace and tranquility in the society. It was further stated therein that number of offences registered against the Petitioner, however, due to the threat issued by the Petitioner, the witnesses are not coming forward to give statements or complaints against the Petitioner. From the statement of the witnesses it appears that the Petitioner has been issuing threat to lodge a false complaint against the industrialists and abusing them in filthy language.

4. On 14.03.2023, the Petitioner submitted his reply and contended that he is an honest man and he is playing active role in raising the voice for the labours who are engaged in various industries situated at M.I.D.C. Waluj. No serious offences were registered against him. He is a permanent resident of CIDCO, Waluj Mahanagar-1. His father is having 4 Acre of land and he is also working in Astara Tooling, B-51/37, Dinde Udyog, M.I.D.C. Waluj, and drawing salary of Rs. 25,000/- p.m. and maintaining his family. False offence was registered against him and he has not indulged in any such crime as aleegeed. The Petitioner further contended that, three months before, at about 11.00 a.m., one person had visited his company and at that time, he met the said person and introduced

himself being a founder President of “Dr. Babasaheb Ambedkar Vichar Manch”, and he is receiving complaints regarding management of company of said person. The Petitioner further stated that the minor workers are engaged in the company of witness No. 1. The witness No. 1 falsely stated that he (Petitioner) demanded Rs. 5,00,000/- (Rupees Five Lakh) as extortion though he has not raised any such demand at any time before. So also, the Crime No.134 of 2023 was falsely registered against him for the offence punishable under Section 384 of I.P.C., on false complaint of informant Shri Digambar Vinayak Naik. However, on 12.06.2023, the Respondent No. 2 Deputy Commissioner of Police, passed an order holding that -

- (1) Crime No.134 of 2023, registered on 15.02.2023 against the Petitioner for the offence punishable under Section 384 and the investigation of said crime is in progress;
- (2) Crime No.410 of 2022, registered on 30.04.2022 for the offence punishable under Section 341, 323, 324, 504, 506 read with Section 34 of I.P.C. and the trial of said offence is pending;
- (3) N.C. No.1078 of 2022, registered on 14.05.2022 for the offences under Section 323, 504, 506 read with Section 34 of I.P.C. and
- (4) Chapter Case No. 213 of 2021 for the offence punishable under Section 107 of Cr.P.C. registered on 08.09.2021 as well as report of cancellation of bond dated 15.05.2022.

Therefore, in order to prevent commission of serious nature of crime and to maintain peace and tranquility, the Respondent No. 2 externed the Petitioner for the period of two years from entire District of Chhatrapati Sambhajanagar.

5. Being aggrieved by the said order, the Petitioner preferred an appeal under Section 60 of the Maharashtra Police Act before the Appellate Authority i.e. Respondent No. 1. However, on 01.12.2023, the Respondent No. 1/Appellate Authority passed the impugned order and confirmed the externment order dated 12.06.2023, passed by the Respondent No. 2.

6. The learned Counsel for the Petitioner canvassed that the externment order dated 12.06.2023 as well as the impugned order dated 01.12.2023 did not disclose any material about registration of serious nature of crime against the Petitioner. However, Crime No. 134 of 2023 registered against him for the offence punishable under Section 384 of I.P.C. on the basis of false and vexatious allegations and the trial of another Crime No. 410 of 2022 registered for the offence punishable under Sections 341, 323, 324, 504, 506 read with

Section 34 of I.P.C. is pending and other crime N.C. Crime No. 1078 of 2022 was allegedly registered on the false complaint and Chapter Case No. 213 of 2021 under Section 107 of Cr.P.C. Therefore, said crimes are not of serious nature. The Petitioner is law abiding citizen and only and the trial in Crime No. 410 of 2022 is pending. Therefore, there is no subjective satisfaction to level the provisions of Section 55 of the Maharashtra Police Act. However, the Respondent No. 2 passed an order dated 12.06.2023 without considering the nature of offence, the Respondent No. 1/Appellate Authority dismissed the appeal on 01.12.2023, though he is not the member of any gang. So also, there is no material to comply with the provisions of Section 55 of the Maharashtra Police Act. Hence, the impugned orders are illegal and bad in law.

7. The learned Counsel for the Petitioner further canvassed that the Respondent No.1/Appellate Authority, without considering the facts as well as without appreciating the documentary evidence available on record, passed the impugned order dated 01.12.2023 on ground that in the year 2022 and 2023, there are cognizable offences and one non cognizable offence registered against the Petitioner. So also, in the year 2022 and 2023, the proceeding for externment of

the Petitioner was initiated for prevention of committing the serious nature of crimes. It is further submitted that for the purpose of maximum period of externment of two years, reasons must be assigned by the Police Authorities and in absence of same, such order is not sustainable.

8. In support of these submissions, the learned Counsel for the Petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of *Deepak Laxman Dongre V/s. State of Maharashtra and Ors.; AIR 2022 SC 1241* and *Rahmat Khan @ Rammu Bismillah V/s. Dy. Commissioner of Police; (2021) 8 SCC 362*.

9. Per contra, the learned APP strongly opposed the Petition and submitted that the due procedure laid down in law was complied by the Respondent Police Authorities, so also, principles of natural justice are duly followed. According to the learned APP, on 17.07.2022, first show cause notice was served upon the Petitioner under Section 59 of the Maharashtra Police Act. However, the Petitioner did not submit reply. Therefore, again on 03.03.2023, second show cause notice was served upon the Petitioner under Section 59 of the Maharashtra Police Act on the ground that the Police Inspector of M.I.D.C. Waluj Police

Station, submitted a proposal for the externment of the Petitioner on 24.02.2023. Accordingly, due inquiry was conducted. The statements of the witnesses were recorded and during inquiry, it was revealed that Crime No. 134 of 2023 is registered against the Petitioner for the offence punishable under Section 324 of I.P.C. on the report of the informant Shri. Digambar Vinayak Naik. Second, Crime No. 410 of 2022 is registered against the present Petitioner for the offence punishable under Section 341, 324, 323, 504, 506 read with Section 34 of I.P.C. on the report lodged by informant Shri Ramkishan Bandu Jadhav. Third, N.C. No. 1078 of 2022 is registered under Section 323, 504, 506 read with Section 34 of IPC on the basis of report lodged by informant Pooja Rajshekhar Chaudhari.

10. The Petitioner submitted his cause and denied about registration of serious nature of crimes against him. Therefore, after considering the said facts and after providing an opportunity of hearing, the Respondent No. 2 passed an order under Section 59 of the Maharashtra Police Act and externed the Petitioner for the period of two years from entire District of Chhatrapati Sambhajinagar. So also, the Respondent No.1/Appellate Authority confirmed the order passed by Respondent No.2, after considering the confidential report

as well as the material available on record and registration of serious crimes against the Petitioner. Therefore, this is not a fit case to interfere with the order of externment, hence prayed for dismissal of the Petition.

11. The learned APP further canvassed that the Respondent Authorities have passed the impugned orders on the administrative grounds to maintain the peace in the society. Therefore, he submits that no interference is called at the hands of this Court as the order of externment is an administrative order.

12. To buttress these submissions, the learned APP placed reliance on the case of ***Deepak Laxman Dongre V/s. State of Maharashtra and Ors.; AIR 2022 SC 1241***, wherein the Hon'ble Apex Court has laid down the guidelines for deciding the Petitions challenging the order of externment passed by the Competent Authority. It is held that for invoking the said provisions there must be objective material on record on the basis of which Competent Authority must record its subjective satisfaction. It is further observed in cited case that even if multiple offences were registered against an individual that by itself is not sufficient to pass an order of

externment. Moreover, there must be satisfying material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give statement against the externee.

13. He further relied on the case of ***Gazi Saduddin V. State of Maharashtra and another; AIR 2003 SC 3116; (2003) 7 SCC 330***, wherein it has been held that the procedure laid down under the Act culminating in passing of the order of externment was duly followed. Primarily, the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.

14. In the case of ***N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080***, the Hon'ble Apex Court has held that the

Courts will be slow in interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, impugned orders are considered in the facts and circumstances of the case.

15. As far as the order passed by taking aid of Section 56 of the Act is concerned, though it is sought to be contended by learned APP that Appellate Authority has taken into consideration the confidential statements, however, the order passed by the Deputy Commissioner of Police, Aurangabad, does not show that such statements are taken into account. In any case, perusal of these statements, on the face of record, it indicates that these statements are general in nature. None of the witnesses have claimed any personal knowledge or fear from the Petitioner. Thus, there is no sufficient material on record to justify the order of externment of the Petitioner, which takes away his liberty as an individual guaranteed under Article 21 of the Constitution of India.

16. It is pertinent to note here that the concerned authorities has sought to invoke provisions of Section 55 and 56 of the

Maharashtra Police Act. The authorities while passing the order of externment, considered the following offences -

- (1) Crime No.134 of 2023, registered on 15.02.2023 against the Petitioner for the offence punishable under Section 384 and the investigation of said crime is in progress;
- (2) Crime No.410 of 2022, registered on 30.04.2022 for the offence punishable under Section 341, 323, 324, 504, 506 read with Section 34 of I.P.C. and the trial of said offence is pending;
- (3) N.C. No.1078 of 2022, registered on 14.05.2022 for the offences under Section 323, 504, 506 read with Section 34 of I.P.C. and
- (4) Chapter Case No.213 of 2021 for the offence punishable under Section 107 of Cr.P.C. registered on 08.09.2021 as well as report of cancellation of bond dated 15.05.2022.

17. Section 55 and 56 of the Maharashtra Police Act provides as under:-

“55. Dispersal of gangs and bodies of persons.

Whenever it shall appear in Greater Bombay and in other areas in which Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the Superintendent 3 empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by

beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto within such time as such officer shall prescribe, and not to enter to area for the areas and such contiguous districts, or part thereof, as the case may be, or return to the place from which each of them was directed to remove himself.

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 abatement 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

(3) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas ") from which he was directed to remove himself.

(2) An officer directing any person under such-section (1) to remove himself from any specified area or areas in the State may further direct such person that during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer-in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State send a report in

writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to the State he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer-in-charge of the police station nearest to the place where he may be staying.”

18. Needless to say that the investigation of Crime No. 134 of 2023 registered for the offences punishable under Section 324 was in progress on the day of passing of the order dated 12.06.2023. The Respondent No. 2 has not come with the case that any charge-sheet has been filed against the Petitioner. The trial is pending in respect of Crime No. 410 of 2022 registered for the offence under Section 341, 323, 324, 504, 506 read with Section 34 of I.P.C. The third is N.C. report and another is Chapter Case, those do not appear to be of serious nature.

19. In the case of ***Deepak Laxman Dongre cited (supra)***, the Hon'ble Apex Court in Para Nos. 4, 6 and 7 of the said judgment has considered the fundamental rights conferred on the citizen to move freely through out the Country under clause (d) of Article 19(1) of the Constitution of India and observed thus :-

“4. 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.

6. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v. Dy. Commr. Of Police, State of Maharashtra in paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.

7. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the

competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause(b), there must be objective material on the basis of which the competent authority must record subjective satisfaction 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 offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).”

20. These observations of Hon’ble Apex Court clearly lay down the guidelines for testing an order of externment passed by the authority under Section 56 of the Act.

21. In the case of ***Rahmat Khan @ Rammu Bismillah, cited (supra)***, the Hon’ble Supreme Court has held that, Sections 56 to 59

of the Act are intended to prevent lawlessness and deal with class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial. An externment order may sometimes be necessary for maintenance of law and order. However, the drastic action of externment should be only taken in exceptional cases to maintain the law and order in a locality and or prevent the breach of public tranquility and peace. In case of *Gazi Saduddin V. State of Maharashtra, cited (supra)*, it has been observed that the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expedient necessity of passing an order of externment.

22. In the case in hand, it prima-facie appears that the Respondents Police Authorities considered two Crimes registered against the Petitioner for the offence punishable under Sections 384, 341, 323, 324, 504, 506 read with Section 34 of I.P.C. as well as one N.C. report for the offence punishable under Section 323, 504, 506 read with Section 34 and another Chapter Case, which is not of serious nature and the activities of the Petitioner does not appear

about encampment of any gang or body of persons in the area or calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by the Petitioner. Merely two crimes have been registered against the present Petitioner, i.e. on the basis of a complaint lodged by an industrialist, it does not comply the provisions of Section 55 of the Maharashtra Police Act to extern the Petitioner for the period of two years.

23. Needless to say that the Petitioner is working in "Astara Tooling, Dinde Udyog factory, M.I.D.C., Waluj, on monthly wages basis and he is also the President of "Dr. Babasaheb Ambedkar Thoughts Foundation (Manch)" and pursuing with the grievances of the labours working with various companies in the M.I.D.C. Waluj. Therefore, considering the ratio laid down in cases of *Gazi Saduddin*, *Deepak Laxman Dongre* and *Rehmat Khan*, cited (*supra*), the impugned orders do not satisfy and demonstrate the essential ingredients of Section 55 of the Maharashtra Police Act to extern the Petitioner for the period of two years. However, both the authorities below failed to consider the nature of offences and externed the Petitioner for the period of two years under order dated 12.06.2023 passed by Respondent No. 2 which confirmed by Respondent No. 1

vide order dated 01.12.2023, does not satisfy the expedient necessity of passing such order.

24. In the light of the above discussion, the impugned orders cannot sustain. The Petition therefore deserves to be allowed. Resultantly, the order dated 01.12.2023 passed by Respondent No.1 as well as the order dated 12.06.2023 passed by Respondent No.2, are hereby quashed and set aside. Accordingly, Rule is made absolute in terms of prayer clause (C).

[Y. G. KHOBRADE, J.]

SMS