



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 351 OF 2024

1. Junaid Sattar Shaikh
Age- 23 years, Occu-Labour.
2. Shahid Dadabhai Sayyad
Age- 26 years, Occ. Labour
R/o: Devgaon, Tal. Newasa
Dist. Ahmednagar.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nashik Division, Dist. Nashik.
3. The Superintendent of Police
Ahmednagar, Dist. Ahmednagar.

...RESPONDENTS

Mr. Manoj A. Dond, Advocate for petitioners.
Mr. S.P. Sonpawale, APP for respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 28th MARCH, 2024
PRONOUNCED ON: 22nd APRIL, 2024

JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of parties, heard finally.

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2. Petitioners are aggrieved by the order of externment dated 08.11.2023, passed by respondent No. 3, under section Section 56(1) of the Maharashtra Police Act, 1951 and order dated 24.01.2024 passed by Divisional Commissioner, Nashik Division, Nashik.

3. Police Inspector, Newasa Police Station initiated proposal for externment of petitioners as petitioners as a gang are involved in serious crimes. It is stated that five serious offences are committed by petitioners and these offences are committed against human body and property, so as to continue their terror in the society. Reliance is also placed on confidential in-camera statements of witnesses A & B.

4. The said proposal was sent for verification to Sub Divisional Police Officer, Shevgaon. On receipt of proposal, Sub Divisional Police Officer, Shevgaon issued show cause notice to petitioners on 12.08.2023. Petitioners replied to the said notice vide reply dated 27.10.2023. Sub Divisional Police Officer, Shevgaon, then recommended externment proposal to respondent No. 3.

5. Respondent No. 3 called upon petitioners as to why they should not be externed from Ahmednagar district for 18 months. After hearing petitioners' impugned order thereby externing petitioners from Ahmednagar district for 18 months is passed by respondent No. 3. In appeal, respondent No. 2, reduced the period of externment to one year.

6. Heard learned advocate for petitioners and learned APP for respondents. Perused the record made available by learned APP.

7. Learned advocate for petitioners has assailed the externment order on the ground that stale offences are considered and there is no live link between last offence and the externment order. He submits that witnesses whose in-camera statements are recorded and relied upon had personal grudge against petitioners and therefore their statements could not have been considered. Further submission is that mother of petitioner No. 1 is heart patient and he has to look after her treatment.

In support of submissions, reliance is placed on the order passed by learned Single Judge of this Court at Principal Seat at Bombay in Criminal Writ Petition No. 2805/2023 (Imtiyaz Hussain Sayyad vs. The State of Maharashtra & Others).

8. Learned APP on the other hand supported the externment order. He submitted that the impugned order is in consonance with section 55 and 56 of said Act and procedure under section 59 was followed. The say/reply filed by petitioners and in-camera statements of witnesses are rightly considered by the authorities. Petitioners had by their acts posed continuous threat to public. Serious offences are registered against them. Appellate Authority has already reduced the period of 18 months to one year. Hence, no case is made out by petitioners to interfere in the externment order.

9. It is a matter of record that following five serious offences are registered against petitioners, which are committed by them as a gang against human body and property, using dangerous weapons including fire arms.

Sr. No.	Police Station	C.R. No. and Sections	Court Case No.
1	Shrirampur City Police Station	C.R. No. 192/2017 under section 3/25 of Arms Act.	R.C.C. No. 100/2020
2	Newasa Police Station	C.R. No. 484/2018, under section 452 of IPC, 3/25 of Arms Act and section 3(2)(v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	Special Case No. 161/2018
3	Shani Shingnapur	C.R. No. 120/2019,	R.C.C. No.

	Police Station	under section 395, 397 of IPC.	257/2018.
4	Newasa Police Station	C.R. No. 32/2020, under section 160, 326, 324 of IPC	R.C.C. No. 262/2020.
5	Newasa Police Station	C.R. No. 724/2023, under section 324, 327, 323, 504, 506 and 34 of IPC.	Under investigation.

Last offence registered against petitioners is C.R. No. 724/2023.

10. Following preventive action was taken against petitioners, which was found to be ineffective.

1. Junaid Sattar Shaikh, resident of Devgaon, Taluka-Newasa, Dist. Ahmednagar (Gang Leader).

Sr.No.	Reported	Chapter Case Number & Section	Remark
1	Head Constable/1548 B.G. Pawar, Newasa Police Station	Chapter Case No. 203/2020, under section 107 Cr.P.C., dated 18.06.2020	Bond for one year was taken, which is expired.

2. Shahid Dadabhai Sayyad, resident of Devgaon, Taluka-Newasa, Dist. Ahmednagar (Gang Member).

Sr.No.	Reported	Chapter Case Number & Section	Remark
1	Head Constable/1548 B.G. Pawar, Newasa Police Station	Chapter Case No. 198/2020, under section 107 Cr.P.C., dated 18.06.2020	Bond for one year was taken, which is expired.

11. It appears that petitioners as a gang have committed five serious offences against human body and property and in all

the five offences charge sheet is filed. Preventive action taken against petitioners has not deterred them from committing serious offences.

12. Respondent No. 3 has also relied on two in-camera statements of confidential witnesses, while passing the externment order. Except stating that offences registered against petitioners are false and they are not convicted in any of the offence, petitioners have not raised any defence. Petitioners have not led any evidence in support of their say.

13. The externment order shows application of mind on the part of respondent No. 3. There is no merit in the contention of petitioners that confidential witnesses whose in-camera statements are recorded and relied upon by respondent No. 3, they had personal grudge against petitioners and their statements could not have been considered. Record thus indicates that there was sufficient material before respondent No. 3, on the basis of which he has come to a conclusion that petitioners need to be externed from Ahmednagar district for a period of 18 months. Respondent No. 3 externed petitioners for a period of 18 months, that period is already curtailed by the Appellate authority to one year.

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14. In State of ***NCT of Delhi vs. Sanjeev @ Bitto***, (2005)

5 SCC 181, the Apex Court has held:

"27. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.

28. As observed in Gazi Saduddin's case (supra) satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.

29. The material justifying externment can also throw light on options to be exercised. If referring to the materials, the authority directing externment also indicates the option he thinks to be proper and appropriate it can not be said to be vitiated even though there is no specific reference to the other options. It is a matter of legitimate inference that when considering materials to adjudicate on the question of desirability for externment, options are also considered and one of the three options can be adopted. There can not be any hair splitting in such matters. A little play in the points is certainly permissible while dealing with such matters."

15. In ***Sumit s/o Ramkrishna Maraskolhe vs. Deputy Commissioner of Police, Nagpur***, 2019 ALL MR (Cri) 1961, it is held that:

"The order of externment need not necessarily refer to the details of the material considered by it so as to show independently that larger or additional area chosen by it is

intimately connected with the actual area of the activities of the externee due to improved or common means of transport and communication.

Application of mind to the material present on record by the authority passing the externment order is necessary, but any reflection of application of mind in the externment order in a specific manner, as if to pass a reasoned order, would not be necessary. It would be enough if the order discloses that the subjective satisfaction has been reached by considering the material available on record and it would and should be a matter of legitimate inference that the authority, while considering materials to satisfy itself about the need for and extent of externment to be ordered, also considered all the options available to it and selected in its wisdom the one which it thought to be most appropriate. This would also mean that authority, in this way, can select a larger area for being covered under its externment order, as one of the options available to it, whether such larger area has within it contiguous or inter-connected or intimately connected pockets of areas or not.

The only duty cast upon the externing authority is to inform the proposed externee of the general nature of material allegations against him and the sphere of corresponding right of the proposed externee to know, we must say, is limited by the object of externment proceedings. The object is to bring certain kind of bad elements to book who, by their criminal activities, make it impossible or difficult for the criminal justice system to deal with sternly. In their cases, legal evidence hardly comes forth because witnesses are hesitant to depose in public out of fear to their person or property. This is the reason why the corresponding right of the proposed externee has been reduced to the minimum possible in law, and that is what lends sufficiency to show-cause notice under Section 59(1) of the Act, 1951."

16. In the present case, there is sufficient material on record to sustain the order of externment against petitioners. Following observations of Apex Court in ***Pandharinath Shridhar Rangnekar vs. Deputy Commissioner Of Police***, (1973) 1 SCC

372, are applicable to the facts of the present case.

"There is a brand of lawless element in society which it is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public, That explains why section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee "of the general nature of the material allegations against him". That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.".....

"scope of judicial review of administrative order is rather limited. Consideration is limited to the legality of decision making process and not legality of the order per se. Mere possibility of another view cannot be a ground for interference."

17. Admittedly, due opportunity was given to petitioners. Petitioners have failed to point out any manifest error or apparent error, which vitiates the externment order. Writ petition being devoid of merit is dismissed.

Rule discharged. No order as to costs.

[NITIN B. SURYAWANSHI, J.]