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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.173 OF 2024

Sham Tukaram Shejul PETITIONER
Age – 26 years, Occ – Agriculture
R/o Sawargaon Hadap,
Taluka and District - Jalna

VERSUS

1. The Divisional Commissioner RESPONDENTS
Chh Sambhajinagar,
Taluka and District Chh. Sambhajinagar

2. Sub Divisional Magistrate, Jalna
Taluka and District – Jalna

3. Superintendent of Police, Jalna
Taluka and District – Jalna

4. Police Inspector, Police Station Maujpuri
Taluka and District – Jalna

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Mr. Parag V. Barde h/f Mr. P. S. Mantri, Advocate for petitioners
Mr. R. B. Dhaware, APP for respondent - State

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WITH
CRIMINAL APPLICATION NO. 1245 OF 2024
IN
CRIMINAL WRIT PETITION NO.173 OF 2024

Ramesh Shriram Yadnyekar (Joshi) APPLICANT

VERSUS

Sham Tukaram Shejul and Others RESPONDENTS

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Mr. A. A. Nimbalkar, Advocate for applicant
Mr. R. B. Dhaware, APP for respondent - State
Mr. P. V. Barde h/f Mr. P. S. Mantri, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 21st MARCH, 2024
PRONOUNCED ON : 2nd APRIL, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. This petition, filed under Article 226 and 227 of the Constitution of India, challenges order of externment passed against petitioner, by Sub Divisional Magistrate, Jalna on 27th September, 2023, thereby externing petitioner from Jalna and Aurangabad districts for a period of two years. Petitioner challenged said order by filing appeal before Divisional Commissioner. By order dated 22nd December, 2023, the appeal filed by petitioner was partly allowed and petitioner is externed only from Jalna district for a period of two years. Both these orders are impugned in the present petition.

3. Heard learned advocate for petitioner and learned APP for the State. Perused the papers of investigation.

4. Learned advocate for petitioner, by relying on ***"Deepak Laxman Dongare V/s State of Maharashtra and Others" 2022 (2) Mh.L.J. (Cri) 155***, submits that only on the basis of two crimes, externment proceedings are initiated against

petitioner. Last offence is of the year 2022 and hence there is no live link. Offences registered against petitioner are out of political rivalry and petitioner has not breached any condition of bail orders. In-camera statements were not provided to petitioner. All the offences registered against petitioner are at Maujpuri police station of Jalna city. Hence, it was not necessary to extern petitioner from entire Jalna district, that too for a period of two years, this order is excessive. There is no subjective satisfaction recorded by the externing authority while passing the impugned order.

5. Learned APP, by relying on the affidavit in reply filed by respondent No.4, supported the impugned orders. He submits that by exhaustive order, the Sub Divisional Magistrate has externed the petitioner from Jalna and Chhatrapati Sambhaji Nagar districts for a period of 2 years. Before passing of the said order, report of the Sub Divisional Police Officer was called, petitioner was heard and reply filed by petitioner was not found satisfactory and hence externment order was rightly passed by the Sub Divisional Magistrate. In view of registration of Crime Nos. 63 of 2022 and 64 of 2022, there is live link for passing the externment order. Several non cognizable offences and Chapter cases are registered against petitioner. Petitioner is continuously indulging in unlawful activities and, therefore, he was required to

be externed. Learned APP distinguished the citation relied on by petitioner, stating that a reasoned order is passed by the externing authority and hence the said citation is not applicable to the facts of the present case. He further submits that the ground of non supply of in camera statements, was neither raised by petitioner before the externing authority, nor before the appellate authority and not even in the writ petition. Therefore, there is no substance in the said ground. He, therefore, submits that impugned orders are not liable to be set aside.

6. Perusal of papers of investigation indicates that Assistant Police Inspector, Maujpuri Police station submitted proposal to the Sub Divisional Officer for externment of petitioner on 17th February, 2023, wherein following 5 offences were mentioned -

S.N	POLICE STATION	CR NO & Sections	Charge Sheet number	Present status
1	Maujpuri	195/2018 u/s 353, 332, 324, 143, 148, of IPC and 135 of Maharashtra Police Act	01/2021 dated 11/01/2021	Sub Judice
2	Maujpui	63/2022 u/s 307, 326, 324, 341, 337, 338, 327, 143, 147, 148, 149, 504, 427 IPC and 135 Maharashtra Police Act	145/2022 dated 28/12/2022	Sub Judice
3	Maujpuri	64/2022 u/s 353, 332, 143, 144, 145, 147, 148, 149, 160 IPC and 135 of Maharashtra Police Act	125/2022 dated 22/10/2022	Sub judice
4	Maujpuri	N. C. No. 504/2022 u/s 506 and 507	--	--

		of IPC		
5	Maujpuri	N.C.No. 413/2022 u/s 323, 504, 506, 34 IPC	--	--

7. In spite of registration of above offences, since petitioner continued to indulge in criminal activities, following preventive action was taken against him:

i. Maujpuri Police Station Chapter Case No. 8 of 2022 under section 110 (e) (g) of the Criminal Procedure Code, dated 20th April, 2022

ii. Maujpuri Police Station Chapter Case No.33 of 2022 under section 110 of the Criminal Procedure Code, dated 28th November, 2022.

8. In camera statements of two witnesses are referred in the said proposal. It is further stated in the proposal that petitioner has created terror in Ram Nagar Sugar Factory and adjoining areas, as he is in a habit of committing bodily offences. Citizens are feeling unsafe because of the criminal activities of the petitioner. People are not ready to give statement against petitioner, because of the terror created by him. Hence, it is necessary to extern petitioner from Chhatrapati Sambhaji Nagar and Jalna districts for a period of 2 years, under section 56 (1) (b) of the Maharashtra Police Act.

9. On receipt of the said proposal, the Superintendent of Police, Jalna, by office order dated 5th April, 2023 issued under

section 59 (1) of the Maharashtra Police Act, authorized Sub Divisional Police Officer, Partur to conduct an inquiry in the externment proceedings. Sub Divisional Police Officer, by notice dated 12th April, 2023, called upon the petitioner to show cause as to why he should not be externed. The notice was served on the petitioner on 5th May, 2023. Petitioner replied the said notice on 17th May, 2023. After conducting inquiry and giving opportunity of hearing to the petitioner, the Sub Divisional Police Officer recommended the externment proposal, stating that petitioner is a ferocious person, habitual criminal and is involved in number of crimes like – member of unlawful assembly, rioting, voluntarily causing hurt, intentional insult with intent to provoke breach of peace, criminal intimidation, attempt to murder, voluntarily causing hurt by dangerous weapons, unlawful restraint, causing hurt by act endangering life or personal safety of others, causing grievous hurt by endangering life or personal safety of others, assault or criminal force to deter public servant from discharge of his duties, criminal intimidation by anonymous communication, etc.

10. After receipt of report of inquiry officer / Sub Divisional Police Officer, a show cause notice was issued to the petitioner by the competent authority / Sub Divisional Magistrate on 9th June, 2023. Petitioner appeared on 10th August, 2023 and

submitted his written say, stating that without any reason, intentionally false cases are registered against him, he is acquitted in the cases registered against him in the year 2009 and in other cases registered against him. In Crime Nos. 63 of 2022 and 64 of 2022, petitioner was granted anticipatory bail and requested to drop the proceedings.

11. Sub Divisional Magistrate found that cases registered against the petitioner in the years 2009 and 2022 are under Chapters II, VII, XVI, XVII and XXII of the Indian Penal Code and the petitioner is a history sheeter. The Sub Divisional Magistrate has found that inquiry is conducted by the Sub Divisional Police Officer, by following section 59 (1) of the Maharashtra Police Act. The Sub Divisional Magistrate, after considering the record, has come to a conclusion that petitioner is liable to be externed from Jalna and Aurangabad districts for a period of two years.

12. Petitioner challenged the said order under section 60 of the Maharashtra Police Act before the Divisional Commissioner, Aurangabad, by filing Appeal No. 115 of 2023. The appeal is partly allowed and the petitioner is externed only from Jalna district for a period of two years.

13. Perusal of record indicates that petitioner has not raised the ground of non supply of in camera statements to him, either

before the Sub Divisional Police Officer, competent authority / Sub Divisional Magistrate or in the appeal filed before the Divisional Commissioner. Even in the present writ petition memo, no such ground is raised by the petitioner. Therefore, there is no merit in the argument of the petitioner that in camera statements were not supplied to him and the same appears to be an afterthought stand taken by the petitioner.

14. There appears material available on record justifying the externment order. The Sub Divisional Magistrate, - respondent No.2, has recorded subjective satisfaction on the basis of objective material available on record, to the effect that movements or acts of petitioner are causing or calculated to cause alarm, danger or harm to the person or property of public. Material on record against petitioner was sufficient for respondent No.2 for believing that petitioner is engaged or is about to be engaged in commission of offence involving force or violence or offence punishable under Chapters XVI and XVII of the Indian Penal Code. The impugned order reflects that the Sub Divisional Magistrate has taken into consideration the material placed on record, on the basis of which the impugned order of externment is passed.

15. It also appears from the record that witnesses are not

willing to come forward to give statement against petitioner by reason of apprehension on their part as regards their safety or safety of their property. Subjective satisfaction is therefore, rightly recorded by the externing authority. Therefore, on this issue the decision ***"Deepak Laxman Dongare"*** (*supra*) does not help the petitioner.

16. The order, externing petitioner from Chhatrapati Sambhaji Nagar and Jalna districts was excessive and the same is rightly modified by appellate authority, by restricting externment order to Jalna district only. Though all the offences are registered against petitioner at Maujpuri Police Station and all the offences are committed by petitioner within Ramnagar Sugar Factory and adjoining areas, fact remains that Ramnagar Sugar factory is situated in Jalna Taluka. Thus, it is contagious to Jalna district. In spite of taking preventive action against petitioner, the same could not produce desired effect of preventing petitioner from indulging in criminal activities. Therefore, externment order of petitioner from Jalna district is justified in the facts of the present case.

17. However, the impugned order does not indicate that respondent No.2 has recorded subjective satisfaction on the basis of material on record that externment should be for

maximum permissible period of two years. No reasons are assigned as to why externment should be for a maximum permissible period of two years. The impugned order, therefore, amounts to imposing unreasonable restrictions on the fundamental rights guaranteed under clause (d) of Article 19 (1) of the Constitution of India as the same is excessive, the it needs to be curtailed. (vide ***"Deepak V/s State of Maharashtra and Others" 2022 (2) Mlj (Cri) 155)***

18. Resultantly, writ petition is partly allowed. Impugned order dated 27th September, 2023 passed by Sub Divisional Magistrate, Jalna is modified as follows:

"Petitioner shall be externed from Jalna District for a period of one year from the date of service of externment order on the petitioner."

19. Rule is made absolute to above extent, with no order as to costs.

20. In view of disposal of the Criminal Writ Petition, Criminal Application No.1245 of 2024 is also disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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