

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1188 OF 2024

Sayyad Jahangir s/o Sayyad Saber,  
Age :- 20 years, Occ. Private Job,  
R/o Labour Colony, Nanded,  
Tq. & Dist. Nanded.

...Petitioner

*VERSUS*

1. The State of Maharashtra  
Through Divisional commissioner,  
Chhatrapati Sambhaji Nagar.

2. The Superitendent of Police,  
Nanded. Tq. & Dist. Nanded.

3. The Sub- Divisional Police Officer,  
Nanded Division, Nanded.  
Tq. & Dist. Nanded.

4. The Police Inspector,  
Vazirabad Police Station, Nanded.  
Tq. & Dist. Nanded.

...Respondent

...

Advocate for Petitioner : Mr. Vaibhav B. Dhage  
APP for Respondents/State : Mr. D.J. Patil

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**CORAM : S.G. MEHARE, J.**

**RESERVED ON : JULY 30, 2024**

**PRONOUNCED ON : AUGUST 09, 2024**

**JUDGMENT :-**

1. Rule. Rule made returnable forthwith.

2. The Petitioner has impugned the order of externment passed by the Superintendent of Police, Nanded dated 01.04.2024 in Outward No. 850/Stha.gu.sha/Kalam-55/Wazirabad 03/2023/Final

Order/2024 and the order of Divisional Commissioner, Aurangabad dated 12.06.2024 in Appeal No.54/2024.

3. A Few facts of the case were that the show cause notice under Section 55 of the Maharashtra Police Act was issued to the petitioner. It was informed that the petitioner was a member of the gang. The inquiring officer issued a notice under Section 59 of the Maharashtra Police Act to the petitioner and his gang members, including the gang leader. The petitioner was informed that there are crimes registered against them at Wazirabad, Itwara, Limbgaon, and Vimantal Police Stations. The list of crimes registered against the gang members was also given. The petitioner was called upon to explain against the proposal of externment. The petitioner and others were informed that their movements in the area were causing or calculated to cause alarm, danger or harm to the persons and property for reasonable suspicion with unlawful designs entertained by the gang. It has created terror in the mind of the general public. Due to their movements, there is a possibility of disturbance of public tranquility. It was proposed that they be would externed for two years from Nanded District.

4. The petitioner submitted his explanation on 08.01.2024. He submitted that he had no concern with the crimes listed in the show cause notice. He was not named in the FIR because he is not a habitual offender. He is pursuing his education and doing service. The

Superintendent of Police granted him the certificate of good behaviour. He is from an educated family, His brother is practicing law at Nanded. His father is a clerk to the Advocate. He is from a well-to-do family. Hence, the proposal against him should be dismissed.

5. After the proposal was placed before the Superintendent of Police/respondent no.2 by the inquiring officer, he again issued a show cause notice to the petitioner on 23.01.2024. The petitioner reiterated the same reply and prayed to quash the proposal. He added that the allegations that instead of improving himself, the crimes registered against him are false. There is no apprehension to the general public from him. No deadly weapons were seized from him. He is not a co-accused with the other externees. He relied on certain case laws.

6. The externing authority, by the impugned order, discarded the submissions and externed the petitioner for six months from Nanded District. The appeal preferred against the order of respondent No.2 was also dismissed, agreeing with the findings recorded by the externing authority.

7. Before advertng to the arguments of the learned counsel for the petitioner and learned APP, it would be appropriate to mention the requirements for exercising the powers under Section 55 of the Maharashtra Police Act.

- (i) There must be a gang, and the proposed externee should be either the leader or a member of the gang.
- (ii) There should be a live link and proximity between the registration of the offences and the initiation of action in the externment proceeding.
- (iii) Every allegation should be disclosed to the externee in show cause notice.
- (iv) The action under Section 55 should not be taken individually or singled out against a few gang members.
- (v) The externing authority should record subjective satisfaction with the objective material.

8. Learned counsel for the petitioner has vehemently argued that there was no material before the externing officer to believe that the petitioner was a member of the gang. No joint crimes were registered against the petitioner with the so-called gang leader. The externing authority has exceeded its jurisdiction without considering the law laid down by this Court in the matter of Savita Vs. The State of Maharashtra. Only one crime was registered against the petitioner; the trial is pending. The Appellate Authority did not apply the mind and mechanically dismissed the appeal. He submits that the order is apparently illegal and against the principles set out by the High Courts in various cases. Hence, the impugned order may be set aside.

9. Per contra, the learned APP would submit that there was ample objective material before the authority to believe that the petitioner was a gang member and that their activities were harmful to the general public and property. It is a big gang under the leadership of Mirza Shabbir Baig. The crimes were registered against the petitioner and their gang members at various places. Since the objective material was sufficient, the subjective satisfaction has been correctly recorded. Considering the nature of offenses registered against the gang, those were committed for financial benefit. He has referred to the material placed on record. He submits that both orders impugned before the Court are legal, proper, and correct.

10. The first requirement to initiate the externment action is that the show cause notice must mention the allegations that the petitioner was the gang member and he was knowing or encamping as the members, leaders, or chief men of any gang operating in the area. The show cause notice placed on record reveals that the petitioner was made aware that the petitioner was a gang member and that various crimes had been registered against them at Wazirabad, Itwara, Limbgaon, and Vimantal police stations. The list of crimes registered against all externees was also given. However, the petitioner has a defence that only one crime has been registered against him with police station Wazirabad, and it is pending. However, he has no concerns about that or other crimes. Its FIR

indicates that it was a crime registered for the offences punishable under Sections 387, 307, 143, 147, 148, 149, 120-B of the Indian Penal Code. The said crime was registered against the petitioner with gang leader Mirza Shabbir Baig Mirza Gaffar Baig, Mirza Sikandar Baig Mirza Gaffar Baig, Mirza Kalandar Baig Mirza Gaffar Baig, Abdul Hafiz Abdul Jabbar and three unknown persons. The petitioner was not named in the FIR. However, he was detected as co-accused, and a charge sheet was filed against him. Except for the above crime, the petitioner was not the co-accused with the other externees. It was a solitary crime registered him in 2023. It seems that the crimes were registered against the co-externees. The petitioner has been considered to be a member of the gang. The foremost requirement to propose an action under Section 55 of the Maharashtra Police Act, as discussed above, is that such externees should be gang leaders or gang members. The material on record shows that except for the single solitary crime of 2023, the petitioner was not co-accused with the other externees. Therefore, the question is to consider whether the petitioner could be a gang member. As per the Oxford Dictionary, “Gang” means “an organized group of criminals or disorderly young people”. All accused should be collectively involved in the seriousness of offences.

11. The Hon’ble Supreme Court in the case of Altaf Rajekhan Pathan and Others Vs. Divisional Commissioner, Pune, and Others,

2018 (4) Mh.L.J. (Cri.) 257 in para 21 observed thus that “it is required to be noted that in all the above Petitions, the offence under the Gambling Act is registered against the gang leader "A" with the alleged member of the gang being "B", against "A" with "C". "A" with "D". "A" with "E", but not against A, B, C, D, or E collectively or even against a substantial number of gang members collectively. It is also required to be noted that in some cases, the offence registered against "A" and "B" is much anterior in point of time to the offences registered against "A" and "E" and therefore, there is no proximity between the offences and therefore the test of there being collective participation is not satisfied as they are all individualistic cases registered against the alleged gang leader and a member.”

12. Similar is the fact of the case that the petitioner has been arraigned as an accused in Crime No.87/2023 for the first time. He was not named in the FIR, but subsequently, he was arraigned as an accused. In other crimes, he is not the accused. The crimes against the co-accused have been registered long back since 2016 and afterwards. This fact gives the Court the scope to record the finding that it is difficult to believe that there was a collective participation of the petitioner in the crimes with the other co-accused against whom a large number of cases were registered. Therefore, the collective participation in initiating an action under Section 55 of the Maharashtra Police Act is not satisfied. Individualistic cases could not

be considered to initiate action under Section 55 of the Maharashtra Police Act. In view of the above observations, the Court is of the view that the authority did not record its subjective satisfaction of the grounds under Section 55 on the basis of material placed before it. Subjective satisfaction on the basis of objective material placed before the authority is *sine qua non* to initiate the action under Section 55 of the Maharashtra Police Act. Hence, the petition deserves to be allowed. Hence, the following order :

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The impugned order of the externment passed by the Superintendent of Police, Nanded dated 01.04.2024 in Outward No. 850/Stha.gu.sha/Kalam-55/Wazirabad 03/2023/Final Order/2024 and the order of Divisional Commissioner, Aurangabad, dated 12.06.2024 in Appeal No.54/2024 stand quashed and set aside.
- (iii) Rule is made absolute in above terms.

**(S.G. MEHARE, J.)**