



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

CRIMINAL WRIT PETITION NO. 154 OF 2025

Ganesh Maroti Bore

Age-52 Years, Occupation - Private Coaching Classes

R/o Mathura Apartment, Near Tillubhai Garage,

Jalgaon Road, Bhusawal, Tal. Bhusawal, Dist. Jalgaon

At Present-C/o Ramesh Maroti Bore, Shriram Nagar,

Muktainagar, Tal. Muktainagar, Dist. Jalgaon

----PETITIONER

(Accused)

VERSUS

1. The State of Maharashtra

Through The Secretary,

The Ministry of Home

Mantralay, Mumbai

2. The District Magistrate Jalgaon

The Collector Office Premises, Jalgaon

Tal. and Dist. Jalgaon

3. The Sub-Divisional Magistrate

Bhusawal Division, Bhusawal

SDO Office Premises, Bhusawal,

Tal. Bhusawal, Dist. Jalgaon

4. The District Superintendent of Police, Jalgaon

The Office of District Superintendent of Police

Opposite S. T. Bus Stand, Jalgaon
Tal. and Dist. Jalgaon

5. The Sub-Divisional Police Officer,
Bhusawal Division, Bhusawal
Tal. Bhusawal, Dist. Jalgaon

----RESPONDENTS

Mr. M. M. Bhokariker, Advocate for petitioner

Ms. P. R. Bharaswadkar, APP for respondent Nos. 1 to 5

**CORAM :Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 16th September, 2025

JUDGMENT (PER : Hiten S. Venegavkar, J) :-

1. Rule. Rule made returnable forthwith.
2. With the consent of all the parties, the petition is taken up for final hearing at the stage of admission itself.
3. The present criminal writ petition is filed under Article 226 and 227 of the Constitution of India seeking to quash and set aside show-cause notice dated 15.07.2024 issued under Section 56(1)(a)(b) of The Maharashtra Police Act, 1951 by respondent No. 3 Sub-Divisional Magistrate, Bhusawal Division, Bhusawal. The consequential order of externment purportedly passed

thereafter is also sought to be quashed and set aside even though the copy of the same is not annexed to the present petition by the petitioner on the ground that the same was never served or communicated to the petitioner. Thus, by way of present petition petitioner seeks protection of his fundamental rights guaranteed under Article 21 of the Constitution of India contending that the entire externment precedence are vitiated by malafides, procedural irregularities and non application of mind by the Externment Authorities especially respondent Nos. 2, 3 and 4.

4. The factual matrix leading to filing of this petition is not in serious dispute. On 14.06.2023, First Information Report (for short “F.I.R”) bearing No. 114 of 2023 was registered with Bhusawal Police Station mainly under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for Short “S.C.S.T. Act”) against the petitioner. The petitioner was arrested on the same day and was subsequently enlarged on bail by the Special Court by its order dated 03.07.2023. The investigation culminated in filing of charge sheet dated 09.08.2023 and thus the trial bearing Special Case No. 108/2023 is pending. The petitioner in his petition has given several incidences showing existence of a history between the petitioner and the informants who have lodged cases against him. The pleadings also demonstrate that petitioner has also filed several cross complaints not only against the informants and his family members but also against several Government officials. According to

the petitioner, this is the root cause for the authorities to malafidely initiate externment action against him. Thus, in brief, the contention of the petitioner is that the externment proceedings is result of retaliation by the Government officials so as to silence and harass the petitioner.

5. According to the petitioner, the report recommending externment was prepared on 26.06.2024 and was submitted to Sub Divisional Police Officer on 01.07.2024. The show-cause notice came to be issued on 15.07.2024 to which the petitioner had submitted a written reply on 04.10.2024. According to the petitioner, the written reply was forwarded to the office of respondent No. 3 by speed post and it was delivered and received by respondent No. 3 on 08.10.2024.

6. The learned Advocate appearing for the petitioner have vehemently argued that the initiation of externment proceedings against the petitioner is an abuse of process of law and also suffers with malice. It is argued that the externment order passed by respondent No. 3 has never been served or communicated to the petitioner and he came to know about the same only through newspaper report. The learned Advocate invited our attention to Page No. 80, Paragraph No. 13 of the petition where the petitioner has explicitly pleaded that he does not possess a copy of externment order and that the exact date thereof is not known to him as the same was never been served

or communicated. He also argued that there is no fresh offence or criminal activity registered against the petitioner post 2023 and all the so called antecedents referred in the show-cause notice are either stale or they are subjudiced where the petitioner has been enlarged on bail upon certain terms and conditions. The Advocate argued that conditions of the bail has never been breached and all these bail orders, record and facts has not been considered by the Externment Authorities. He further argued that there is absolutely no material on record to suggest that petitioner is a dangerous person and a threat to the public order. Thus, according to him, the very basis of initiation to externment proceedings and furthermore issuing show-cause notice to the petitioner on the available records is the abuse of process of law and, therefore, the consequential externment order which came to passed without the same being served upon the petitioner is also bad in law and deserves to be quashed and set aside.

7. The learned APP before countering the arguments of the petitioner's Advocate raised a preliminary objection about the maintainability of the petition before the Division Bench of this Court. It is argued that a challenge to an externment order lies before the learned Single Judge and, therefore, the present petition filed before the Division Bench should be relegated for hearing to the Single Judge of this Court. We noted the said preliminary objection and requested the learned APP also to address on merits

of the matter. In support of the impugned action of externment of the petitioner, the learned APP argued that petitioner is habitual offender with multiple offences registered against him for serious offences including that of offences under S.C.S.T Act and also provision of Indian Penal Code (for short “I.P.C”). She also took us through the records pointing out that even chapter proceedings under Section 107 of Criminal Procedure Code (for short “Cr.P.C”) was initiated against the petitioner in the year 2023 and the petitioner has executed a bond for maintaining peace. According to her, in spite of the chapter proceedings, the petitioner has been indulging in the criminal activities and thereby threatening people by monetary extortions who threats causing physical injuries and hence have spread terror in the society. She then referred to the two confidential witnesses statements which were recorded during the externment proceedings and argued that both the witnesses have described the petitioner as a dangerous person who threats and extorts money from the public thereby creating a sense of fear and terror in the locality. It is thus submitted that the impugned externment proceedings are justified and proper. She further prayed that the petition be dismissed on both the counts.

8. Before we advert to the merits of the present case, we find it necessary to deal with the preliminary objections raised by the learned APP about the jurisdiction of the Division Bench to hear the present writ petition on the basis of reliefs claimed therein. For the sake of convenience, we have

already referred to the gist of prayers and reliefs sought by the petitioner in the first paragraph of this judgment. On perusal of the prayers and pleadings in the writ petition it can be observed that the challenged raised is to the show-cause notice dated 15.07.2024 and thereafter challenge to the consequential order of final externment of the petitioner. In spite of the final externment order, there is specific pleading in the petition contending that the said externment order was never communicated nor served upon the petitioner. Moreover in the prayer clause the petitioner has also sought a direction for production of the said externment order from the Externment Authorities which are arrayed as party respondents herein. Thus, in our view, a writ petition under Article 226 and 227 of the Constitution of India is maintainable against administrative and quasi judicial actions of the Executive Authorities particularly when such actions are alleged to infringe fundamental principles of law and also fundamental rights of a citizen guaranteed by the Constitution of India. The grievance raised by the petitioner pertains not only to the violation of his rights to liberty as guaranteed under Article 21 of the Constitution of India, but also to the absence of procedural fairness adapted by the respondent authorities in the decision making process of issuing externment order against the petitioner. These are two classic grounds where the extra ordinary writ jurisdiction of this Court is rightly invoked by the petitioner and accordingly we overrule the preliminary objection and hold that in the aforesaid facts and circumstances, the Division

bench of this Court has jurisdiction to decide the present petition in present form and for reliefs sought therein.

9. While proceeding to the substantive challenge raised in the petition, we turn our attention to the relevant statutory provisions under Maharashtra Police Act, 1951. The relevant provisions applicable in the present facts and circumstances are Section 56 and 59 of the said act which reads as follows :-

56. Removal of persons about to commit offence:

(1) Whenever it shall appear in Brihan Mumbai 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 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 abetment 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, Anti-social and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) 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 for 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 subsection (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

59. Hearing to be given before order under section 55, 56, 57, or 57-A is passed :

(1) Before an order under section 55, 56, 57 or 57-A is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witness produced by him.

(2) The authority or officer proceeding under sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 55, 56, 57 or 57-A require such person to appear before him and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him may be passed.

Section 56(1)(a)(b) of the Maharashtra Police Act empowers the authorities to issue orders directing a person to remove himself outside the limits of a specified area if such person is found to be habitual in commission of certain categories of offences or is acting in a manner prejudicial to public

order. However, powers given to the Authorities under Section 56 of the said Act has certain procedural safeguards enshrined under Section 59 of the said Act. Section 59 of the said Act mandates that before passing any order under Section 55, 56 or 57 of the said Act, a concerned authority must inform the person in writing of the general nature of allegations against him, furnish reasonable opportunity to submit an extension and also permit examination of witnesses if so requested. The provision underscores himself a natural justice in the proceedings that have serious consequences on personal liberty and freedom of movement.

10. Upon closure reading of Section 56 of the Maharashtra Police Act, it reveals that the foundational requirement for initiating externment proceedings is the satisfaction of the competent Authority to the fact that the person is engaged in or is likely to be engaged in, activities dangerous to public at large or prejudicial to public order. Thus, in our view, a person having past criminal antecedents is not sufficient to attract action under Section 56 of the Maharashtra Police Act. There must be proximate and contemporaneous material on record to demonstrate that the individual has propensity to disturb public peace and tranquility. The externment order cannot be based on stale incidents or on mere registration of cases. The order necessarily should show that the presence of the person in the locality is likely to lead towards disturbance or breach of public order. Perusal of the show-case notice dated

15.07.2024, makes reference to registration of criminal offences against the petitioner namely F.I.R No. 114/2023 registered for offences under Sections of S.C.S.T. Act. Another F.I.R bearing No. 54/2017 was registered against the petitioner for offences under Section 382, 380 and 385 of I.P.C. The show-cause notice also mentions about the registration of one NC dated 27.05.2017 for offences under Section 324, 504 and 506 of I.P.C. There is also one chapter proceeding initiated under Section 107 of Cr.P.C against the petitioner wherein bond was executed by petitioner on 28.08.2023 for maintaining peace. Perusal of the record also shows that in two cognizable offences registered and pending, the petitioner has been released on bail by Competent Courts with certain conditions and there is absolutely no allegation on record of the prosecution that petitioner has committed breach of those conditions. Furthermore neither the show-cause notice, nor the externment order which is produced on record by the learned APP makes reference as to whether the authorities have considered the bail orders while processing the entire externment proceedings. In our view non consideration of the bail orders clearly reflects non application of mind to the material fact which has a direct bearing on the need and justification for taking preventive action against the petitioner.

11. We have also perused statement of both confidential witnesses in original which has been produced before us by learned APP. Reading of the

same suggest that they are general in nature and lack specificity. The witnesses do not narrate any personal incident wherein the petitioner have threatened, abused, extorted or otherwise acted in a manner endangering their safety. The statement only refers to the past history of the petitioner, vague apprehension of fear and there is no allegation of any tangible event of criminal activity by the petitioner. Such vague statement cannot form the basis of such a serious action of externment against the petitioner. As it affects the fundamental right of liberty of a citizen and, therefore, necessitate that such orders must be passed with due regard to the doctrine of proportionality, fairness and reasonableness. In the absence to create reason and credible material, such order cannot sustain.

12. We have also noted that the externment proposal according to the records produced before us was prepared in the month of June, 2024 and the final order of externment against the petitioner was passed only in November, 2024 i.e., after a laps of more than four months. The affidavit of reply filed by the respondents does not give any explanation for such a long delay. The delay in concluding preventive action undermines the very purpose of such action. If the passage of time is such that the alleged apprehension of harm no longer remains credible than the externment loses its rational for the simple reason that externment is not a punitive measure but it is preventive.

13. In addition to all above, the most glaring illegality in the present case is the failure of the Authorities to serve or communicate the externment order upon the petitioner. Section 56(2) of the Maharashtra Police Act clearly mentions that the “person needs to remove himself from any specified area or areas in the State”. The learned APP tried to impress upon us by arguing that the final order of externment was pasted on the doors of the petitioner’s last known residence however there is nothing on record to show that any attempt was made to serve the order personally or any law or rule has been pointed out to support the contention of the learned APP that pasting the externment order on the residence of the externee is in accordance with the prescribed norms or rules. In fact, a specific averment about non service of the final externment order is made in the petition by the petitioner and there is absolutely no explanation or denial about the same in the reply filed by the authorities to the present petition. We therefore, find merits in the petitioner’s contention that he was never served with the order and he came to know of the same only through newspaper reports. This in our view clearly violates the most basic principle of the fair procedure. The principle of natural justice is not a mere formality, it is the sole of fair administration. The order which is not served upon the affected person especially when that order curtails is opportunity and freedom of movement, such order in our view is nullity in law. The affected person must have a fair opportunity to note the reason, grounds and basis of the action so as

to provide him an appropriate opportunity to challenge before higher authorities if he so desires. Denial of this opportunity renders the action arbitrary. In the light of the foregoing discussion, we are of the opinion that the impugned show-cause notice dated 15.07.2024 and the consequential final externment order purportedly passed on 05.11.2024 are unsustainable in law and hence deserves to be quashed and set aside. Thus following order :-

ORDER

1. Rule made absolute.
2. The impugned show cause notice dated 15.07.2024 and the consequential externment order dated 05.11.2024 are hereby quashed and set aside.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

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