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

40 CRIMINAL WRIT PETITION NO. 329 OF 2025

ANAND BHAGWAT SURYAWANSHI AND OTHERS

....Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondents

Mr. A. M. Reddy, Advocate h/f Mr. B. S. Deshmukh, Advocate &
Mr. A. M. Pawar, Advocate for the petitioners
Smt. Chaitali Choudhari-Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 10th JUNE, 2025

PRONOUNCED ON : 13th JUNE, 2025

P. C.

1. Heard the parties.
2. The matter is taken up for final disposal with the consent of the parties at this stage.
3. The petition is arising out of the proceeding of externment. The petitioners are externed from District Jalgaon

by the learned Superintendent of Police, Jalgaon. In an appeal, the learned Divisional Commissioner, Nashik confirmed the order passed by the authorities. The petitioners are, therefore, before this court.

4. Facts in short are that, the petitioners were issued with show cause notice dated 04-09-2024, second notice was issued on 17-10-2024 asking the petitioners to give explanation as to why no action of externment be taken against them. Third; such notice was issued on 24-10-2024. The petitioners filed reply. Considering the reply, the leaned Superintendent of Police passed an order. The learned Superintendent of Police considered total eleven offences as given in the notice while passing the order.

5. Mr. Reddy, learned advocate for the petitioners vehemently submits that there was no sufficient material before the authority to take action. The learned authority considered eleven offences those were alleged against the petitioners. Out

of eleven offences nine offences were already considered when earlier order was passed of externment. The earlier order was challenged by the petitioners by filing appeal before the learned Divisional Commissioner. The learned Divisional Commissioner has quashed and set aside the order of externment. He, thus, submits that now the same offences cannot be considered while taking action of externment for the second time. This aspect is not considered by the learned Divisional Commissioner.

6. Out of two offences which are now considered are the offences under sections 357 and 380. It is not shown that the petitioners are the members of the gang. Offence is registered only against the accused No.4 on 18-08-2024. When, in fact, accused No. 4 was in custody on that day. In some of the offences the petitioners are already released on bail. It is only after release of the petitioners on bail, action came to be taken. In some of the offences, the petitioners are now already acquitted. He, thus, submits that no case is made out to take action under Section 55 of the Maharashtra Police Act. There is

no subjective satisfaction on the part of the authority appearing from the order. He, thus, prays for quashing and setting aside the impugned order by allowing the petition.

7. The learned APP forcefully argued that the authority has rightly considered the material produced before it. Reply of the petitioners was considered. From the chart of the offences, it is seen that the petitioners are involved in various offences. A clear case is made out to take action of externment. The earlier order was quashed and set aside by the learned Divisional Commissioner. The petitioners however again found indulging into offences which certainly creates terror in the mind of the people. The secrete statements would clearly show that the persons were not ready to give any statement against the petitioners. The petitioners happen to be habitual offenders. They are office bearers of Republican Party of India having political connection. She thus, prays for rejection of the petition.

8. This court has considered the matter in detail. It

does appear from the order that the learned authorities have considered the eleven offences while passing the order. From the record, it does appear that out of eleven offences, nine offences were already considered while passing the earlier order. The learned Divisional Commissioner in that case had set aside the order passed by the authority. Offences are wrongly relied upon and considered by the authorities while passing the second order. As considering those offences, the learned Divisional Commissioner had set aside the order passed earlier. Looking at the secrete statements, this court finds that those are not sufficient to take action of externment.

9. The learned advocate for the petitioners relied upon the judgment in the case of Altaf Rajekhan Pathan and others Vs Divisional Commission, Pune and others¹. The Division Bench of this court in para 29 as observed below:

29. In the context of the aforesaid issue, section 55 would have to be revisited, the said provision has already been reproduced in the

1 2018 SCC OnLine Bom 1475

earlier part of this judgment. The said provision as can be seen can be invoked against the movement or encampment of any gang or body of persons in the area of a Commissioner in the commissionerate area, in a district by the district Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf. Therefore, the sine-qua-non for section 55 to apply is the movement or encampment of any gang or body of persons. Hence the section contemplates that there has to be a collective action or concerted action on the part of the gang members. Only when there is a collective or concerted action that the action of dispersal or removal of each of the gang members can be taken. The word “gang” has not been defined in the police act. It would therefore be useful to refer to the dictionary meaning of the

said word “gang”.

Black’s Law Dictionary “Gang” means:

‘A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes’

Oxford Dictionary ‘Gang’ means:

‘an organized group of criminals or disorderly young people’

10. Thus, it was necessary for the authority to consider as to whether activities of the petitioners were the activities committed by the gang, so as to attract the provision of section 55 of the Act. The petitioners further relied upon the judgment in Criminal Writ Petition NO. 844/2024 in the case of Aslam Shabbir Shaikh @ Bunty Jahagirdar Vs State of Maharashtra. In the said judgment the court considered that in two of the cases the charge-sheet was not filed. Considering the judgment in the case of Imptiyaz Hussain Sayyad this court observed that no action of externment is tenable. In the said case also the

petitioner was externed on the earlier material action on the same set of facts. The said order of externment was quashed and set aside by the High Court. It was observed that there was no live link and proximity between petitioner and the proposed action. This court finds that said judgment is applicable in the present set of facts.

11. Considering above, this court finds that case is made out to allow the writ petition. The writ petition, therefore allowed in terms of prayer clause-B. The action of externment stands quashed and set aside. Pending application, if any, also stands disposed off.

[KISHORE C. SANT, J.]