



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

CRIMINAL WRIT PETITION NO. 808 OF 2024

Sayyad Mohmmmed Sarfaraz S/o Ibrahim,
Age- 36 years, Occ: Private Service,
R/o. Plot No.60, C.I.V. Colony, Near
Mehraj Masjid, Mukund Nagar,
Ahmednagar, Dist- Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra
(Notice to be served through the Office of the
APP, Bombay High Court Bench at Aurangabad)
2. The Divisional Commissioner, Nasik
Division, Nasik.
3. The Sub-Divisional Magistrate,
Ahmednagar, Dist-Ahmednagar

...RESPONDENTS

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Mr. Mazhar Jahagirdar h/f Mr. Sohail Yusuf Shaikh & Mr. Joyeb I.
Shaikh, Advocate for the Petitioner
Ms. Ashlesha S. Deshmukh, APP for Respondents

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CORAM : Y. G. KHOBRAGADE, J.

**RESERVED ON : 23.01.2025
PRONOUNCED ON : 06.02.2025**

JUDGMENT :-

1. Rule. Rule made returnable forthwith and with
consent of both parties it is heard finally at the stage of admission.

2. By the present Petition, under Article 226 of the Constitution of India, the Petitioner takes exception to the order dated 15.01.2024 passed by the Respondent No.2 Divisional Commissioner, Nasik and thereby confirming the order of externment of the Petitioner as passed by the Respondent No.3 Sub-Divisional Magistrate, Ahmednagar on 18.09.2023.

3. Facts giving rise to the present Petition are that, on 13.04.2023, the Police Inspector attached with Bhingar Camp Police Station submitted a proposal with Respondent No.3 / Sub Divisional Magistrate for taking preventive action against the Petitioner under Section 56(1)(a)(b) of the Maharashtra Police Act. It is alleged that a series of offences have been registered against the Petitioner. The petitioner's conduct has been disrupting Public peace, therefore, an inquiry was directed. Accordingly, the Assistant Police Inspector of Bhingar Camp Police Station, Bhingar conducted confidential inquiry and submitted its report stating that, due to fear of the present Petitioner, nobody dares to give statement openly against the Petitioner. After assuring that the names of the witnesses would be kept confidential, the statements of Witnesses A and B were recorded

in Camera on 12.04.2023 and 13.04.2023. Thereafter, proposal for externment of the Petitioner was submitted. As per the Report, the Petitioner has been creating an atmosphere of fear in the minds of the people by using force and intimidation, as well as conducting illegal gathering with his associates and using dangerous weapons like iron rods, wooden sticks and stones to cause serious injuries to the people. The Petitioner also vandalizing and committing arson vehicles and damaging public property, disturbing public peace and creating rifts in the minds of people in the Hindu and Muslim communities, harassing women, abusing and harassing people by beating them, threatening to kill them, violating the prohibitory order of the Honorable District Magistrate etc., Therefore, the Petitioner was served with notice dated 08.08.2023 under Section 56(1)(a)(b) of the Maharashtra Police Act and called upon him to submit his cause as to why he should not be externed. On 29.08.2023, the Petitioner personally appeared and prayed for time to submit his reply. Accordingly, on 11.09.2023, the Petitioner filed his reply.

4. On 18.09.2023, the Respondent No.3 / Sub-Divisional Magistrate, Ahmednagar, passed an order and considered that, series

of serious offences are registered against the present Petitioner. Furthermore, the petitioner has been causing disturbance in the society, therefore, externed the Petitioner for the period of two years from entire Ahmednagar District.

5. Being aggrieved by said order of externment, the Petitioner filed externment appeal before the Respondent No.2 / Divisional Commissioner Nashik. On 15.01.2024, Respondent No.2 / Divisional Commissioner, Nasik passed the impugned order and confirmed the order of externment passed by the Respondent No.3 on 18.09.2023.

6. The learned counsel for the Petitioner canvassed in vehemence that, as per the show cause notice served to the Petitioner, the Police Authority mentioned about recording in-camera statements of the witnesses a & b, but the statement of both the witnesses is of general nature and there is no specific allegations on which date the offences have been committed by the Petitioner. Therefore, valuable right of the Petitioner to reply said notice is seriously prejudiced. Further, the Externing Authority failed to elaborate contents of statements of the witnesses a & b recorded in-camera. Section 56 of

the Maharashtra Police Act, 1951 provides about recording specific findings that, the 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. Further, it is necessary for the Externing Authority to be satisfied that the witnesses are unwilling to come forward to give evidence against the Petitioner. However, the Externing Authority failed to give any satisfactory reason and passed the externment order. So also, no sufficient opportunity has been provided for the Petitioner to rebut the statements of witnesses, hence, it is illegal, bad in law.

7. The learned counsel for the Petitioner canvassed that, the Externing Authority passed the order of externment in violation of provisions of Maharashtra Police Act and infringed the fundamental rights of the Petitioner guaranteed under Article 19 of the Constitution of India, even though the Petitioner was acquitted in Crime No.71 of 2022 registered with Kotwali Police Station for the offences u/s 188, 269 of IPC and in Crime No.841 of 2021 for the offences under Section 153, 153(a) read with Section 34 of the IPC. However, other crimes viz., Crime Nos.339 of 2023 registered for the

offence u/s 505(2), 298 read with Section 34 of IPC, Crime No. 294 of 2023 registered u/s 324, 435, 427 of IPC and Section 7(1)(a) of Prevention of damage to the Public Property Act and Section 135 of Maharashtra Police Act are shown under investigation. The trials are pending in respect of Crime No.564 of 2022 registered with Bhingar Camp Police Station for the offences u/s 186 and 341 of the IPC and Crime No.212 of 2017 registered for the offence under Section 395, 394, 323, 504, 506, 427 of IPC, Section 37(1)(3)/137 of the Maharashtra Police Act.

8. It is canvassed that, as per show cause notice dated 08.08.2023, other three chapter cases are registered with Kotwali and Bhingar Camp Police Station under Section 107, 144(2) and 110(e) (g) of Code of Criminal Procedure, but those are stale and no live link has been established with the crimes registered prior to issuance of service of externment notice. Therefore, entire process of externment of the Petitioner is illegal, bad in law and violative of Article 19 of the Constitution of India.

9. To buttress these submissions, the learned counsel for the Petitioner relied on the case of *Balu Shivling Dombe v. Divisional*

Magistrate, Pandharpur, wherein externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case.

10. It further relied on the case of **Deepak S/O Laxman Dongre V. The State Of Maharashtra & Ors. 2022 LiveLaw (SC) 93**, wherein, the Apex Court held that;

“ There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along 6 with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction 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 offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of

externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b)."

11. In case of ***Rahmat Khan Rammu Bismillah Versus Deputy Commissioner of Police 2021 LiveLaw (SC) 404***, it is held by the Apex Court in Para. No.34 as under;

"34. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace. In this case, it is patently clear that the impugned externment order was an outcome of the complaints lodged by the Appellant against government officials, some Madrasas and persons connected with such Madarasas who later lodged FIRs against the Appellant. The FIRs are clearly vindictive, retaliatory and aimed to teach a lesson to the Appellant and stifle his voice."

12. In case-in-hand, the Externing Authority did not follow the procedure and mandate properly as per the Act, and for that purpose the petitioner is relying on case of ***Shri. Arshad Sahil Khan Vs. Deputy Commissioner Of Police, Cri. Writ Petition No. 2603 of 2021***, this court held in para. No.11.

“11. In an externment proceedings initiated against any person it is necessary to scrupulously follow the procedure and mandate of said sections. Once the person is externed, his fundamental right to stay at the place of his choice or to move from one place to another gets curtailed.”

13. Per contra, the Assistant Police Inspector, Bhingar Camp Police Station, Bhingar Ahmednagar filed reply affidavit and strongly opposed the Petition. It is canvassed on behalf of the Respondent Authority that, the Petitioner has committed serious offences and responsible for creating an atmosphere of fear in the minds of the people by using force and intimidation, as well as for conducting gathering of illegal groups with their associates. The Petitioner is in habit to use dangerous weapons like iron rods, wooden sticks and stones to cause serious injuries, vandalizing and committing arson vehicles. The Petitioner habitually damages public property, disturbs public peace and creating rifts in the minds of people in the Hindu and Muslim communities. The Petitioner always harassing male and female and abusing them and issuing threats to kill them. The Petitioner was also found while violating the prohibitory order passed by the District Magistrate etc.

14. It is further canvassed that, six offenses are registered against the Petitioner for the serious offences and in past, preventive action was taken against the Petitioner under Section 107 and 144 of the IPC, therefore, the Petitioner executed bond but said period is over. However, again chapter case has been registered under Section 110(e)(g) of Cr.P.C. with Bhingar Camp Police Station but it was later dropped due to initiation of externment proceedings. Therefore, considering the confidential report as well as statement of the witnesses in respect of causing breach of peace in the society and dangerous activities on part of the Petitioner, the Respondent No.3 Authority passed an order dated 18.09.2023 and externed the Petitioner for the period of two years from the entire Ahmednagar District, which has been affirmed by Respondent No.2 Appellate Authority. Therefore, the administrative action initiated by the Respondent Authority to maintain peace in the society after following the principle of natural justice, need no interference, hence, prayed for dismissal of the Petition.

15. Having regard to the submissions canvassed on behalf of both sides, I have perused the petition paper book. In case-in-hand it

prima facie appears that, the Petitioner served with the notice dated 08.08.2023 proposing his externment for the period of two years due to registration of following crimes;

Sr. No.	Police Station	C.R. No.	Offences under Act /Section	Stage
1.	Bhingar Camp	339/2023	Section 505(2), 34 of I.P.C.	Investigation
2.	MIDC	294/2023	Section 324, 435, 427, of IPC, with Sec. 37(1)(3) of M.P.Act, 1951.	Investigation
3.	Kotwali	71/2022	Sec. 188 and 269 of IPC	Acquitted
4.	Bhingar Camp	564/2022	Sec. 186 and 341 of IPC	Trial pending
5.	Kotwali	841/2021	Sec. 153, 153(A), and 34 of IPC	Acquitted
6.	Bhingar Camp	212/2017	Sec. 395, 354, 323, 504, 506 427 of IPC, with Sec. 37(1)(3) of M. P. Act, 1951.	Trial pending

Chapter Cases				
Sr. No.	Police Station	C.R. No.	Offences under Act /Section	Stage
1.	Kotwali	473/2021	Cr.P.C. u/s 107	Bond period over
2.	Kotwali	280/2022	Cr.P.C. u/s 144(2)	----
3.	Camp	68/2022	Cr.P.C. u/s 110(e)(g)	Revoked

16. In case of **Harikesh @ Guddu Madan Kattilwar Vs. Deputy Police Commissioner** (Criminal Writ Petition No. 908 of 2022), decided on 24.01.2023, the Co-ordinate Bench of this Court observed in paragraph Nos. 14 and 15 as under:

“14. It is to be noted that this order passed by the respondent No.1 and confirmed by the respondent No.3 suffers from the virus of excessiveness. The order of externment apart from making inroads on the personal liberty guaranteed under the Constitution of India, makes the said person live separate from his family members. Similarly, the externment order can deprive the said person of his livelihood. In the given case, depending upon the financial position of the person, it can make the dependents of the said person to starve. Therefore, in order to justify the externment for a maximum period of two years, the Authority is required to consider the objective material to record subjective satisfaction on all points. In this case, I am constrained to observe that the order passed by the respondent No.1 is woefully silent on all these points. The respondent No.1 has not recorded the reasons to order the externment of the petitioner for a period of two years and that too from the entire Amravati District. It is seen on perusal of the notice and order that all the crimes committed by the petitioner were within the jurisdiction of Frezarpura Police Station, Amravati City.

15. In my considered opinion, therefore, the order passed by the respondent No.1 and confirmed by the respondent No.3 suffers from the virus of excessiveness. The law laid down on the point in the cases of Shaikh Mukhtyar S/o Mustafa Shaikh Vs. State of Maharashtra and Others [2017 ALL.M.R. (Cri.) 268 and Bhagwat Dadasaheb Landge and Another Vs. State of Maharashtra and Others [2020(5) Mh.L.J. (Cri.) 546], would, therefore, equally apply in this case. It is to be noted that the excessive nature of the order on both the counts is one of the factors, which would weigh in favour of the petitioner. The order of externment,

making a direct inroads on the fundamental right of movement, must, therefore, pass all the legal tests. In this case, the order passed by the respondent No.1 and confirmed by the respondent No.3 do not pass the said test. It is to be noted that the respondent No.3 despite being confronted with the factual position vis-a-vis the acquittal of the petitioner in four crimes and his involvement in four crimes under the Prohibition Act, confirmed the said order. Perusal of the order of the respondent No.3 would show that the respondent No.3 has recorded factual submissions, but failed to sufficiently deal with the same. Therefore, in my view, this order is not sustainable.”

17. In case of ***Mohammad Alam Ibrahim Shaikh @ Alu Vs. State of Maharashtra, 2005 ALL MR (Cri) 2593***, it is held that, delay of 18 months from the date of show cause notice not explaining and the order was not on the basis of offence registered. On the contrary, offences are of very serious nature, preventive action and live link not snapped. The delay in passing order of externment by itself is not fatal, there has to be some satisfactory explanation for delay and delay should not result in snapping live link. It was held that the delay resulted in snapping live link between 1 preventive action and allegation.

18. On perusal of order of externment dated 18.09.2023 it shows that though the Police Authority referred about registration of Crime against the Petitioner for damaging the

public property, however, except crime No.294 of 2023 no other crimes are related to damage of public property but said crime is shown under investigation and no charge sheet filed as on issuance of the externment notice. The Petitioner is released on bail on 02.12.2017 in Crime No.564 of 2022. It is not the case of Respondents Authority that, the Prosecution has filed an Application for cancellation of Bail in said crimes due to breach of any bail conditions.

19. Needless to say that, externing a person from a specific area for a maximum period of two years without specifying exigencies certainly deprived his right to livelihood and inconvenience caused to his relatives including parents, wife and children who are dependent on income of the externee. Needless to say that, the petitioner has not yet been sentenced for any serious offence which have been provided under Chapter XII, XVI, and XVII. However, trial for offenses punishable under Section 395, 394, 323, 504, 506, 427 of IPC and Section 37(1) (3)/137 of the Maharashtra Police Act are pending. Therefore, considering the facts and circumstances of the case as well as law

laid down by the Hon'ble Supreme Court of India and this Court, it certainly appears that, the order of externment passed by Respondent No.3 on 18.09.2023 and confirmed by the Respondent No.2 vide order dated 15.01.2024 is not justifiable. In view of the above discussion, this Petition needs to be allowed. Accordingly, I proceed to pass the following order.

ORDER

1. The impugned orders dated 15.01.2024 passed by the Respondent No. 2 / Divisional Commissioner, Nasik and order dated 18.09.2023 passed by the Respondent No. 3 / Sub-Divisional Magistrate, Ahmednagar in respect of externment of the petitioner are hereby quashed and set aside.
2. Accordingly, Rule is made absolute.
3. No order as to costs.

[Y. G. KHOBRAGADE, J.]