



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 844 OF 2024

Aslam Shabbir Shaikh @ Bunty Jahagirdar
Age: 52 years, Occupation: business,
R/o. Madina, Masjid Road, Ward No.2,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai
2. The Divisional Commissioner,
Nashik Division, Nashik
3. The Sub-Divisional Officer,
Shrirampur Division,
Shrirampur, District Ahmednagar
4. The Deputy Superintendent of Police,
Shrirampur Division, Shrirampur

... RESPONDENTS

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Ms Pradnya Talekar, Advocate i/b Talekar and Associates for the
Petitioner

Mr. S. M. Ganachari, APP for Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 27.01.2025

PRONOUNCED ON : 04.02.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the sides, heard finally at the stage of admission.

2. By the present Petition under Article 227 of the Constitution of India R/w Sec. 482 of the Code of Criminal Procedure, the Petitioner takes exception to the order dated 28.03.2024 passed by Respondent No.2, Divisional Commissioner, Nashik, in Externment Appeal No.19 of 2024 and whereby affirmed the order passed by Respondent No.3 for externing the Petitioner from Ahmednagar and Pune Districts instead of five districts viz; Ahmednagar, Pune, Nashik, Aurangabad and Beed, for a period of two years.

3. On face of record it appears that, the Respondent Police Authorities have sought to invoke Section 56(1)(a)(b) of the Maharashtra Police Act, 1951. In pursuance of the proposal for externment of the Petitioner u/sec. 56(1)(a)(b) of the Act, 1951, the Sub-Divisional Police Officer, Shrirampur was authorised under letter dated 21.12.2023 to conduct the enquiry. Accordingly, on 13.01.2024, the Sub-Divisional Police Officer (S.D.P.O.), Shrirampur,

conducted primary inquiry and submitted its report stating that, several offences are registered against the present Petitioner with Police Stations i.e. Bhiwandi, Manmad, Newasa, Shrirampur city, Deccan Police Station, Pune. The S.D.P.O., had called the witnesses A and B and recorded their statements as per their say. However, the SDPO found that both the witnesses A and B are frightened to give statement against the Petitioner, so also, no one coming forward to give any statement against the Petitioner due to his criminal activities. Under the said show cause notice, the Petitioner was called upon to submit explanation as to why he should not be externed for a period of two years from above Five Districts with description of series of crimes registered against him. In response to the said notice, the Petitioner submitted his written say and contended that, intentionally false crimes are registered against him. He never indulged into any such criminal activities. The police authorities have shown about registration of crime No.69 of 2002, but he already acquitted by the Sessions Court, Mumbai, on 17.01.2015. He further submits that, Crime No.3057 of 2006 is registered prior to 18 years, but the trial of said crime is still pending. He acquitted in Crime No.175 of 2011 vide judgment and order dated 29.06.2013. He also acquitted in

Crime No.247 of 2012 on 03.12.2012 by the learned J.M.F.C., Shrirampur. The trial of Crime No.168 of 2012 is pending against him since last 12 years. The Crime Nos. 406 of 2023 and 407 of 2023 are falsely registered against him and no charge-sheets have been filed till issuance of the notice.

4. The Petitioner further contended that, previously he was externed for a period of two years vide order dated 25.04.2017 passed in Externment case No.14 of 2016. However, on 17.07.2017, this Court passed an order in Criminal Writ Petition No.857 of 2017 and set aside the said externment order. But, again the Police Authorities were initiated externment proceeding under Section 55 of the Maharashtra Police Act. But the Respondent No.2 Appellate Authority passed an order on 19.01.2019 and quashed said externment proceeding on ground that, the externment proceeding came to be initiated on the same ground on which this Court quash and set aside order of externment on 17.07.2017 in Cri. W. P. No.857 of 2017. Therefore, prayed for drop of externment proceeding.

5. On 31.01.2024, the Respondent No.3 Sub-Divisional Officer, Shrirampur, passed an order holding that, there are seven

offences registered with various Police Stations viz; Bhiwandi, Manmad, Newasa, Shrirampur city, Deccan Police Station, Pune, etc.. Due to dangerous activities of the present Petitioner, there is harm to the citizens and their properties. Further, due to petitioner's criminal activities, the witnesses are not willing to come forward to give evidence in public against him. Therefore, considering the nature of offences as well as report submitted by the S.D.P.O., the Respondent No.3 passed an order and externed the Petitioner for a period of two years from entire districts of Ahmednagar, Pune, Nashik, Aurangabad and Beed.

6. Being aggrieved by said order, the Petitioner invoked u/s 60 of Act, 1951 and filed externment Appeal No.19 of 2024, before Respondent No.2 Appellate Authority. On 28.03.2024, the Appellate Authority passed the impugned order affirming order of externment of the Petitioner for the period of two years to the extent of Districts Ahmednagar and Pune only.

7. The Petitioner has challenged his externment order on the following grounds:-

- (i) Once the externment order is set aside, then externment of the Petitioner on the same ground is not maintainable;

- (ii) The Petitioner already acquitted for some of the offences on which basis the proposal for externment of the Petitioner submitted;
- (iii) There is no live link with the offences registered against the Petitioner and the offences allegedly described in the proposal for externment.
- (iv) Two new offences registered against the Petitioner have been considered, but the prosecution has not filed charge-sheet against the Petitioner for the said two offences till issuance of the externment notice.
- (v) In the externment notice under Section 56 of the Maharashtra Police Act, the statement of witnesses allegedly recorded in camera, but the details of said witnesses have not been described in the notice.
- (vi) As per the provisions of Section 56 of the Maharashtra Police Act, maximum period of externment is provided two years, however, while externing the Petitioner for the maximum period of two weeks, the authorities have not given sufficient elaborative reasons and not explained as to why the Petitioner is required to be externed for a maximum period of two years.

8. The learned counsel for the Petitioner submits that as per the show cause notice, following crimes are registered against the Petitioner:-

Sr. No.	Police Stations	Crime No.	Offences u/s	Current Status
1	Bhiwandi Taluka	I-69/2002	302, 120(B), 34 of IPC, 3/25 of Arms Act	Trial Pending
2	Manmad	I-3057/2006	120, 121 of IPC, 3, 9 Official Secret Act, 1923	Trial Pending
3	Newasa	I-175/2011	143, 147, 148, 149, 295, 307, 326, 333, 436, 336, 337, 452, 504, 506, 120(B) of IPC, 3/25, 4/25 of Arms Act, 37(1) (3), 135 of the Bombay Police Act, 3 of the Prevention of Damage to Public Property Act	Trial Pending
4	Shrirampur City	I-247/2012	147, 148, 324 of IPC, 37(1)(3), 135 of the Bombay Police Act.	Trial Pending
5	Deccan Police Station, Pune Anti Terrorist Cell, Mumbai	I-168/2012	307, 427, 120B of IPC, 3, 4, 5 of Indian Explosive Substance Act, 16 & 18 of Unlawful Activities (Prevention) Act and Crime No.09/2012 307, 435, 120B of IPC, 3, 4 & 5 of Indian Explosive Substance Act, 3/25 of Arms Act, 16(1)B, 18, 20, 23, 38 & 39 of Unlawful Activities (Prevention) Act, 3(1), (ii)3, (2) and 3(4) of MCOCA	Trial Pending
6	Shrirampur City	I-406/2023	143, 147, 148, 149, 323, 504 of IPC, 3(1)(r) & 3(1)(s) of SC & ST (Prevention of Atrocities) Act	Police Investigation
7	Shrirampur City	I-407/2023	143, 147, 148, 149, 323, 504, 506 of IPC	Police Investigation

9. However, the Petitioner is acquitted in Crime Serial Nos. 1, 3 and 4, whereas, Crime Serial Nos. 2, 5, 6 and 7 are stale offences. So also, as per Judgment and order dated 27.07.2017 passed by this Court in Criminal Writ Petition No.857 of 2017, the crime Serial Nos. 2 and 5 are not having live link in 2024. The prosecution has not filed charge-sheet against the petitioner in respect of Crime Serial Nos. 6 and 7 as on date of service of externment show cause notice. The previous externment order has been set aside by Respondent No.3 on the ground that, the externment proceeding came to be initiated on the same grounds, which this Court set aside.

10. The learned counsel for the Petitioner further canvassed that Respondent Nos. 2 and 3 have failed to consider material available on record to connect live link with the offences which are registered against the Petitioner while service of notice under Section 56 of the Maharashtra Police Act. Further, without filing the charge-sheet in crimes which are subsequently registered, therefore, grounds set out in the externment notice are not sound and valid reasons. Therefore, prayed to quash and set aside the impugned order arising out of the order passed by Respondent No.3.

11. To buttress these submissions, the learned counsel for the Petitioner placed reliance on the following case laws.

- (i) *Deepak Laxman Dongre Vs State of Maharashtra and Ors., AIR 2022 SC 1241;*
- (ii) *Imtiyaz Hussain Sayyad Vs. State of Maharashtra and others, 2024 SCC OnLine Bom 442;*
- (iii) *Subhash Ganu Bhoir Vs. K. P. Raghuwanshi and another, 1986 SCC OnLine Bom 124 : (1987) 1 Bom CR 425;*
- (iv) *Imran Abdul Wahid Hasmi Vs. Dy. Commissioner of Police and Others, 2016 SCC OnLine Bom 3868 : (2016) 3 AIR Bom R (Cri) 358;*
- (v) *Iqbal Hussain Abid Hussain Qureshi Vs. The State of Maharashtra & Ors., 1998 SCC OnLine Bom 727 : (1999) 101 (1) Bom LR 631;*
- (vi) *Deepak Kailas Aglave Vs. The State of Maharashtra and others, Judgment dated 02.09.2024 delivered by this Court (Coram: S. G. Mehare, J.) in Criminal Writ Petition No.1190 of 2024.*

12. Per contra, the learned APP canvassed that, on 31.01.2024, the Sub-Divisional Magistrate passed the order after following due procedure of law and externed the Petitioner for a period of two years from five Districts (i) Ahmednagar, (ii) Pune, (iii) Nashik, (iv) Aurangabad and (v) Beed, because of criminal, dangerous activities of the petitioner in all Districts. The Petitioner challenged said order in Externment Appeal No.19 of 2024, however, the Respondent No.2 Appellate Authority passed the impugned order dated 28.03.2024 and affirmed the order passed by Respondent No.3.

13. Since number of crimes are registered against the present Petitioner due to his criminal activities and tranquility in the society and the offences are registered against the Petitioner relating to the human body, which resulted in breach of peace and harm to the society at large. Therefore, the Respondents Police Authority issued a notice by following the principles of natural justice by giving an opportunity of being heard and the Respondent Authorities have passed the administrative order and externed the Petitioner. Therefore, there is no infirmity and material placed on record sufficient to extern the Petitioner from Ahmednagar and Pune Districts.

14. In support of these submissions, the learned APP placed reliance on the case of *N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080*, wherein it has been held that, the Courts will be slow in interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety.

15. It is pertinent to note here that, the Respondent Police authorities have sought to invoke provisions of Section 55 and 56 of

the Maharashtra Police Act and while passing the order of externment, considered the following offences: -

- (1) Crime No.134 of 2023, registered on 15.02.2023 against the Petitioner for the offence punishable under Section 384 and the investigation of said crime is in progress;*
- (2) Crime No.410 of 2022, registered on 30.04.2022 for the offence punishable under Section 341, 323, 324, 504, 506 read with Section 34 of I.P.C. and the trial of said offence is pending;*
- (3) N.C. No.1078 of 2022, registered on 14.05.2022 for the offences under Section 323, 504, 506 read with Section 34 of I.P.C. and*
- (4) Chapter Case No.213 of 2021 for the offence punishable under Section 107 of Cr.P.C. registered on 08.09.2021 as well as report of cancellation of bond dated 15.05.2022.*

16. Section 55 and 56 of the Maharashtra Police Act provides as under:-

“55. Dispersal of gangs and bodies of persons.

Whenever it shall appear in Greater Bombay and in other areas in which Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the Superintendent 3 empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or

such area and any district or districts, or any part thereof, contiguous thereto within such time as such officer shall prescribe, and not to enter to area for the areas and such contiguous districts, or part thereof, as the case may be, or return to the place from which each of them was directed to remove himself.

56. Removal of persons about to commit offence.

(1) Whenever it shall appear in Greater Bombay 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 specially 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 abatement 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, Antisocial and other Dangerous Activities Act, 1980 or

(2) in any manner prejudicial to the maintenance or supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(3) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said office 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 or 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 such-section (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.”

17. On plain reading of Section 56(1)(a)(b) of the Act of 1951, it would show that subjective satisfaction for passing of externment order cannot be recorded on the basis of offences/crimes under which the present Petitioner already tried and acquitted by the competent Court.

18. The action for externment of the Petitioner certainly takes his liberty as an individual guaranteed under Articles 19 of the

Constitution of India. Therefore, the grounds for externment of the Petitioner provided under clause (a) of sub-section (1) of Section 56 must show that, the Petitioner causing or is calculated to cause danger or alarm or harm to a person or property. As per clause (b) of sub-section (1) of Section 56, the grounds for externment must believe that the Petitioner is engaged or is about to be engaged in the commission of an offence involving affairs or violence or an offence punishable under Chapter XII, XVI, XVII of I.P.C. or abatement of any such offence. Further, the competent authority is empowered to pass order or externment if any is known the witnesses are not willing to come forward to give evidence in public against the Petitioner.

19. In the case of ***Deepak Laxman Dongre*** cited (*supra*) on behalf of the Petitioner, the Hon'ble Supreme Court considered the scope of Section 56 of the Maharashtra Police Act and held in paragraphs 11 to 13, as under:-

“11. In the facts of the case, the non-application of mind is apparent on the face of the record as the order dated 2nd June 2020 of the learned Judicial Magistrate is not even considered in the impugned order of externment though the appellant specifically relied upon it in his reply. This is very relevant as the appellant was sought to be detained under sub-section (3) of Section 151 of Cr.PC for a period of 15 days on the basis of the same offences which are relied upon in the impugned order of externment. As mentioned earlier, from 2nd June 2020 till the

passing of the impugned order of externment, the appellant is not shown to be involved in any objectionable activity. The impugned order appears to have been passed casually in a cavalier manner. The first three offences relied upon are of 2013 and 2018 which are stale offences in the sense that there is no live link between the said offences and the necessity of passing an order of externment in the year 2020. The two offences of 2020 alleged against the appellant are against two individuals. The first one is the daughter of the said MLA and the other is the said Varsha Bankar. There is material on record to show that the said Varsha Bankar was acting as per the instructions of the brother of the said MLA. The said two offences are in respect of individuals. There is no material on record to show that witnesses were not coming forward to depose in these two cases. Therefore, both clauses (a) and (b) of subsection (1) of Section 56 are not attracted.

12. As the order impugned takes away fundamental right under Article 19(1)(d) of the Constitution of India, it must stand the test of reasonableness contemplated by clause (5) of Article 19. Considering the bare facts on record, the said order shows non-application of mind and smacks of arbitrariness. Therefore, it becomes vulnerable. The order cannot be sustained in law.

13. Section 58 of the 1951 Act reads thus:

“58. Period of operation of orders under section 55, 56, 57 and 57A - A direction made under section 55, 56, 57 and 57A not to enter any particular area or such area and any District or Districts, or any part thereof, contiguous thereto, or any specified area or areas as the case maybe, shall be for such period as may be specified therein and shall in no case exceed a period of two years from the date on which the person removes himself or is removed from the area, District or Districts or part aforesaid or from the specified area or areas as the case may be”.

On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56. On the basis of objective

assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15th December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent no.2 on the basis of material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India.”

20. In the case of ***Imtiyaz Hussain Sayyad*** (supra), it is held that, mere registration of a number of offences by itself does not sustain an externment under Section 56(1)(b) of the Act. The offences must either involve elements of force or violence or fall under Chapters XII, XVI and XVII of the I.P.C. and in addition, the externing authority must record satisfaction that the witnesses are not willing to come forward to give evidence in public against the externee by reason of apprehension on their part as regards the safety of their person or property. In paragraph 19, this Court held that two crimes are registered, but those are under investigation and no

charge-sheet has been filed. Hence, the same cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial. So also, there must be live link between the cases filed against the Petitioner and the externment order.

21. In the case of ***Subhash Ganu Bhoir*** cited (supra), this Court has observed in paragraph 5, as under:-

“5. In the petition a specific statement has been made by the petitioner that the earlier externment order passed against him was quashed by the Court in Criminal Writ Petition No. 720 of 1982. It is also alleged that the first three allegations made in the impugned show cause notice were also the subject matter of the earlier order. In the judgment of this Court in Criminal Writ Petition No. 720 of 1982 decided on 6th of December, 1982 by Kurdukar and D.B. Deshpande, JJ., it was observed that there was an allegation that the externnee had committed one murder; but it was not disputed that he was honourably acquitted by the Session Court. In spite of these observations of this Court in Criminal Writ Petition No. 720 of 1982, again the said allegation is repeated in the show cause notice as instance No. 1. In other matters also the externnee was acquitted and it is the case of the petitioner that it was a honourable acquittal. To say the least the said instances are too remote and stale. As to why the chapter cases instituted against the petitioner came to be dropped, is also not explained. In these circumstances by talking recourse to old and stale instances, which were the subject matter of the earlier proceedings, no order could have been passed under section 56(a) and (b) of the Bombay Police Act. In our view some of the grounds which were the subject matter of the earlier externment proceedings in Criminal Writ Petition No. 720 of 1982, could not have been made basis of the present externment proceedings in view of the decision of this Court in Criminal Writ Petition No. 720 of 1982. Once this finding is recorded, then the whole order must get vitiated.”

22. In the case of ***Imran Abdul Wahid Hasmi***, cited (supra), the Division Bench of this Court held in paragraph 10, as under:-

“10. On perusal of the order of externment as well as the show-cause notice, it is apparent that the action was initiated in exercise of powers under Section 56 (1)(a) and (b) of the said Act. In the notice, it has been mentioned that since 2011, the petitioners movements and activities had caused or calculated to cause danger, harm and alarm to the persons and properties of the residents, shop owners and businessmen from the area of Sanjay Nagar Hutments, Sant Nirankari Hutments at Shivaji Nagar, Vainganwadi, Govandi and adjoining areas. The petitioner was also informed that he was involved in commission of offences and the cases are pending against him as well as one case is under investigation. It is further mentioned that the petitioner has committed serious offences within the areas mentioned therein and have committed offences punishable under Chapters 16 and 17 of the Indian Penal Code. The notice further refers to the statements of two witnesses who are not willing to come forward to depose against him on account of fear which was recorded in-camera. In paragraph 4 of the notice, it is mentioned that the witnesses referred to in paragraph 2(a) and (b) are victims at the hands of the petitioners and they are not willing to come forward to depose against the petitioner in public. It is pertinent to note that the aforesaid assertion is in respect to the activities referred by witnesses (a) and (b) whose statements were recorded in-camera. Hence, as far as the other allegations referred to in the notice, there is no satisfaction therein that the witnesses in connection with said activities are not willing to come forward to depose against the petitioner in public. The notice spells out the activities which forms the grounds under Clause (a) and clause (b) of Section 56 (1) of the said Act, however, the satisfaction that the witnesses are not willing to come forward to depose against the petitioner is recorded only in respect of the activities reflected in paragraph nos. 2(a) and 2(b) of the notice. No such satisfaction is spelt out in respect of the activities reflected in the introductory paragraph 1(a) of the notice.”

23. In the case of *Iqbal Hussain Abid Hussain Qureshi (supra)*, it has been held that, once it is held that the Petitioner was denied the reasonable opportunity the said ground could not have been the basis of formation of opinion. It is also clear that when the order of externment is based on the several grounds and one of the grounds cannot be sustained, the Court cannot decide which ground weights with the Externment Authority and it cannot substitute the decision over that of the Externment Authority. The order on that count is liable to be quashed and set aside.

24. In the Judgment dated 02.09.2024, delivered by this Court in Cri. W. P. No.1190 of 2024, it has been observed in paragraphs 11 and 12, as under:-

“11. Not mentioning the general nature of material in a show cause notice invalidates such notice. It must mention the fact that the witnesses are not coming forward to give the evidence against him in public for the reason of apprehension as regards to the safety to his person and property. The law is well settled that the camera statement of the witnesses should mention the specific details regarding the time, place, and month of the incident. If such statements are vague, the externment order should be considered invalid.

12. The pronouncement of the Hon’ble Supreme Court and the Bombay High Court on section 56 of the Act would be summarized as follows;

a) The show cause notice under section 59 of the Act should mention the details of crimes registered against the proposed externnee.

- b) The show cause notice should disclose the facts that the witnesses are not willing to come forward to give the evidence against the proposed externee in public by reason of apprehension on their part as regards the safety of their person or property.*
- c) The Authority should believe that there are reasonable grounds to form an opinion that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offences punishable under Chapters XII, XVI and XVII of the Indian Penal Code and abetment thereof.*
- d) The principle of natural justice by granting fair hearing to such person shall be followed.*
- e) There shall be live link and proximity in crime and the action of the externment. There should be no abnormal delay in passing externment orders from the last offence registered against him.*
- f) The Authority shall be subjectively satisfied with the objective material.*
- g) The cases registered and pending against such a person should not be stale and old.*
- h) The orders should not be for excessive areas of externing such a person from larger areas and while passing such orders, the authority must assign the reasons for extering him beyond the area of operation.*
- i) The authority can not consider the extraneous material which was not disclosed in the show cause notices.*
- j) The camera statements of the witnesses should not be vague and identical. The order should reflect the application of mind.”*

25. In case in hand, it is not in dispute that, the Petitioner served with the show-cause notice under Section 56(a)(b) of the Maharashtra Police Act because of registration of series of crimes for various offence under the Indian Penal Code, Official Secrets Act, Prevention of Damage to the Public Property, Indian Arms Act,

Maharashtra Police Act, Anti Terrorist Act, MCOC Act, 1999 etc., as described in para 7 referred above. Further, recently, Crime numbers 406 of 2023 and 407 of 2023 are registered against the petitioner with Shrirampur Police Station for the offences u/s 143, 147, 148, 149, 323, 504, 506 of IPC and Sec. 3(1)(r), 3(1)(s) of SC, ST Atrocities Act. However, in both these crimes no charge sheets are filed against the petitioner till date of service of externment notice. Therefore, as per the dictum laid down by this Court in the case of ***Imtiyaz Hussain Sayyad***, cited (supra), said crimes cannot be considered for externment of the Petitioner.

26. Further, the Respondents Police Authorities are fail to bring substantial material on record to connect live link between the cases registered against the Petitioner and the externment order. The Petitioner is acquitted in Crime Serial Nos. 1, 3 and 4, whereas, Crime Serial Nos. 2, 5, 6 and 7 are stale offences. As per Judgment dated 27.07.2017 passed by this Court in Criminal Writ Petition No.857 of 2017, the crime Serial Nos. 2 and 5 are not having live link in 2024. Therefore, said offences in which the Petitioner already acquitted, cannot be considered for externment. However, Respondent No.3 Externment Authority considered statement of witnesses (A) and (B),

recorded in camera, but there is no satisfactory explanation about statements of said witnesses to show that, due to criminal activities of the petitioner the witnesses are not willing to come forward to depose against the Petitioner in public. There is no live link and proximity between last crime registered against the Petitioner and action initiated under Section 56(1)(a)(b) of the Maharashtra Police Act.

27. Needless to say that, in past the Petitioner was externed on the same set of facts and set order of externment came to be quashed by this Court vide Judgment dated 17.07.2017 in Criminal Writ Petition No.857 of 2017. Not only this but subsequent externment order also quashed by the Respondent No.2. Therefore, in my view the Respondents Police Authorities are fail to bring cogent material on record to connect live link and proximity between the last crime registered against the Petitioner and proposed action of externment u/s 56(1)(a)(b) of the Act, 1951.

28. It is further submitted that, Sec. 56 provides maximum period of externment is two years. In case of *Deepak Laxman Dongre cited (supra)* it is held that, when the competent authority passes an order for the maximum period of two years it is necessary to record

subjective satisfaction about imposing such period and must disclose an application of mind for passing an order of externment for the maximum period of two years based on material available on record and in absence of explanation it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India. However, in case-in-hand, the Externment authority fail to give any explanation for externment of the petitioner for the maximum period of two years, hence, it is violative of right of the petitioner granted under Art. 19 (1) of the Constitution of India.

29. In the light of above discussions, I proceed to pass the following order:

::ORDER::

- (i) Rule is made absolute.
- (ii) The impugned orders dated 28.03.2024 passed by Respondent No.2, Divisional Commissioner, Nashik, in Externment Appeal No.19 of 2024 and order dated 31.01.2024 passed by Respondent No.3 Sub-Divisional Officer, Shrirampur, are quashed and set aside.

[Y. G. KHOBRAGADE, J.]