



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

901 CRIMINAL WRIT PETITION NO. 1158 OF 2025

Nazim s/o Islauddin Shaikh,
Age 28 yrs. Occ. Business
r/o Zenda Galli, Gandhi Nagar,
Kopargaon, Tq. Kopargaon
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary
Home Department
Mantralaya Mumbai-32
2. The Divisional Commissioner,
Nashik Division, Nashik
3. The Sub Divisional Police Officer,
Shirdi Division, Shirdi
Tq. Rahata, Dist. Ahmednagar.
(copy of Respondent to be served on
Public Prosecutor, High Court of Bombay
Bench at Aurangabad)

...RESPONDENTS

...
Advocate for the Petitioner : Mr. Kishorkumar B. Borde
and Mr. Kailas B. Jadhav.
APP for Respondent Nos. 1 to 3 : Mr. S. S. Dande

...
CORAM : ABHAY J. MANTRI, J.

DATE : 26.11.2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for the respective

parties.

2. The petitioner assails the order dated 06.08.2025 passed by the respondent No.2 -Divisional Commissioner, Nashik (hereinafter referred to as '*Commissioner*') in Externment Appeal No. 52/2025, whereby, confirmed the order dated 30.06.2025 passed by respondent No.3 - the learned Sub-Divisional Police Officer, Shirdi Division, Shirdi (hereinafter referred to as '*SDPO*') in Externment Case No. 3/2025, whereby the petitioner was externed from the Ahilyanagar and three Talukas in Nashik District i.e. Sinner, Niphad, Yewala and Vaijapur Taluka from Chh. Sambhajinagar, for a period of one year. Hence, he has preferred this petition.

3. Learned Advocate for the petitioner has vehemently submitted that the offences mentioned in the chart at Sr. Nos. 1 to 4 are of the year 2019 and 2020 and for that purpose the concerned externment authority/SP, Ahmednagar, had already passed an order on 31.12.2020 and extended him from the Ahmednagar District for a period of 20 months and he had complied/undergone the said order. Thereafter, two offences were registered and out of that one was registered in 2023 which was challenged by the petitioner before this Court in Writ Petition No.1262/2023, wherein this Court has passed the order dated 11th September 2023 and directed him to appear before the

concerned authority again and, thereafter, on executing indemnity bond, the said show cause Notice was withdrawn by the concerned authority. Thereafter, the offence bearing No. 423/2024 was registered against him. Only for the registration of one new offence under the Arms Act, the impugned order was passed, and the appellate authority confirmed the said order. As such, he submits that the said order is illegal and cannot be sustained in the eyes of the law.

4. To buttress the submissions, learned Advocate for the petitioner relied upon the judgment passed by the Hon'ble Apex Court in *Deepak s/o Laxman Dongre Versus State of Maharashtra and others, (2023) 14 SCC 707* and the judgment of this Court in *Nitin s/o Manohar Kakade Versus State of Maharashtra and others, CrWP No.174/2017, Dated February 09, 2017* and pointed out para 10 and 11 and submitted that in view of the mandate in those judgments, the show cause notice and impugned order shall be quashed and set aside.

5. As against this, the learned APP vehemently resisted the petition on the ground that the petitioner is a habitual offender and earlier twice an externment order was passed against him, and this is for the third time, the order is passed. He has pointed out in paragraphs Nos. 8 and 9 of the affidavit-in-reply and tried to substantiate the order passed by the learned authorities. As such, he has prayed to dismiss the petition.

6. Perused the impugned order, which was passed by the learned SDPO, Shirdi, whereby the petitioner was externed from the entire Ahmednagar District and three talukas in Nashik District and one taluka in Chatrapati Sambhajnagar adjacent to Shirdi Taluka. The learned APP was unable to reply as to how the learned SDPO had passed the order of externment of the petitioner from the entire A'Nagar District. However, he fairly submitted that, as per Section 56 of the Maharashtra Police Act, 1951 (hereinafter referred to as "*the Act*"), the competent authority is empowered and authorised to extern a person outside the local limits of its jurisdiction and the districts contiguous to its jurisdiction.

7. I have gone through the impugned order and record as well as the judgment relied upon by the learned Advocate for the petitioner. At the outset, it appears that, for the cases of 2019 and 2020, for which the petitioner was earlier externed from Ahmednagar District, in addition to this, it can be said that said offences are stale offences, and only two offences have been registered thereafter at Kopergaon City Police Station in 2023 and 2024; therefore, the learned SDPO has passed the order.

8. It is pertinent to note that merely the registration of the number of offences by itself does not sustain an externment order

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 Indian Penal Code. In addition, the externing authority must record “*subjective 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.

9. While dealing with this issue, I would like to reproduce paragraph Nos. 12, 14 and 15 of the judgment of the Hon’ble Apex Court in **Deepak** (*supra*), which reads thus :

12. Considering the nature of the power under Section 56, the competent authority is not expected to write a judgment containing elaborate reasons. However, the competent authority must record its subjective satisfaction of the existence of one of the grounds in sub-section (1) of Section 56 on the basis of objective material placed before it. Though the competent authority is not required to record reasons on par with a judicial order, when challenged, the competent authority must be in a position to show the application of mind. The Court, while testing the order of externment, cannot go into the question of the sufficiency of material based on which the subjective satisfaction has been recorded. However, the Court can always consider whether there existed any material on the basis of which a subjective satisfaction could have been recorded. The Court can interfere when either there is no material or the relevant material has not been considered. The Court cannot interfere because

there is a possibility of another view being taken. As in the case of any other administrative order, the judicial review is permissible on the grounds of mala fides, unreasonableness or arbitrariness.

14. As the order impugned takes away fundamental right under Article 191)(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.

15. Section 58 of the 1951 Act reads thus :

58. Period of operation of orders under Sections 55, 56, 57 and 57-A.--

A direction made under Sections 55, 56, 57 and 57-A 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 may be, 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”

10. In para 16 of the judgment in **Nitin** (Supra), it was observed thus :

“16. Therefore, whenever there are cases of externment or detention, as the case may be, the concerned authorities are bound to adhere to the provisions of the Act and also the various pronouncements of the High Court and the Supreme Court on the interpretation of the provisions of the said Act. It is necessary for the authority to arrive at subjective satisfaction on the basis of material collected during the inquiry and after seeking the response of the proposed externnee; however, as already observed, respondent no.3, without assigning any reason, issued the show cause notice mentioning therein why the petitioner should not be externed from five districts, even though the proposal submitted by respondent no. 4

mentions only three districts. Apart from it, so far as the externment of the petitioner from the other two districts, i.e. Beed district and Aurangabad, is concerned, no justifiable or sound reasons have been recorded by respondent no.3. As already observed, the appellate authority did not consider the legal aspects and proceeded to modify the order, making it enforceable in Pathardi and Shevgaon talukas.”

11. In light of the law laid down judgments above as well as parameters laid down under section 56(1)(a), the aforementioned challenges deserve to be appreciated. It appears that four offences were registered in 2019 and 2020, and, for that purpose, an externment order was already passed against the petitioner; therefore, further consideration of those offences for passing the externment order does not arise. The only two offences registered thereafter are in 2023 and 2024.

12. It is pertinent to note that the externment authority has only emphasised the pendency of two cases against the petitioner. It is trite that cases still sub-judice before the court cannot be taken into consideration in determining the quantum of the final decision in the matter, as the quantum depends on the outcome of the case.

13. Apart from the above, as per observations in *Deepak (supra)*, a learned authority is not expected to write a judgment containing elaborate reasons, but the competent authority must record its subjective satisfaction of the existence of one of the grounds in Sub-

section 1 of Section 56 of the Act, on the basis of material placed before it.

14. It is to be noted that the impugned order takes away the fundamental rights of the petitioner under Article 19(1)(d) and 21 of the Constitution of India. Likewise, the order of externment is not an ordinary measure, and it must be resorted to sparingly and in extraordinary circumstances.

15. Thus, considering the above discussion and the mandate laid down in *Deepak* (*supra*) and *Nitin* (*supra*), it appears that the order passed by the learned authorities cannot be sustained in the eyes of the law, as those were passed without recording the subjective satisfaction as embodied in section 56 of the Act. Therefore, those orders are liable to be quashed and set aside.

16. Besides, it appears that the concerned authorities have not recorded the subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in commission of an offence involving force or violence as have been enumerated in Section 56 (1)(b) of the Act, as well as laws laid down by this Court and the Apex Court in the catena of judgments and proceeded to pass the order. The authorities have erred in considering the stale offences of 2019 and 2020 for which he had already

undergone the externment order. Furthermore, the passing of the order indicates that orders have not assigned any cogent reason as contemplated under Section 56 of the Act.

17. As a result, the impugned orders passed by the authorities appear improper and unjust and therefore liable to be set aside. Consequently, the Criminal Writ Petition is allowed, as such, the order dated 06.08.2025 passed by the respondent No.2 -Divisional Commissioner, Nashik, in Externment Appeal No. 52/2025, and the order dated 30.06.2025 passed by respondent No.3 - the learned Sub-Divisional Police Officer, Shirdi Division, Shirdi, in Externment Case No.3/2025, are quashed and set aside.

18. Rule is made absolute accordingly.

(ABHAY J. MANTRI)
JUDGE

shp/-