



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

Criminal Writ Petition No. 1784 Of 2024

Javed Hakim Shaikh

Age : 38 years, Occupation- Agri/Trade,
R/o. Pimpalwadi, (Piraji),
Tq. Paithan, Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Superintendent of Police,
Aurangabad.
4. The Sub Divisional Police Officer,
Aurangabad.

.. Respondents

AND

Criminal Writ Petition No. 1869 Of 2024

Wazir alias Kalu Yasin Pathan

Age : 40 years, Occupation- Agri.,
R/o. Pimpalwadi, (Piraji),
Tq. Paithan, Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.

3. The Superintendent of Police,
Aurangabad.
4. The Sub Divisional Police Officer,
Aurangabad.

.. Respondents

- * Ms. Priyanka P. Shinde, Advocate for the Petitioners.
- * Mrs. Ashlesha S. Deshmukh, APP for Respondent Nos. 1 to 4
in WP-1784/2024.
- * Mr. S.M. Ganachari, APP for Respondent Nos. 1 to 4
in WP-1869/2024.

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 20th MARCH 2025

PRONOUNCED ON : 27th MARCH 2025

J U D G M E N T :

. Rule. Rule is made returnable forthwith as the petitions pertain to externment.

2. Both the Petitioners suffered common order of externment by the authority at the first instance. The appeals filed against the order were decided by distinct judgment passed on 19.08.2024 by the Appellate Authority, dismissing those appeals. There is common record. I, therefore, propose to decide both petitions by common judgment and order.

3. Petitioners suffered proceeding of externment under Section 55 of the Maharashtra Police Act, 1951 (Hereinafter referred to as 'Act' for the sake of brevity and convenience) on the basis of offences C.R. No.62/2022 under Sections 353, 332, 295, 503 read with 34 of the Indian

Penal Code and C.R. No.242/2023 under Sections 394 read with 34 of the Indian Penal Code registered with MIDC Paithan Police Station. In-camera statements of two witnesses were recorded. The proposal was forwarded by the Assistant Police Inspector of MIDC Paithan Police Station on 06.05.2024 to the Respondent No.3. Respondent No.4/Sub-Divisional Police Officer was entrusted an inquiry. Accordingly report was submitted on 05.06.2024. The Petitioners were issued show cause notices on 14.06.2024. They replied on 20.06.2024.

4. On the above referred foundation, Respondent No.3 passed order under Section 55(1), externing both Petitioners for one year from District Chattrapati Sambhaji Nagar. Respondent No.2/Appellate Authority confirmed externment order on 19.08.2024. The Petitioners are found to be Members of a gang which has established a terror in the vicinity of MIDC Paithan and Taluka Paithan. They are found to have indulged in various illegal acts including causing obstruction to the Government work. They are found to have been undeterred despite arresting them. Their activities are found to be detrimental to the residents of the locality and their properties. On the basis of such subjective satisfaction, they are held to be liable for the externment.

5. Learned Counsel Ms. Priyanka Shinde for the Petitioners canvassed following submissions :

(i) The order of externing the Petitioners from entire Chattrapati Sambhaji Nagar District is disproportionate, perverse and arbitrary because no reasons are assigned to exclude them beyond MIDC Paithan or Paithan Taluka.

(ii) The subjective satisfaction arrived at by the authority is not only defective, but unreasonable and perverse because there is no cogent

material to proceed against them.

- (iii) There was no live link between the offences pitted against them and the order.
- (iv) The confidential statements are vague and without any material particular.
- (v) The material pitted against them is inadequate to conclude that they formed a gang and their activities are detrimental to the public peace.

6. Reliance is placed on the following judgments :

- (i) Bhagwat Dadasaheb Landge Vs. State of Maharashtra, 2020(4) Bom.C.R. (Cri.) 273
- (ii) Abasaheb Balasaheb Warkhede Vs. The State of Maharashtra 2022 ALL MR (Cri) 1541
- (iii) Mohan s/o. Sakharam Kharat & Ors. Vs. State of Maharashtra and Ors. 2021 ALL MR (Cri) 2766

7. Per contra, learned APP Mrs. Ashlesha S. Deshmukh would support impugned order. It is submitted that on the basis of two offences, in-camera statements and report dated 05.06.2024, the authorities proposed to take action for an externment. It is further submitted that due procedure of law was followed and by extending opportunity, the decision impugned was taken. The action was founded on concrete material indicating criminal activities by forming gang.

8. Mr. Ganachari, learned APP appearing in another matter also adopts the submissions referred above. Additionally he would submit that the reply tendered by the Petitioner is not mitigating one.

Petitioner-Wazir @ Kalu Yasin Pathan was found to have entered in the limits of Chhatrapati Sambhaji Nagar by visiting his house at Pimplewadi, Taluka Paithan, thereby committing breach of externment order. Against him offence bearing C.R. No.275/2024 was registered. He would further submit that considering the nature of the activities, the peace and tranquility of entire district Chhatrapati Sambhaji Nagar is in danger and therefore externment from entire district is justifiable. It is submitted that only three months are remaining and no interference is called for.

9. Having heard both the sides extensively, the Respondents undertook the proceeding on the basis of C.R. No.62/2022 registered on 30.03.2022; C.R. No.242/2023 registered on 06.10.2023. Additionally in-camera statements of two witnesses were recorded. In both the matters, the police papers are placed on record. As the Petitioner – Wazir @ Kalu Yasin Pathan committed breach of the externment order, C.R. No.275/2024 is registered against him.

10. Both the offences pitted against the Petitioners were registered with MIDC Paithan Police Station. The investigation of the offences was conducted by selfsame police station. No reasons have been assigned by the Respondent No.3 for externing the Petitioners from entire Chhatrapati Sambhaji Nagar District. On the contrary, the order dated 22.06.2024 and especially the following part indicates activities of the Petitioners were to the extent of Paithan Taluka or MIDC Paithan.

महाराष्ट्र पोलीस अधिनियम कलम ५५ अन्वये पोलीस अधीक्षक या नात्याने मला देण्यात आलेल्या अधिकारान्वये, मी येथे नमूद करू इच्छितो की, माझ्या समोर असणाऱ्या तथ्यसूच्या आधारे माझी खात्री पटली आहे की, नियोजित हद्दपार क्रमांक १ व २ यांची एक टोळी असून त्यांच्या वेळोवेळी वृत्तांतुळे पोस्टे एमआयडीसी पैठण व पैठण तालुक्यात, आसपासच्या परिसरात नागरिकांचे जिवितास व मालमत्तेच्या भयाचे वातावरण निर्माण झाले आहे. त्यामुळे पोस्टे एमआयडीसी पैठण व पैठण तालुक्यात, आसपासच्या परिसरात हिंसक घटना घडून भिती व दहशतीचे वातावरण निर्माण होवु नये, सर्व सामान्य नागरिकांचे जिविताचे व मालमत्तेचे रक्षण व्हावे, त्यांना उपद्रव होवु नये यासाठी मी तुमच्या टोळीची पंगडपंग करण्यासाठी खालील आदेश करीत आहे.

. In the absence of any specific reason, it is impermissible to extern the Petitioners beyond the limit of Paithan Taluka or its MIDC area. The Appellate Court's order is also silent on the aspect of this matter. This is serious flaw in the orders of externment affecting the subjective satisfaction of the competent authority.

11. Petitioners have relied on the judgments of Bhagwat Dadasaheb Landge (supra), Abasaheb Balasaheb Warkhede (supra) and Mohan s/o. Sakharam Kharat & Ors. (supra), to support the submission that no reasons have been assigned for externment beyond Paithan. We find substance in the submissions of learned Counsel for the Petitioners. They are bound to succeed on this ground.

12. The last offence was registered on 06.10.2023. Thereafter the proposal was submitted by the Assistant Police Inspector to the Respondent No.3 on 06.05.2024, after seven months. It has not been explained by the Respondents as to why seven months were consumed for proceeding against the Petitioners. The live link is missing from the last offence till initiation of the proceeding against the Petitioners.

13. I have considered First Information Reports pitted against the Petitioners so as to know the nature of activities. The first offence pertains to the overtact committed by in all 13 persons and the Petitioners during the course of Gram Panchayat meeting. The Petitioners were alleged to be involved, though they were not members. Another offence is about extortion and the robbery. The allegations against the Petitioners are not regarding their activities by forming gang. The second offence is individual centric. Only it is mentioned in the report of Respondent No.4 that the activities pertained to gang and establishing terror. I find no material to support the allegations.

14. The in-camera statements are criticized by the Petitioners being vague and unreliable. Those witnesses did not depose any particular antecedents. Those are lacking material particulars. It is not made clear by the Respondents as to whether those statements were verified by competent authority or not.

15. It is very surprising that from the original papers, both the learned APPs are unable to point out in-camera statements of the witnesses. The index of the police papers also does not show that they were forming part of the papers. The purport of the in-camera statements are attempted to be shown from order dated 22.06.2024 which is also a ground to draw adverse interference against Respondent/authorities. The relevant record should have been produced before the Court.

16. The registration of C.R. No.275/2024 for offence under Section 142 of the Maharashtra Police Act, would not be impediment against Petitioner – Wazir @ Kalu Yasin Pathan. The concerned Petitioner will face the consequences. Neither the said overtact would show the activity of the Petitioner as a member of the gang.

17. I find that the material pitted against the Petitioners is grossly inadequate to arrive at subjective satisfaction against the Petitioners. Their alleged activities were confined to Paithan Taluka but they are externed from the entire district. I am of the considered view that subjective satisfaction is faulty and arbitrary. Both the Petitions are bound to succeed. I, therefore, pass following order :

ORDER

a) Impugned order dated 22.06.2024 passed by the Respondent No.3 and the order of confirmation dated 19.08.2024 passed by the

Respondent No.2 are quashed and set aside.

- b) Petitioners shall be at liberty to enter Chhatrapati Sambhaji Nagar District.
- c) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

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