



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1951 OF 2024

Santosh @ Raju s/o Vishwanath Zalte,
Age 38 years, Occ : Nil,
R/o : High Court Colony, Satara Parisar,
Chhatrapati Sambhaji nagar.
Chennai. (Tamil Nadu).

... PETITIONER

V/s.

1. The State of Maharashtra
2. The Divisional Commissioner,
Aurangabad.
3. The Deputy Police Commissioner,
Zone-1 and the Special Executive
Magistrate, Aurangabad.
4. The Assistant Police Commissioner
Commissioner Office, Aurangabad.
5. The Senior Police Inspector,
Waluj M.I.D.C. Police Station,
Taluka & District Aurangabad.

... RESPONDENTS

.....
Mr. P.P. Giri & T.V. Kamble , Advocate for the Petitioner
Mr. S.M. Ganachari, APP for the Respondent-State
.....

CORAM : Y.G. KHOBRAGADE, J.

RESERVED ON : 22.01.2025

PRONOUNCED ON : 31.01.2025

JUDGMENT:-

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

2. The Petitioner, who has been externed, invoked the jurisdiction of this Court under Article 226 of the Constitution of India and takes exception to the order dated 05.08.2024 passed by the Respondent No.2 Divisional Commissioner, Ch. Sambhajnagar in externment Appeal No.2024/साप्र./कक्ष-1/पोल-1/हद्दपार/सिआर-65 under Section 60 of the Maharashtra Police Act, thereby affirming the order of externment passed by the Respondent No.3 on 06.05.2024.

3. In a nutshell, the facts giving rise to the present petition are that, the Petitioner was served with the Notice dated 10.04.2024 under Section 59 of the Maharashtra Police Act issued by the Respondent No.3 and called upon him to submit his cause as to why he should not be externed from the entire Ch. Sambhajnagar District for a period of two years because of registration of following crimes as under:

Sr. No.	Police Station	Crime Nos. & Sections	Date of registration	Present position
1.	MIDC Waluj	989/2023 u/s 447, 437 r/w 34 of IPC and u/s. 3 of the Prevention of Damage to Public Property Act, 1984	24.11.2023	Investigation in progress

2.	MIDC Waluj	1098/2022 u/s. 395, 397, 398, 506 and u/s. 3/25 of the Arms Act	14.12.2022	Trial pending / sub-judice
3.	MIDC Waluj	1099/2022 u/s. 143, 147, 427, 447 and u/s. 135 of the Maharashtra Police Act, 1951	14.12.2022	Trial pending / sub-judice
4	City Chowk	45/2022 u/s. 269, 270 and u/s. 135 of the Maharashtra Police Act, 1951	09.02.2022	Trial pending / sub-judice

Prohibitory action

1.	MIDC Waluj	Chapter Case No.59/2022 u/s. 110 of Cr.PC.	On 30.12.2022, the Petitioner had furnished a bond of Rs.50,000/- ensuring that he will maintain peace for a period of two years
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4. On 24.09.2024, the Petitioner submitted his reply and claimed that, he is a social worker and agitated for the grievances of the general public but his Politically rival group having a grudge against him and jealous about his popularity in the society. He is a Builder by profession and runs a Security Agency. Further, he is distributing fruits, clothes to the needy person, so also, such as pen and books, stationery items to students from lower income strata. He regularly celebrates anniversaries of national leaders. However, the Police Authorities falsely implicated him in criminal cases. He is enlarged on bail in all the crimes described in the tabular form above. Therefore, proposed action of his externment for a period of two years is illegal, bad in law.

5. On 06.05.2024, the Respondent No.3 passed an order and externed the Petitioner from the entire Ch. Sambhajinagar city and district for a period of two years. Being aggrieved by the said order dated 06.05.2024, the Petitioner preferred Externment Appeal under Section 60 before the Respondent No.2, Divisional Commissioner, Ch. Sambhajinagar. On 05.08.2024, the Respondent No.2 passed the impugned order and affirmed the order of externment passed by the Respondent No.3 on 06.05.2024.

6. The learned counsel appearing for the Petitioner canvassed that, the Respondent Authority failed to appreciate the material available in proper perspective manner and arrived at an erroneous finding. It is further canvassed that the Petitioner is a social activist and is always helpful to the poor, needy people and agitate for their grievances. Therefore, the Petitioner's political rivals group made false allegations and implicated the Petitioner in false crimes.

7. The learned counsel appearing for the Petitioner further canvassed that, the 1st Crime No.1098/2022 registered with the MIDC Waluj Police Station against the Petitioner for the offence punishable under Section 395, 397, 398, 506 of the I.P.C., r/w Sec. 3/25 of the Arms Act and on the same day, 2nd Crime No.1099/2022 was also registered against the present Petitioner for the offence punishable under Section 143, 147, 427, 447 of the I.P.C. and under Section 135 of the Maharashtra Police Act, 1951. But prior to the registration of said

crimes, the Petitioner approached the MIDC Waluj Police Station to lodge a complaint for cognizable offence arising out of same incident described in Crime No.1099/2022. However, the Police Authorities did not register FIR on the Petitioner's report and falsely implicated the Petitioner. It is further canvassed that, Crime No.1099/2022 is of civil nature and Civil Suit bearing RCS No.388/2024 is pending before the C.J.S.D., Aurangabad in respect of the land between him and the adverse party. However, the Respondent No.3 has considered 5 Crimes, viz:

- (i) No.45/2022 registered with City Chowk Police Station for the offence punishable under Section 269, 270 of the I.P.C. and Section 135 of the Maharashtra Police Act,
- (ii) 098/2022 registered with Wajuj MIDC P. S. u/s. 395, 397, 398, 506 and u/s. 3/25 of the Arms Act
- (iii) 1099/2022 registered with Wajuj MIDC P. S. u/s. 143, 147, 427, 447 and u/s. 135 of the Maharashtra Police Act, 1951
- (iv) 45/2022 registered with City Chowk P. S. u/s. 269, 270 and u/s. 135 of the Maharashtra Police Act, 1951
- (v) Chapter Case No.59/2022 u/s. 110 of Cr.PC.

8. However, the Respondent No.3-Authority failed to consider that chapter case was registered during the Covid-19 pandemic for not following the directions issued by the District Magistrate but subsequently prosecution has

been withdrawn. Therefore, considering the registration of stale crimes and as such the Petitioner was release on bail in all these crimes, therefore, there is no necessity to extern the Petitioner from Ch.Sambhajinagar city and the entire district without giving elaborate reasons. Therefore, prayed for quashing and setting aside both orders dated 05.08.2024 and 06.05.2024 passed by the Respondent No. 2 & 3 Authorities.

9. In support of these submissions the learned counsel appearing for the Petitioner placed reliance on the following case laws:

- i) **Deepak S/o Laxman Dongre V/s. State of Maharashtra & Ors.; (2023) 14 SCC 707.**
- ii) **Judgment dated 10.07.2023 passed by the Coordinate Bench of this Court at Nagpur in Criminal Writ Petition No.235/2023.**
- iii) **Imtiyaz Hussain Sayyad V/s. State of Maharashtra & Ors; 2024 SCC OnLine Bom 442.**
- iv) **Deepak V/s. State of Maharashtra & Ors; 2024 SCC OnLine Bom 2840.**
- v) **Judgment dated 24.01.2023 passed by the Coordinate Bench of this Court at Nagpur in Criminal Writ Petition No. 908/2022.**

10. Per contra, the learned APP canvassed that, on 23.01.2024, the Respondent No.5- Senior Police Inspector, MIDC Waluj Police Station submitted a proposal for the externment of the Petitioner from the entire

Ch.Sambhajinagar District for a period of two years. The Respondent No.4 was appointed being a Inquiry Officer. After due inquiry and being satisfied that, the witnesses are not willing to come forward to give evidence in public against the Petitioner under the apprehension of their safety and endanger to their property. Therefore, the Respondent No.4 issued show cause notice to the Petitioner directing him to appear on 10.02.2024 and to submit explanation. Though, the Petitioner appeared and sought time to file reply till 29.02.2024 but subsequently the Petitioner remained absent and no reply was filed. Therefore, the Respondent No.4 considered material available on record and submitted inquiry report on 09.04.2024.

11. The learned APP further canvassed that, the Respondent No.3 issued a notice dated 10.04.2024 under Section 59 of the Maharashtra Police Act and called upon the Petitioner to submit his cause as to why he should not be externed for a period for two years for his illegal activities disturbing peace, and tranquility in the society. The Petitioner filed his reply dated 29.04.2024 and denied allegations. Thereafter, in compliance of principal of natural justice, the Respondent No.3 provided an opportunity of hearing and passed the order dated 06.05.2024 and externed the Petitioner from the entire Ch. Sambhajinagar city and District for a period of two years. In Appeal under Section 60, the Respondent No.2 passed the impugned order and affirmed the order of externment passed by the Respondent No.3 on 06.05.2024. Therefore,

the impugned order does not suffer from any illegality and no substantial grounds are set out. Hence, prayed for dismissal of the petition.

12. The learned APP further canvassed that, the police authorities complied with the due process of law and followed the principles of natural justice by giving sufficient opportunity to file reply and also of a personal hearing. It is further canvassed that the Respondent Nos.2 and 3-Authorities have passed the impugned orders on administrative grounds to maintain peace in the society, hence, prayed for dismissal of the petition.

13. Section 56 of the Maharashtra Police Act, which reads as under.

56. Removal of persons about to commit offence. Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate 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 Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment 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;

(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 of supplies of commodities essential of 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

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or other wise 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 his 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 area") from which he was directed to remove himself.]

14. On plain reading of Section 56, it *prima facie* appears that, if any person's movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property and there are reasonable grounds to believe that such person is engaged or is about to engage in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment of any such offence, and if the concerned officer believe that act of such person is likely to disturb the peace in the society, the District Magistrate or Sub Divisional Magistrate empowered to remove such person from any specified area or areas for the specific period.

15. In case of *Deepak Laxman Dongre V/s. State of Maharashtra and Ors.; cited supra*, wherein the Hon'ble Apex Court laid down guidelines for deciding the Petitions challenging the order of externment passed by the Competent Authority and held that, to invoke the said provisions, there must be objective material on record based on which the Competent Authority must record its subjective satisfaction. It is further observed in cited case that, even if multiple offences have been registered against an individual that by itself is not sufficient to pass an order of externment. Moreover, there must be satisfying material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give statement against the externee.

16. In case of *Imtiyaz Hussain Sayyad-Vs-State of Maharashtra & Ors., cited supra*, it is held that, the Externing Authority require to satisfy the requirement of class of cases stipulated by clause (b) and also to consider the crimes which were under investigation and charge-sheet had not been filed. It is trite, the crimes which are still under investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not sent the accused for trial.

17. In case of *Deepak V/s. State of Maharashtra, 2024 SCC OnLine Bom 2840*, exigencies for invoking Sec. 56 of Maharashtra Police Act are prescribed as under:

- “a) The show cause notice under section 59 of the Act should mention the details of crimes registered against the proposed externee.
- 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 Penal Code, 1860 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 externing 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.”

18. No doubt, in case of *N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080*, the Hon'ble Apex Court has held that, the Courts

should be slow while interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, the impugned orders have been considered in the facts and circumstances of the case.

19. In the case in hand, it *prima facie* appears that, the Respondent No.5 submitted a proposal on 23.01.2024 in respect of externment of the Petitioner from entire Ch.Sambhajinagar District for a period of two years. The Respondent No.4-Assistant Police Commissioner was appointed for conducting the inquiry. Thereafter, the Petitioner was served with the show cause notice directing him to appear on 10.02.2024 with an explanation in his defence. Though, the Petitioner appeared before the Respondent No.4 but he failed to submit his reply till 29.02.2024 in spite of fact that the Petitioner had sought time he remained absent. Therefore, the Respondent No.4 recorded in-camera statements of the witnesses and submitted Report dated 09.04.2024 on the basis of material available.

20. Needless to say that, thereafter, the Petitioner was again served with the show cause notice dated 10.04.2024 directing him to submit his reply as to why he should not be externed for a period of two years from the entire Ch.Sambhajinagar district due his act of breach of peace and tranquility. It is

not in dispute that, on 29.04.2024 the Petitioner filed his reply and stated about registration of above false crimes against him on the same day and he already being enlarged on bail in said crimes. Further, there is no live link with the externment notice and registration of crimes against him at the time of service of externment notice.

21. It is submitted that, on 06.05.2024, the Respondent No.3 passed an order and considered registration of Crime Nos.1098/2022 and 1099/2022 registered with MIDC Waluj Police Station, Crime No.45/2022 registered with City Chowk Police Station, Crime No.989/2023 registered with MIDC Waluj Police Station and trials of all these crimes are pending. So also, one chapter case is registered against the Petitioner for which the Petitioner has furnished bond but said chapter case was subsequently withdrawn.

22. On perusal of record, it appears that Crime Nos.1098/2022 & 1099/2022 are registered with MIDC Waluj Police Station on same day. On perusal of contents of FIR in Crime Nos.1098/2022, it appears that the Informant lodged a report against the Petitioner for forcibly disturbing his possession over the landed property which is of civil nature and Civil Suit is sub-judice between the Petitioner and Informant. The Investigation Agency did not file a charge-sheet against the Petitioner in connection with Crime No.989/2023 registered with MIDC Waluj P. S. on 24-11-2023 for the offences u/s

447, 437 r/w 34 of IPC and u/s. 3 of the Prevention of Damage to Public Property Act, 1984. Therefore, said crime cannot be taken into consideration as per the law laid down in case of *Imtiyaz Hussain Sayyad, cited supra*.

23. It is not out of place to mention that, the externment order came to be passed by relying upon clauses (a) and (b) of Section 56 sub-section (1) of the Act of 1951, however, it is mandatory provides about acts and movements of any person must be causing or calculated to cause alarm, danger or harm to person or property. As per clause (b) the ground requires that, the competent authority must satisfy that, the material must established about existence of reasonable grounds for believing that person sought to be externed is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or abetment of any such offence. The second part of clause (b), which is required to be read with first part, clearly provides that the competent authority empowered to pass an order should form an opinion that the witnesses are not willing to come forward to give evidence in public against such person, only because of an apprehension on their part as regards safety of their person or property. The conjoint reading of clauses (a) and (b) would, therefore, show that in arriving at subjective satisfaction as to the grounds, there must be objective material on record before the authority and the same must be considered in accordance with law.

24. Needless to say that though four crimes have been registered against the Petitioner under Chapter XII, XVI or XVII of the I.P.C., however, in all these crimes the Petitioner was already released on bail and the prosecution has not moved application for cancellation of bail due to breach of bail conditions. However, the Respondent No.2 as well as the Respondent No.3 have not at all considered the bail orders. Though, the Respondent No.4 allegedly conducted an inquiry and recorded statements of the confidential witnesses but in the inquiry nothing was disclosed about conduct of the present Petitioner in respect of disturbing peace in the society.

25. On perusal of the FIR in Crime No.1099/2022, it also appears that the dispute is of a civil nature in respect of forcibly taking possession of the landed property by the Petitioner and his associates. Crime No.45/2022 appears to be registered about making agitation in respect of refusal of the permission by the Collector for agitation. Another Crime No.989/2023 also appears to be about demolition of construction raised by the public body. Therefore, the conduct of the Petitioner does not appear to be hazardous to the society and disturbing peace in the society.

26. On perusal of record, it appears that the Respondent No.4 recorded statements of the confidential witnesses, however, the order passed by the Respondent No.3 does not show about personal verification of

statements of those witnesses, which requires scrupulous examination. Therefore, serious prejudice is caused to the Petitioner.

27. It would be worthwhile to mention here that, order of externment apart from making inroads on the personal liberty guaranteed under Section 19 of the Constitution of India and the Petitioner will be required to live separately from his family members for a period of two years and no specific reasons are recorded while externing the Petitioner for the maximum period of two years provided u/s 56 of the Act, 1951, merely three cases are registered in respect of property dispute and one for taking out morcha without permission at the office of Collector. Therefore, the Writ Petition is hereby allowed. The impugned order dated 05.08.2024 passed by the Respondent No.2 and order dated 06.05.2024 passed by the Respondent No.3 are hereby quashed and set aside.

28. Accordingly, Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]