



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1597 OF 2025

Shaikh @ Farukh Shaikh Mobin,
age 24 years, occu. Labour,
R/o. Near Bukhari Masjid,
Sakhla Plot, Parbhani, Dist. Parbhani.

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Kotwali Police Station,
Parbhani, Tal & Dist. Parbhani
Through Police Station Officer/Inspector
3. The Superintendent of Police
Parbhani, Tq. & Dist. Parbhani,
4. The Divisional Commissioner,
Divisional Ch. Sambhajinagar,
Dist. Ch. Sambhajinagar.

...Respondents

Advocate for Petitioner : Mr. Syed Azizoddin R.
APP for Respondents : Mr. S.S. Dande

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CORAM : ABHAY J. MANTRI, J.

DATE : 12th DECEMBER, 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 at the admission stage.

2. The petitioner, who has been externed by invoking the provisions contained in Section 56 (1) of the Maharashtra Police Act, 1951 (for short, '*the Act*'), has assailed the legality and validity of the externment order dated 03.05.2025, passed by respondent no. 3 – The Superintendent of Police, Parbhani, and the order dated 25.08.2025, passed by the respondent No. 4, thereby confirming the order passed by the respondent No. 3 and dismissing the appeal filed by the petitioner, whereby the petitioner has preferred this petition.

3. Having heard learned Advocate for the petitioner and learned APP for the respondents, at the outset, it appears that on committal of three offences, the SDPO, Parbhani, vide show cause notice dated 15.02.2025, called upon him as to why he was not being externed from the jurisdiction of Parbhani district, as well as adjacent districts to it, for a period of two years. However, thereafter, respondent no. 3 – The Superintendent of Police, after considering the petitioner's submission, passed the order on 03.05.2025, by which the petitioner was externed for the period of one year from Parbhani district as a chief of the gang, and the said order was confirmed by respondent no. 4 – The Commissioner, vide an order dated 25.08.2025.

4. Learned Advocate for the petitioner challenges the said orders on three grounds. *First*, the 2022 offence is stale. *Second*, the

offence of the year 2024, registered vide Crime No. 356/2024, against the petitioner is under investigation. Therefore, the same cannot be considered while passing the order. Lastly, he submitted that the authority cannot pass an order of externment against the petitioner as a member or chief of a gang or a body of persons. Therefore, he submitted that, in view of the registration of one offence, the passing of the impugned order of externment is improper. He further submitted that seven months have elapsed since then, yet he continues to comply with the said order.

5. To buttress his submissions, he has relied on the judgments in (i) *Ahammad Mainuddin Shaikh Versus The State of Maharashtra and Others, 2013 ALLMR(Cri) 3804* and (ii) *Rajesh Tribhuvandas Gupta Versus The State of Maharashtra and Others, 2024:BHC-AS:50419-DB*.

6. On the contrary, the learned APP Shri. Dande resisted the application, contending that the nature of the offences was serious. After considering the material before the learned authorities, they recorded their subjective satisfaction and passed the order; therefore, no interference is required in writ jurisdiction.

7. Having gone through the record, at the outset, it appears that based on the three offences, the authorities have initiated the action against the petitioner, which are as follows:

Sr. Nos.	Police Station & Crime Nos.	Offence	Name of the accused	Status
1.	Kotwali Police Station, CR No. 92/2022	324,323,504,506,143,147, 148,149 of the IPC	Sk.Farooque Sk. Mobin and Others	RCC Pending trial RCC No. 573/2022
2.	Kotwali Police Station, CR No. 356/2024	109(1), 118(2), 352, 351(3), 3(5) of the Code of Civil Procedure	Sk. Farooque Sk. Mobin & Sham Tulshiram Darshankar	Under investigation.
3.	Kotwali Police Station, CR No. 139/2024	326,324,323,143,147,148, 149 of IPC along with Section 3 (1)(r)(s), 3(2) (va) of SC & ST (Prevention of Atrocities) Act.	Sk. Farooque Sk. Mobin & others	Spl. Case No. 114/2024. Pending in court.

8. Bare perusal of the table, it appears that the offence, i.e. Crime No. 92/2022, is of the year 2022, which is a stale offence, and there is no live link between the said offence and the necessity of passing an order of externment in the year 2025.

9. Secondly, the offence i.e. Crime No. 356/2024, is under investigation and as per the law laid down by this Court in ***Rajesh Tribhuvandas Gupta*** (supra), “a crime under investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigation agency may or may not charge the accused for trial, and therefore, the said offence cannot be taken into consideration”. In view of the above, only one offence remains, i.e. Crime No. 139/2024.

10. It is a settled position of law that mere registration of several offences does not, by itself, sustain an externment under Section 56 (1) (b) of the Act. The offences either involve elements of force or violence or fall under Chapters 12, 16 and 17 of the Indian Penal Code. Mere registration of three offences does not make him liable to be externed from the district.

11. Similarly, I would like to reproduce paragraphs nos. 12 and 13 of the judgment in **Ahammad Mainuddin Shaikh** (supra), as under :

“12. So, it is clear that whatever criminal cases are there against the alleged gang members, they are more individualistic in nature than collective and do not show that these persons have got together and are indulging in criminal acts as a group. This material certainly does not make out any case against the petitioner as a member or chief of a gang or body of persons. There is no other material mentioned in the order which is relevant for determining as to whether or not the petitioner is a leader or member of a gang or body of persons. Therefore, the very first requirement of Section 55 is not satisfied in this case, and, on this ground alone, the order passed by the externing authority and also the order of the appellate authority confirming it deserve to be quashed and set aside.

13. The illegality so committed by both authorities does not stop here. The externing authority, while

passing the final order, which has been confirmed by the appellate authority, has directed externment only against the petitioner and not the remaining 5 members of his alleged gang, for a period of one year, from the district of Kolhapur. Such discrimination between members of the gang is not permissible in law, particularly when collective criminal activity is alleged on their part by arraigning at least some of them, as accused, along with the petitioner. Section 55 of the Act contemplates a collective action against the gang or body of persons and, therefore, the final direction that is required to be issued in terms of this section would also have to be necessarily against each of the members of the gang and not against one or a few of them on a selective basis. So, on this ground also, we find that the impugned orders are absolutely illegal and cannot be sustained in law.”

12. Bare perusal of the above observations, it appears that this Court has categorically held that the material produced before the authority does not make out any case against the petitioner as a member or chief of a gang or body of persons. Therefore, passing of an order of externment against a single member of a gang is not permissible under the law. In the case at hand, on perusal of the first line of the order, it is evident that the respondent no. 3 – The Superintendent of Police has initiated the action against the petitioner as the chief of the gang; however, it does not appear that the Superintendent of Police initiated

the action against the rest of the members of the gang. Therefore, in view of the mandate laid down in the *Ahammad Mainuddin Shaikh* (supra), it is applicable in the case at hand.

13. Apart from that, it appears that the petitioner has suffered seven months of externment out of one year, i.e. more than 50% of the order. Thus, it emerges that the order of externment is passed without recording the 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 rights guaranteed under clause (d) of Article 19 (1) of the Constitution of India. That being so, in view of the above discussion and the law laid down in the above-cited judgments, the impugned order cannot be sustained in the eyes of the law and is liable to be quashed and set aside.

14. Consequently, the Criminal Writ Petition is allowed. The externment order dated 03.05.2025, passed by the respondent no. 3 – Superintendent of Police, Parbhani, and the order dated 25.08.2025, passed by respondent no. 4, are hereby quashed and set aside. As a sequel, the externment order is quashed and set aside. Rule is made absolute. No costs.

(ABHAY J. MANTRI, J.)