



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 2023 OF 2024

Tukaram s/o Dhondiram Jadhav ... **Petitioner**
R/o Kabansangavi (Bansavargoan), Chakur
Tq. Chakur, Dist. Latur

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Chakur Police Station, Dist. Latur
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. Sub Divisional Magistrate, Ahmedpur
Tq. Ahmedpur Dist. Latur
4. The Sub Divisional Police Officer,
Tq. Chakur, Dist Laturd
5. The Superintendent of Police, ... **Respondents**
District Latur

Mr. Kiran Jamdar a/w Mr. Rahul P. Cheble, Advocates for the Petitioner,
Mr. K. K. Naik, APP for the Respondents State

CORAM : Y. G. KHOBRADE, J.
RESERVED ON : 23.01.2025

JUDGMENT:-

1. **Rule.** Rule made returnable forthwith. Heard finally with
consent of both the sides.

2. By the present petition, the Petitioner takes exception to the order dated 27.11.2024 passed by the Divisional Commissioner, Chhatrapati Sambhajanagar (Aurangabad) in Externment Appeal bearing Outward No. 2024/Sapra/Kaksha-1/Pol-1/Haddapar/CR-163 thereby confirmed the order dated 21.10.2024 passed by Respondent No.3/Sub Divisional Magistrate, Ahmedpur in Externment Case bearing No.2024/MG/CR, whereby ordered the externment of the Petitioner from the jurisdiction of Chakur Taluka and Latur District for the period of three months from the date of receipt of the order.

3. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. It is not in dispute that, on 23.08.2024, the petitioner was served with show notice under section 56 (a) (b) of the Maharashtra Police Act calling upon him to show cause as to why he should not be externed for the period of three months because of registration of four crimes against him, as under:

Sr. No.	Police Station	Crime No.	Sections
1	Chakur	144/2016	302, 143, 147, 148, 149 of IPC
2	Chakur	135/2019	12(A) of Maharashtra Prohibition of Gambling Act
3	Chakur	494/2020	353, 504 of I.P.C.
4	Chakur	394/2022	323,504,506 of I.P.C. and 3(1) (i)(r), 3(1)(i)(s) of SC ST (Prevention of Atrocities) Act

4. On 29.08.2024, the petitioner replied said notice and denied contents of notice under section 56 of the Maharashtra Police Act. According to the Petitioner, he already acquitted in Crime No. 144 of 2016 and Crime No. 494 of 2020 after full-fledged trial. Therefore, on the day of service of notice dated 23.08.2024, Crime Nos. 144 of 2016 and 494 of 2020 were not registered against him. The Petitioner further contended that he is social worker and Vice President of National Congress Party for six years. He always agitating for the grievances of poor and needy people, however, under the pressure of landlords and politicians, he has been falsely implicated in the crime and served with the notice, hence, prayed for the recall of the notice.

5. On 21.10.2024, Respondent No.3/Sub Divisional Magistrate, Ahmedpur passed an order in Externment Case bearing No.2024/MG/CR holding that from 2016 to 2022, various crimes are registered against the present petitioner including offences under sections, 353, 323,504,506 of I.P.C. and 3(1) (i)(r), 3(1)(i)(s) of SC ST (Prevention of Atrocities) Act and Section 12(A) of Maharashtra Prohibition of Gambling Act but there is no change in behaviour of the Petitioner. Therefore, considering the code of conduct, probable State Legislative Assembly Election 2024 and to prevent threats to public servants at the hands of petitioner and to maintain peace in society and prevent racial conflict, the petitioner externed from the

jurisdiction of Chakur Taluka and Latur District for the period of three months.

6. Being aggrieved by said order, the petitioner filed Appeal bearing Outward No.2024/Sapra/Kaksha-1/Pol-1/Haddapar/CR-163 before Respondent No.2 Divisional Commissioner, Chh. Sambhajinagar (Aurangabad). On 27.11.2024, the Respondent No.2/appellate authority passed the impugned order and affirmed order passed by the Respondent no. 3 holding that, though the petitioner acquitted in Crime No. 144 of 2016 and Crime No. 494 of 2020 but trial of Crime No. 135 of 2019 for the offence under section 12(A) of Maharashtra Prohibition of Gambling Act and Crime No. 394 of 2022 for the offences punishable under section 323, 504, 506 of I.P.C. and 3(1) (i)(r), 3(1)(i)(s) of SC ST (Prevention of Atrocities) Act are pending.

7. Needless to say that, the petitioner is already acquitted in Crime No. 144/2016 for the offences punishable under sections 302, 143, 147, 148, 149 of IPC vide Judgment dated 11.07.2024 and in Crime No. 494/2020 registered for the offences punishable u/secs 353, 504 of IPC vide judgment dated 22.02.2024 passed by the learned Sessions Court Latur in Sessions case No. 23 of 2023 after fullfledge trial. Therefore, the trials only in respect of two crimes i.e. Crime Nos. 135 of 2019 for the offence under section 12(A) of Maharashtra Prohibition of Gambling Act

and Crime No. 394 of 2022 for the offences under sections 323, 504, 506 of I.P.C. and 3(1)(i)(r), 3(1)(i)(s) of SC ST (Prevention of Atrocities) Act are pending before the competent Court. Furthermore, the crimes registered against the Petitioner are not recent, even at the time of the issuance of the notice Under Section 56 of the Maharashtra Police Act.

8. In *Mohammad Alam Ibrahim Shaikh @ Alu Vs. State of Maharashtra, 2005 ALL MR (Cri) 2593*, it is held that delay of 18 months from the date of show cause notice not explaining and the order was not on basis of offence registered. On the contrary offences are of very serious nature, preventive action and live link not snapped. The delay in passing order of externment by itself is not fatal, there has to be some satisfactory explanation for delay and delay should not result in snapping live link. It was held that the delay resulted in snapping live link between preventive action and allegation.

9. In case of *Harikesh @ Guddu Madan Kattilwar Vs. Deputy Police Commissioner* (Criminal Writ Petition No. 908 of 2022), decided on 24.01.2023, the Coordinate Bench of this Court observed in paragraph Nos. 14 and 15 as under:

“14) It is to be noted that this order passed by the respondent No.1 and confirmed by the respondent No.3 suffers from the virus of excessiveness. The order of externment apart from

making inroads on the personal liberty guaranteed under the Constitution of India, makes the said person live separate from his family members. Similarly, the externment order can deprive the said person of his livelihood. In the given case, depending upon the financial position of the person, it can make the dependents of the said person to starve. Therefore, in order to justify the externment for a maximum period of two years, the Authority is required to consider the objective material to record subjective satisfaction on all points. In this case, I am constrained to observe that the order passed by the respondent No.1 is woefully silent on all these points. The respondent No.1 has not recorded the reasons to order the externment of the petitioner for a period of two years and that too from the entire Amravati District. It is seen on perusal of the notice and order that all the crimes committed by the petitioner were within the jurisdiction of Frezarpura Police Station, Amravati City.

15) In my considered opinion, therefore, the order passed by the respondent No.1 and confirmed by the respondent No.3 suffers from the virus of excessiveness. The law laid down on the point in the cases of Shaikh Mukhtyar S/o Mustafa Shaikh Vs. State of Maharashtra and Others [2017 ALL.M.R. (Cri.) 268 and Bhagwat Dadasaheb Landge and Another Vs. State of Maharashtra and Others [2020(5) Mh.L.J. (Cri.) 546], would, therefore, equally apply in this case. It is to be noted that the excessive nature of the order on both the counts is one of the factors, which would weigh in favour of the petitioner. The order of externment, making a direct inroads on the fundamental right of movement, must, therefore, pass all the legal tests. In this case, the order passed by the respondent No.1 and confirmed by the respondent No.3 do not pass the said test. It is to be noted that the respondent No.3 despite being confronted with the factual position vis-a-vis the acquittal of the petitioner in four crimes and his involvement in four crimes under the Prohibition Act, confirmed the said order. Perusal of the order of the respondent No.3 would show that the respondent No.3 has recorded factual submissions, but

failed to sufficiently deal with the same. Therefore, in my view, this order is not sustainable.”

10. Needless to say that considering registration of crimes referred in the notice dated 23.08.2024 it appears that all four crimes are stale, and the petitioner was acquitted in two of them after trial. However, the appellate authority suspected about causing any obstruction while discharging duties by police officials during State Legislative Assembly Election 2024, therefore the petitioner has been externed for the period of three months in order to maintain code of conduct and to conduct election peacefully, however the said election already been held and the results were declared on 20.11.2024.

11. In view of above discussion and considering the nature of offences as well as conduct of the petitioner, ordering the externment of the petitioner for the period of three months would be unjustifiable. Therefore, the externment order 21.10.2024 passed by Respondent No.3/Sub Divisional Magistrate, Ahmedpur and affirmed by the Respondent No.2 Divisional Commissioner vide its order dated 27.11.2024 need to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER

- (i) Criminal Writ Petition No. 2023 of 2024 is hereby allowed.
- (ii) The order dated 21.10.2024 passed by Respondent No.3/Sub Divisional Magistrate, Ahmedpur and confirmed vide order dated 27.11.2024 passed by Respondent No.2 Divisional Commissioner, is hereby quash and set aside.
- (iii) Rule is partly made absolute in above terms.

(Y. G. KHOBRAGADE, J.)

JPChavan