

Mr. Manas Gawankar, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.
PSI K. Patil, PSI Sawant, Sewree Police Station present.

RESERVED ON : 4 DECEMBER 2025
PRONOUNCED ON : 16 DECEMBER 2025

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. By this Petition under Article 226 of the Constitution of India, the Petitioner takes exception to an order dated 10 September 2025 passed by the Divisional Commissioner, Konkan Division, in Appeal No.213 of 2024, whereby the appeal preferred by the Petitioner against an order dated 15 November 2024 passed by the Deputy Commissioner of Police, Port Zone, Mumbai, came to be dismissed by affirming the said order of externment.
3. Shorn of superfluities, the background facts can be stated, as under :
 - 3.1 A Notice under Section 59 of the Maharashtra Police Act, 1951 (the Act, 1951) was served on the Petitioner calling upon him to show cause as to why

action under Section 56 of the Act, 1951 be not taken against the Petitioner in view of the registration of 12 crimes against the Petitioner at Sewree Police Station during the period 2011 to 2024 and the prohibitory actions taken against the Petitioner.

3.2 It was, inter alia, alleged that the movements or acts of the Petitioner were causing or calculated to cause alarm, danger or harm to the persons and properties in the vicinity of Sewree and that the Petitioner had been engaged or was about to be engaged in the commission of the offences involving force or violence and/or offences affecting human body or in relation to property punishable under the Indian Penal Code, 1860. On account of the reign of terror allegedly created by the Petitioner, the witnesses were not willing to come forward to give evidence in public against the Petitioner, as they apprehended danger to their person or property.

3.3 The Petitioner appeared and contested the proceeding. By an order dated 15 November 2024, the Deputy Commissioner of Police, Port Zone, passed an order of externment of the Petitioner invoking Section 56(1)(a) and (b) of the Act, 1951, from the limits of the Mumbai City, Mumbai Suburban , Thane and Navi Mumbai districts for a term of two years. It was recorded that the Petitioner had been regularly indulging in violent and dangerous activities and the witnesses were not willing to come forward to give evidence in public against the Petitioner, as they feared for safety of their person

and/or property.

3.4 Being aggrieved, the Petitioner preferred an appeal before the Divisional Commissioner, Konkan Division under Section 60 of the Act, 1951. By the impugned order, the Appellate Authority dismissed the appeal concurring with the view of the Deputy Commissioner.

3.5 Being further aggrieved, the Petitioner has invoked the writ jurisdiction.

4. Mr. Gawankar, learned Counsel for the Petitioner, would submit that, the impugned orders suffer from the vice of non-application of mind. Inviting the attention of the Court to the crimes which have been registered against the Petitioner and taken into account by the authorities, Mr. Gawankar would urge that, out of the 12 crimes, 8 crimes, which were registered till the year 2020 could not have been taken into account as there was no live-link between the registration of those crimes and the measure of externment. Out of balance four crimes, Mr. Gawankar would urge, the 10th crime registered vide C.R.No.841 of 2023 for the offences punishable under Sections 504, 506 of the IPC, also could not have been considered as the said crime does not fall within the ambit of the offences covered by clause (b) of Section 56(1) of the Act, 1951. It was submitted that the Petitioner had been roped in the 12th crime i.e. C.R.No.105 of 2024 at the instance of a person who intends to evict the Petitioner from the shop premises in the occupation of the Petitioner.

5. In any event, Mr. Gawankar would urge, the externing authority did not

advert to the necessity of externing the Petitioner for a full term of two years as no reason has been ascribed for the same in the externment order. The Appellate Authority failed to notice the aforesaid glaring infirmities in the order of externment, submitted Mr. Gawankar.

6. In opposition to this, Mrs. Tendulkar, learned APP, would submit that the material on record indicates that the Petitioner had created a reign of terror in Sewree area. Subjective satisfaction arrived at by the Competent Authority cannot be interfered with by this Court on the basis of inadequacy or insufficiency of the material. Therefore, the Petition is devoid of substance, urged Mrs. Tendulkar.

7. The Petitioner was ordered to be externed by invoking the provisions contained in Section 56(1)(a) and (b) of the Act, 1951. The measure of externment, by its very nature, is extra-ordinary. It has the effect of forced displacement from the home and surroundings. Often it affects the livelihood of the person ordered to be externed. Thus, there must exist justifiable ground to sustain an order of externment. The order of externment, therefore, must be strictly within the bounds of the statutory provisions. Under clause (a) of sub-Section (1) of Section 56, the externing authority must be satisfied on the basis of the objective material that the movements or acts of the person to be externed are causing or calculated to cause alarm, danger or harm to person or property. Under clause (b), there must be an objective material on the

strength of which the externing authority must record subjective satisfaction that there are reasonable grounds for believing that the externee is engaged or about to be engaged in the commission of offences involving force or violence.

8. Mere registration of a number of offences by itself does not sustain an externment 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 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. In effect, to sustain an action of externment under sub-clause (b), the offences the externee has engaged in must be under one of the Chapters enumerated therein and that the acts or conduct of the externee are such that the witnesses are terrified and dissuaded from giving evidence against the externee in public fearing safety of their person or property.

10. In the case at hand, the submission on behalf of the Petitioner that the crimes registered against the Petitioner during the period 2011-2020 could not have been taken into account as there was no live-link between those acts and conduct of the petitioner and the measure of externment, cannot be said to be unfounded. However, in the totality of circumstances, the registration of

number of crimes against the Petitioner also indicates the consistent acts and conduct on the part of the Petitioner, which have the propensity to cause alarm, danger or harm to persons or property. Thus, the subjective satisfaction arrived at by the Competent Authority cannot be said to be vitiated on the said count alone.

11. The submission on behalf of the Petitioner in regard to the term of the externment order, however, deserves consideration. Under Section 58 of the Act, 1951, the period of operation of the order passed under Section 56 of the Act, 1951, shall in no case exceed the period of two years from the date on which the externee either removes himself or is removed from the area from which he is ordered to be externed. Section 58, thus, empowers the Competent Authority to specify the period for which the externment order may remain in operation, while providing the maximum term of two years. The Competent Authority is, therefore, expected to delve into the question of the term for which the order of externment, in the circumstances of the given case, shall be operative. The externment for the maximum term of two years cannot be construed as a default period of externment. Resultantly, if the Competent Authority externs a person for a full term of two years, the order of externment ought to spell out the reasons for which the Competent Authority considered it necessary to extern the externee for a full term of two years, and not a lesser period.

12. In the case of **Deepak s/o Laxman Dongre V/s. State of Maharashtra and Ors.**¹, the Supreme Court after adverting to the provisions of Section 58 of the Act, 1951, underscored the necessity of arriving at the subjective satisfaction regarding the term of externment also on the basis of objective material. It was ruled that, where the externee is externed for a maximum permissible period of two years, without recording the subjective satisfaction regarding the necessity of the externment for a full term, it would amount to imposing unreasonable restrictions on the fundamental rights guaranteed under clause (d) of Article 19(1) of the Constitution of India. The observations in paragraph No.16 of the said judgment are instructive, and, hence, extracted below :

“16. On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. When the competent authority passes an order for the

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maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15 December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent No.2 on the basis of material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording 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 right guaranteed under clause (d) of Article 19(1) of the Constitution of India.” (emphasis supplied)

13. On the aforesaid touchstone, reverting to the facts of the case, it becomes abundantly clear that the Competent Authority was simply not alive to the necessity of bestowing consideration in regard to the term for which the Petitioner be externed to achieve the object of externment. The order passed by the Deputy Commissioner of Police, singularly lacks reasons to support the externment for the full term. After recording satisfaction under Section 56(1) (a) and (b) of the Act, 1951, the Competent Authority straightway proceeded to extern the Petitioner for the full term of two years.

14. Applying the principles enunciated in **Deepak s/o Laxman Dongre (supra)**, it would be difficult to sustain the order passed by the Deputy Commissioner to extern the Petitioner for the full term of two years. In the absence of any reasons ascribed in the order dated 15 November 2024, the externment for the maximum period of two years appears to be an unreasonable restriction on the fundamental right guaranteed under Article 19(1)(d) of the Constitution.

15. For the foregoing reasons, the impugned order as well as the order of externment passed by the Deputy Commissioner of Police, deserve to be quashed and set aside.

16. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed in terms of prayer clauses (a) and (b).

(ii) The impugned order dated 10 September 2025 as well as the order dated 15 November 2024 externing the Petitioner stand quashed and set aside.

(iii) Rule made absolute in the aforesaid terms.

(iv) No costs.

(N.J.JAMADAR, J.)