

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 382 OF 2015.

Mr.Sk.Jafar Sk.Jabbar ..vs.. State of Mah. thr. Principal Secretary, Mantralaya Mumbai.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.A.A.Naik Adv. with Mr.P.R.Agrawal, Adv. for the
petitioner.
Mr.S.M.Ukey, APP for the respondents.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : JUNE 15, 2015.

1. Heard learned counsel for the parties.

2. Perused the record. Petitioner has been externed by order dated 29th of April, 2014 from the jurisdiction of Police Commissioner, Amravati City and Amravati Rural. He challenged that order in appeal and on 5th of June, 2014 that order came to be stayed. According to the petitioner, he got knowledge of vacation of that order only on 13th of March, 2015 when the appeal was fixed for hearing before respondent no.2 – Appellate Authority and after collecting necessary papers, the order vacating that stay has been questioned before this Court. Submissions are, order vacating the alleged stay passed on 4th of February, 2015 is behind back of the petitioner and therefore unsustainable.

3. Shri A.A.Naik, learned counsel for the petitioner, submitted that in connection with Crime No.119 of 2014 petitioner was taken in custody on 25th of November, 2014 and continued in custody till he was released on bail by this Court in Criminal Application (BA) No.176 of 2015 on 15th of April, 2015. He invites attention to condition No.(i) and condition No.(v) imposed by learned Single Judge to show that he

has to attend Police Station Nagpuri Gate, Amravati on every Sunday of the month between 9.00 am. and 12.00 noon and cannot leave area of Nagpuri Gate Police Station, Amravati without informing that Police Station. He submits that even today petitioner continues in Amravati.

4. Learned Additional Public Prosecutor submits that petitioner is already externed out of Amravati by following due procedure and he is presently at Akola. He submits that after obtaining stay orders on 5th of June, 2014 it was seen that the petitioner involved in some criminal activities and as such orders have been vacated on 4th of February, 2015. The said orders were communicated to the petitioner immediately when he was in custody and he did not challenge the orders vacating it till 5th of May, 2015. He further submits that present proceedings came to be filed only to enable the petitioner to attend the meeting of Municipal Corporation, Amravati which was then to come up 20th of May, 2015. He further submits that Appellate Authority has heard the appeal finally and final orders in the appeal can be passed shortly.

5. Advocate Shri Naik, in reply, submits that actual deportation of petitioner out of Amravati has not been placed on record by the respondents. Similarly, service of externment order on petitioner while he was in custody is also not on record. He submits that after getting knowledge of order and after collecting necessary documents the petition has been filed at the earliest and as petitioner has to comply with condition No.(i) and (v) of the order of learned Single Judge dated 15th of April, 2015, there is no question of petitioner moving out of Amravati. He further submits that next meeting of Amravati Municipal Corporation now scheduled to be held on 20th of June, 2015. He states that in this situation petitioner may be permitted to stay at Amravati to attend that meeting and respondent no.2 may be directed to pass final order on appeal at the earliest. He further submits that If orders are

adverse then the same may be stayed for further period of fifteen days to enable petitioner to challenge the same.

6. Learned Additional Public Prosecutor opposes the grant of interim order after appeal is decided by the Appellate Authority.

7. Having heard the learned counsel for both the sides, we find that challenge to order vacating stay on 4th of February, 2015 is presented to this Court on 5th of May, 2015.

8. In the meanwhile, on 15th of April, 2015, learned Single Judge has passed orders releasing petitioner on bail with conditions already mentioned supra. Neither petitioner nor respondents have then pointed out to learned Single Judge the orders of externment. The fact that the petitioner was not in Amravati District as was already externed, was relevant and ought to have been pointed out to learned Single Judge. The condition No.(i) and condition No.(v) of the bail order show the necessity of presence of appellant at Police station Nagpuri Gate, Amravati. In this situation, we find it difficult to accept the oral contention that petitioner has already been sent out of Amravati.

9. At this stage, learned Additional Public Prosecutor, upon instructions, states that on 19th of April, 2015 appellant has reported at Ramdaspath Police Station, Akola. The learned counsel for the petitioner is not in a position to meet this assertion as it has come at eleventh hour without necessary instructions.

10. The order of learned Single particularly condition No.(v), does not prohibit the petitioner from moving out of area of Police Station Nagpuri Gate at Amravati. The only obligation cast upon him is to inform the Police Station Nagpuri Gate, Amravati beforehand. So the

fact that petitioner has reported on 19th of April, 2015 at Ramdaspath Police Station of Akola does not militate with the case of petitioner that he is at Amravati. Similarly, if petitioner was already externed, his marking presence on 19th of April, 2015 at Ramdaspath Police Station of Akola does not further the defence raised by the respondents before this Court. In any event, either petitioner or the respondents sought to have moved appropriate application seeking modification of bail conditions. That has not been done till date.

11. In this situation, we grant petitioner leave to attend the meeting of Municipal Corporation, Amravati which is to be held on 20th of June, 2015. Similarly, we direct respondent no.2 – Appellate Authority to decide appeal pending before him by 30th of June, 2015 without fail. Parties are directed to maintain status quo till that date.

12. With these directions we dispose of writ petition.
In the circumstances, no order as to costs.

JUDGE

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