

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
CRIMINAL WRIT PETITION NO.1384 OF 2015

Umarkhan @ Immukhan s/o  
Sikandar Khan, age: 30 years,  
Occ: Agril., (Name on notice  
Imrankhan @ Immu Sikandar  
Khan Pathan), R/o Fakarabad  
Mohalla, Pathari, District  
Parbhani.

Petitioner

Versus

- 1 State of Maharashtra,  
through Police Inspector,  
Pathari Police Station,  
Pathari, District Parbhani.
- 2 The Divisional Commissioner,  
Aurangabad Division,  
Aurangabad.
- 3 The Sub Divisional Magistrate,  
Pathari, Taluka Pathari,  
District Parbhani.
- 4 The Sub Divisional Police  
Officer, Selu, Taluka Selu,  
District Parbhani.

Respondents

Mr.D.D.Choudhari, advocate for the petitioner.  
Mr.S.J.Salgare, APP for Respondents.

**CORAM : R.M.BORDE &  
K.L.WADANE, JJ.  
DATE : 04th April, 2016**

**ORAL JUDGMENT (Per R.M.Borde, J.):**

1           Heard. Rule. Rule made returnable forthwith and  
heard finally by consent of learned Counsel for respective parties.

2           The petitioner is objecting to the order dated 31.12.2014, passed by the Sub Divisional Magistrate, Pathri, directing externment of the petitioner from the limits of Districts Parbhani, Nanded, Hingoli, Beed, Jalna and Latur, for the period of two years. The order passed by the externing authority on 31.12.2014 was subject matter of challenge before the Divisional Commissioner, Aurangabad Division, Aurangabad. The Divisional Commissioner, exercising powers of the State Government, has partially allowed the appeal and confirmed the order passed by Sub Divisional Magistrate only in respect of limits of Parbhani district, by an order issued in September 2015.

3           The petitioner was issued with a notice by the Sub Divisional Magistrate, Pathri, calling upon him to show cause as to why action of externment shall not be taken on account of his involvement in criminal activities, which are causing or calculated to cause alarm, danger or harm to person or property.

(i)           An offence bearing Crime No.24/2013 in respect of commission of offence punishable under Sections 147, 148, 149, 365, 341, 342, 294, 323, 506 of the Indian Penal Code as well as under Section 3(1)(x) of the Atrocities Act, has been registered against the petitioner in the year 2013 at Police Station Pathri. The police recommended "A" summary report in the matter and as such, the case has been disposed of.

(ii)           The second case recorded in the notice is Crime No.132/2013 in respect of commission of offence punishable under

Sections 307, 325, 147, 148, 149, 323, 504, 506 of the Indian Penal Code as well as under Section 3(1)(x) of the Atrocities Act. It is informed that investigation in the crime is complete and charge sheet has been presented to the Court.

(iii) The third offence noted in the notice is Crime No.26/2013 in respect of which provision also a charge sheet has been presented to the Court.

(iv) The fourth offence relates to Section 66(A) of the Information Technology Act, which has been declared unconstitutional by the Supreme Court.

4 Thus it transpires that out of the four offences noted in the notice, investigation in two crimes is complete and charge sheet has been presented to the Court whereas, in respect of one crime, the police have submitted "A" summary report under Section 169 of the Criminal Procedure Code, which has been accepted by the Magistrate. The police have resorted to preventive action under Section 56 (1) (a) and (b) of the Bombay Police Act. It is provided under Section 56 that:

**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 Section 7 to the Commissioner and in other area or areas to which the 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,

an order of externment can be issued.

5 In the instant matter, there are acts alleged against the accused which relate back to the years 2013 and 2014, whereas, action has been taken against the petitioner in the year 2014. The petitioner has not faced trial in respect of any offence and as such, it is difficult for the police officers to conclude that as a result of activities of the petitioner, the witnesses are not coming forward to depose against him. There are two offences registered against the petitioner under under the Chapters of Indian Penal Code referred to in sub clause (b) of Section 56(1) of the Bombay Police Act. However, trial in respect of aforesaid offences has not yet concluded. It is also not demonstrated that as to how movements or acts of the petitioner are causing or calculated to cause alarm, danger or harm to person or property. There is no previous conviction attributable to the petitioner. In these circumstances, according to us, there is no reasonable ground available for the externing authority to take preventive action against the petitioner. The law of land applicable to the citizens is sufficient to take care of the situation mentioned in the notice.

6           In view of the reasons recorded above, action of the externing authority is in excess of jurisdiction. There are no reasonable grounds for directing externment of the petitioner. The preventive action proposed against the petitioner curtails his freedom of movement, which is guaranteed to every individual citizen of the Country. If at all, movements or acts of any individual are to be curtailed, the action taken shall be strictly in accordance with the provisions of the relevant Act. Freedom of an individual cannot be curtailed merely on account of suspicion without there being any foundation.

7           For the reasons recorded above, orders impugned in this petition deserve to be quashed and set aside and same is accordingly quashed and set aside.

8           Rule is accordingly made absolute to the extent specified above.

**K.L.WADANE**  
**JUDGE**

adb/crwp138415

**R.M.BORDE**  
**JUDGE**