**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1514/2015**

Akash s/o Gopal Sharma
Aged 22 years, Occ.Student
R/o Teachers Colony,
Mondha Road, Jalna

**… PETITIONER**
**[original appellant-Non-applicant]**

**VERSUS**

1] The State of Maharashtra
Through the Police Station,
Officer, Chandanzira Police Station
Jalna.

2] The Divisional Commissioner
Aurangabad Division, Aurangabad

3] The Sub Divisional Magistrate,
Jalna Sub Division, Jalna

4] The Assistant Police Inspector
Chandanzira Police Station,
Jalna.

**.. RESPONDENTS**
**[Respondent No.1 is the original Applicant Respondent No.2 is the Appellate Authority, Respondent No.3 is the Sub Divisional Magistrate at Jalna who has passed the externment Order in case of Petitioner, Respondent No.4 is the Assistant Police**

**Inspector, Chandanzira Police Station,Jalna.]**

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Mr. S.S.Choudhary,Advocate for appellant.
Mrs. P.V.Diggikar, APP for Respondent-State

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**CORAM : A.V.NIRGUDE &**
**V.L.ACHLIYA,JJ.**

**DATED : 21ST JULY,2016**

**ORAL JUDGMENT [PER V.L.ACHLIYA,J.] :-**

Rule. Rule returnable forthwith. By consent heard finally at the stage of admission.

2] The petitioner in this case has challenged the order of externment dated 26/8/2015 passed by Sub Divisional Magistrate, Jalna as well as the order in Appeal dated 5/11/2015 passed by Divisional Commissioner, Aurangabad Division, Aurangabad confirming the order passed by the Sub Divisional Magistrate, Jalna.

3] The Assistant Commissioner of Police, Jalna issued a show cause notice dated 10/6/2015 to petitioner whereby the petitioner was called upon to explain as to why he shall not be externed for a period of two years from the local limits of District Jalna. In the notice issued, it is alleged that as many as 6 cases are registered against the petitioner with police station Sadar Barzar, Jalna and 3 cases registered with Taluka police station, Jalna. It is further alleged that the petitioner habitually indulges into criminal activities and because of his terror, the witnesses are not coming forward to depose against him. Petitioner has responded to the said show

cause notice and submitted his written reply on 29/5/2015. Vide order dated 26/8/2015, the Sub Divisional Magistrate, Jalna passed the impugned order whereby the petitioner has been externed for a period of 2 years from the local limits of District Jalna as well as Aurangabad District. Being aggrieved, the petitioner preferred an appeal before the Divisional Commissioner, Aurangabad Division, Aurangabad. Since there was inordinate delay in deciding the appeal, the petitioner approached this Court and filed Criminal Writ Petition No.1380/2015. Vide order dated 29/10/2015 the said Writ Petition was disposed of by directing to the Divisional Commissioner, Auragnabad to pass order within two weeks from the date of receipt of order. Ultimately, the Divisional Commissioner decided the appeal vide order dated 5/10/2015 and dismissed the appeal preferred by the petitioner. Being aggrieved by the orders passed by the S.D.M. Jalna and the Divisional Commissioner, Aurangabad, the petitioner has preferred this Writ Petition on various grounds as set out in the petition. However, the learned counsel for petitioner has restricted his argument to challenge the order on the ground of excessiveness.

4] We have heard Mr.S.S.Choudhary, learned counsel for the petitioner and Mrs.P.V.Diggikar, learned APP for the State. We have perused the impugned show cause notice, the order passed by S.D.M., as well as the order passed by the Divisional Commissioner, Aurangabad.

5] In our view, the impugned orders are not sustainable in law for the sole reason that the orders passed are without proper application of mind and same suffer from vice of excessiveness. Perusal of the show cause notice dated 10/6/2015, issued by the Assistant Commissioner of Police, Jalna, appears to be vague notice. In the

notice issued, except the bare words that because of the activities of the petitioner, the witnesses are not coming forward no such instances have been mentioned in the notice. No material to form such opinion was made available to petitioner. No specific instances were given in the notice to form the basis to initiate such action under Section 56(1)(a)(b) of Bombay Police Act 1951. It is pertinent to note that while issuing the notice, the proceeding registered under Section 107 of IPC against the petitioner also referred as one of the crime registered against the petitioner. The notice refers to commission of offences by petitioner within the local limits of police station, Sadar Bazar, Jalna. In the notice issued, it is nowhere mentioned that the petitioner found to be indulged into criminal activities within entire District of Jalna or beyond the District of Jalna. It is quite settled position in law that while taking action as contemplated under Section 56 of the Bombay Police, Act, the authority concerned must apply its mind and the action to be taken must be based upon material to justify such action. The notice to be issued must be specific and supported by material to support such action. The last offence registered against the petitioner was in the year 2013. The notice was issued on 10/6/2015. Thus within a period of more than 1 year, no crime was registered against the petitioner. In the reply filed to the show cause notice, the petitioner has specifically stated that in most of the cases in which he is shown to be an accused have resulted into an acquittal. He has also stated that he is student and completed education upto 12$^{th}$ standard. He has further stated that since his childhood, he is working with Art and Craft Anandnagari. He has supported his say by filing documents to that effect. He has further stated that after the murder of his father, registration of offences against him have been stopped. He has also named the persons who were instrumental in getting the offences registered. He has produced the certificate issued by President of Art and Crafts

institution certifying his behaviour to be Good. However, the S.D.M. passed the impugned order without taking in consideration the reply filed by petitioner. It is rather surprising to note that though the notice confined to extern the petitioner from the local limits of District Jalna, the learned S.D.M. has passed order to extern the petitioner from the local limits of District Jalna as well as District Aurangabad. While passing such order to extern the petitioner from the local limits of District Aurangabad, no reasons have been assigned. This reflects non application of mind on the part of the S.D.M. in passing the order. It was expected on the part of the S.D.M to have pass order within the scope of show cause notice. In absence of notice to extern the petitioner from District Aurangabad, the learned S.D.M., should not have passed such order.

6] Perusal of the order passed by the S.D.M., reflects that he has referred to some statements made by the witnesses in-camera who alleged to have stated that they are unable to come forward to depose against the petitioner due to his terror. It is pertinent to note that there is no reference of such statement being recorded, in the show cause notice nor copies of such statements made available to the petitioner. In absence of such material being made available and opportunity of hearing was given to him, the S.D.M. should not have referred and relied upon such material against the petitioner.

7] We have also noticed that the notice issued to the petitioner is completely vague and no ingredients of Section 56 (a) (1) (b) of Bombay Police Act mentioned in the show cause notice. The Divisional Commissioner who has decided the appeal has also not applied his mind. He has not taken any pains to find out as to whether there is any material to justify such action under Section 56(a) (1) (b) of Bombay Police Act. Since the orders to extern the

person leads to deprive the personal liberty and curtail the movement of the person, it is expected that the authorities vested with such powers, must examine the material before passing such orders. The order of such nature cannot be passed merely on asking of police authority. The order to be passed must be based upon material to justify such drastic action.

8] The impugned orders suffer from vice of excessiveness for the sole reason that the offences alleged against the petitioner though confine to city of Jalna, the petitioner has been externed from District Jalna as well as Aurangabad. The show cause notice nowhere refers offences registered against the petitioner outside the limits of Jalna City. As per proposal received the petitioner was required to be externed from District Jalna. The show cause notice issued to petitioner also restricts to extern the petitioner from the local limits of Jalna District, however, the order has been passed to extern the petitioner from the District Jalna as well as local limits of Aurangabad District. No reasons have been recorded in the order passed by the learned S.D.M. to extern petitioner from the local limits of Aurangabad District. The manner in which order has been passed reflects callous approach on the part of said authority in such orders affecting the personal liberty and movement of the person. On this count also the orders passed deserves to be set aside.

9] In the result, we are inclined to allow the petition. Accordingly the petition is allowed in terms of prayer clauses “A” and “B”. The impugned orders are set aside. Rule made absolute in above terms with no order as to costs.

**(V.L.ACHLIYA,J.)** **(A.V.NIRGUDE,J.)**

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