

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

CRIMINAL APPLICATION (APL) NO. 202/2016.

Anup Ashok Nimbalkar

-VERSUS-

The Superintendent of Police, Wardha and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B. P. DHARMADHIKARI
& A.S. CHANDURKAR, JJ.

DATE : OCTOBER 03, 2016.

Heard Shri R.R. Vyas, learned Counsel for the applicant and Shri R.S. Nayak, learned A.P.P. for non-applicants.

2. The impugned order dated 26.02.2016 externs applicant from Wardha District for a period of one year, treating him as a leader of a gang, under Section 55 of the Maharashtra Police Act.

3. Identical order in case of his alleged colleague gang member namely - Roshan Dubey has been quashed and set aside today by this Court while allowing Writ Petition No. 260/2016.

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4. In addition to facts looked into therein, we find in this matter that in show cause notice, first three offences i.e. 3246/2007, 3246/2008 and 451/2009 though find mention, applicant pointed out that he has been acquitted therefrom. This acquittal is alleged to be not on merits, but, witnesses have turned hostile, by the officer proposing externment. No specific finding on correctness of these assertions is recorded by the externing authority. The impugned order therefore, shows non application of mind to that extent.

5. Crime No. 28/2016, allegedly committed on 30.01.2016, not forming part of show cause notice is also entered consideration and vitiated application of mind.

6. In camera statements not connected with show cause notice, are relied upon in the impugned order.

7. In show cause notice, one Sony Prakash Nimbalkar is stated to be the leader of the gang, and after chart of crime, it is mentioned that gang has continued to indulge in offence under leadership of the applicant. These assertions in show cause notice do not

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form part of the impugned order.

8. However, we find above instances and reasons given in order passed today in case of Roshan Dubey sufficient to quash and set aside the impugned order dated 26.02.2016.

9. Accordingly, Criminal Application is allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd.

CERTIFICATE

I certify that this judgment/order uploaded is a true and correct copy of original signed judgment/order.

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Pvt. Sec.