

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

CRIMINAL WRIT PETITION NO. 260/2016.

Roshan Babbu Dubey

-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.K. Tiwari, learned Counsel
for the petitioner and Shri R.S. Nayak, learned A.P.P.
for respondents.

2. After hearing the respective counsel for
some time on 01.10.2016, the matter came to be
adjourned to today.

3. Short grievance of learned counsel for
petitioner is, only because petitioner has surname
"Dubey", it is presumed that he is member of Gang and
action has been taken against him under Section 55 of
the Maharashtra Police Act. He points out that

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preventive action initiated vide Case No.60/2016 under Section 110-E of Criminal Procedure Code has become infructuous due to passage of time. Only one Crime No.402/2015 is allegedly registered against the petitioner under Sections 367, 452, 34 of Indian Penal Code and on all relevant dates it was at investigation stage.

4. Without prejudice, he invites attention even to impugned order to urge that how non-application of mind in this respect is apparent therein. While passing the impugned order, the petitioner has been unnecessarily involved in the old matters.

5. Learned A.P.P. has read out to us the impugned order dated 26.02.2016 to substantiate his contention. He also relies upon the reply affidavit filed by the S.D.P.O. Wardha to substantiate the order.

6. It is not in dispute that the action has been taken against the petitioner as member of Gang. Impugned order dated 26.02.2016, points out that total 7 offences registered against the Gang. Offence at sr.no.7 is Crime No. 402/2015, which finds only mention in show cause notice issued to the petitioner. Two preventive action again are mentioned in the final

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order, while in show cause notice, later action vide case no.60/2015 only appears. In the impugned order, outcome of adjudication of any of the criminal matters against him is not disclosed.

7. As already stated above, Crime No.402/2015 appears to be at the stage of investigation even on 26.02.2016. Thus, the impugned order does not show any previous involvement of petitioner in any other crime or his conviction or acquittal by any Court after trial. In spite of this, in the impugned order, the fact that petitioner has been acquitted by the Courts and therefore, it has encouraged him to indulge in similar activities appears. The observations are obviously perverse and show non application of mind.

8. Reference to statement of one of the witness /complainant in Crime No.402/2015, also appears in the body of the order. While considering that statement, the Authority has used only two names; first name is of one Anup Nimbalkar, the second name is of friend of Anup Nimbalkar i.e. Dubey.

9. First name of Dubey does not figure any

where in the order. This statement is also not reflected in the show cause notice. Learned counsel for petitioner has pointed out that if this statement is of the complainant, as matter is still under investigation, petitioner was not given any previous notice thereof.

10. We also find that along with petitioner Roshan Dubey, action has been taken against Gaurav Dubey, who appears to be real brother of Roshan, therefore, the complainant referred either Roshan Dubey or Gaurav Dubey, but, then the impugned order does not throw any light in this connection.

11. Two in-camera statements are also looked into while passing the impugned order, however, in show cause notice no such statements are pointed out.

12. Similarly Crime no.28/2016, allegedly committed on 30.01.2016 under Sections 324, 506, 504, read with Section 34 of Indian Penal Code, not forming part of show cause notice, also appears to have been looked into while arriving at subjective satisfaction. Thus, petitioner did not get any opportunity to reply to it.

13. In this situation, we find that the impugned order does not show necessary application

of mind leading to subjective satisfaction in the matter.
The same is therefore, quashed and set aside. Liberty
to respondents to pass fresh orders in accordance with
law. 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.