

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 84 OF 2017**

Balu @ Balasaheb Jagannath Jadhav
Age : 39 years, Occ : Agri. & Social Service,
R/o Kabad Galli, Beed, Tq. Beed, Dist. Beed.

..PETITIONER

-VERSUS-

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The Superintendent of Police/
The Externment Tribunal, Beed,
Dist. Beed.
3. The Sub-Divisional Police Officer,
Sub-Division, Beed, Dist. Beed.
4. The Assistant Police Inspector,
Beed City Police Station, Beed.

..RESPONDENTS

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Mr. V.P. Savant, Advocate for petitioner
Mr. S.Y. Mahajan, A.P.P. for respondent/State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

**RESERVED ON : 24.04.2017
PRONOUNCED ON : 02.05.2017**

JUDGMENT (S.S. SHINDE, J) :-

Rule. Rule made returnable forthwith

and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayer :-

"B. Quash and set aside the judgment and order dated 16.12.2016 passed by Ld. Divisional Commissioner, Aurangabad in Appeal No.113/2016 and judgment and order dated 13.06.2016 passed by the Ld. Externment Tribunal/Ld. Superintendent of Police, Beed in File bearing No.LCB:01/MPA Sec. 55/2006/16 and for that purpose issue necessary order."

3. The learned counsel appearing for the petitioner submits that, none of the offences mentioned in the show-cause notice, can be said to be under Chapter XVI or XVII of the Indian Penal Code. It is submitted that, the petitioner is Councillor of Beed Municipal Council for 10 years and is a respectable person in the society. 31 Offences shown registered against the petitioner are punishable under Section 12A of the Maharashtra Prevention of Gambling

Act, 1887, which is bailable offence. In respect of offence bearing C.R. No.12/2016 registered with Police Station, Beed (City) under Sections 395, 504 and 506 of the I.P. Code, it is submitted that, the complainant therein himself has given the affidavit and on the basis of the said affidavit, the petitioner is enlarged on bail and now the investigation of the said crime is in progress. It is submitted that, the offences registered against the petitioner are with an ulterior motive and in some of the alleged offences, the petitioner is already acquitted. Respondent No.2 has initiated the externment proceedings out of vengeance, since in the month of January-February, 2016 one Police Constable was trapped by the Anti Corruption Department on the basis of the complaint filed by the petitioner and other three persons. The said externment proceedings have been initiated so as to take revenge of said incident. It is submitted that, there are dependents upon the petitioner and he is the only bread earner of his family. Therefore, the learned counsel appearing for the petitioner submits that, the Petition may be allowed. The learned counsel appearing for the petitioner has

placed reliance on the reported judgments in the cases of **Vijay Lalso Jadhav V/s State of Maharashtra and others¹**, **Shri Rajwardhan Babaso Patil V/s Shri Vijaysinha Jadhav and anr.²** and also **Umar Mohammed Maibari V/s K.P. Gaikwad and another³**.

4. On the other hand, the learned A.P.P. appearing for the respondent/State, relying upon the reasons assigned by Respondent Nos. 1 and 2 in the impugned orders, submits that, after considering the documents, the order of externment has been passed by Respondent No.2. The authorities have given cogent and convincing reasons in the impugned orders. It is submitted that, more than 31 offences are pending against the petitioner. He is involved in illegal activities, and therefore, his externment was warranted and accordingly, the impugned order is passed by Respondent no.2. It is submitted that, while passing the impugned order, the mandate of provisions of the Bombay Police Act, and also the procedure contemplated therein, has been followed and thereafter, only an order of externment has been passed

1 2014 All MR (Cri) 1277

2 2015 All MR (Cri) 2936

3 1988(2) Bom. C.R. 724

by respondent no.2.

5. We have given anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the respondent/State. With their able assistance, we have perused the original record of the case and also the grounds taken in the Petition, annexures thereto and the reasons assigned by the authorities while passing the impugned orders.

6. Upon careful perusal of the record in relation to the case in hand maintained by the respondents, it appears that, the show cause notice issued to the petitioner in the month of March, 2016 is keeping in view the provisions of Section 55 of the Maharashtra Police Act, 1951. It further appears that, the petitioner has filed the written reply to the said notice through the Advocate. The notice was issued taking recourse to Section 59 of the Maharashtra Police Act by invoking the provisions of Section 55. The provisions of Section 55 reads thus :-

"55. Dispersal of gangs and bodies of persons

Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the (Superintendent) empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove

himself outside the area within the local limits of his jurisdiction (or such area and any district or districts, or any part thereof, contiguous thereto) within such time as such officer shall prescribe, and not to enter to area (for the areas and such contiguous districts, or part thereof, as the case may be,) or return to the place from which each of them was directed to remove himself."

7. If the nature of offences registered against the petitioner and other members of his gang is considered, not only offences are registered under the provisions of the Maharashtra Prevention of Gambling Act, 1887 but also registered even under the I.P. Code. There are in all 30 offences registered against the petitioner. Crime No.12 of 2016 registered at Beed Police Station (City) for the offences punishable under Sections 395, 504, 506 of the I.P. Code would clearly demonstrate the alleged activities of the petitioner, which are causing danger to the public peace. It is clear from the alleged activities of the petitioner that, the petitioner is not acting in individual

capacity but he has formed the gang of persons and then involved in commission of offence. Respondent no.2 has considered the material collected by Respondent No.4 during the course of enquiry and subjectively satisfied that, the movement of the body of persons of which the petitioner is a member in Beed city and adjoining area is causing danger by indulging into unlawful designs to the public residing in the said area, and therefore, the externment of the petitioner from Beed district is necessary.

8. On careful perusal of the reasons assigned by respondent no.2 in the impugned order, it is abundantly clear that, there is detail discussion and specific considerations of the offences registered against the petitioner. An each of the offence is discussed separately and thereafter the observations are made by the authority. In some of the offences, the investigation is in progress and in some of the offences already the charge-sheet is filed. As already observed, the Crime No.12/2016 is registered for the offences punishable under Sections 395, 504, 506 of the Indian Penal Code with Beed Police Station (City). We have also

carefully perused the orders passed by Respondent Nos.1 and 2, and we are of the opinion that, all the aspects have been considered by all the authorities and thereafter the order of externment of the petitioner from Beed district is passed. In that view of the matter, viewed from any angle, we are of the opinion that, the externment of the petitioner from the boundaries of Beed district is proper and needs no interference.

9. Upon careful perusal of the reasons assigned by respondent no.2 in the impugned order not only unlawful/illegal activities of the gang of which the petitioner is a member are considered by the said authorities, however, in camera statements of the persons residing in the said vicinity, wherein the gang of the petitioner is involved in the alleged activities, have also been recorded. Along with the petitioner other five members of his gang have been externed from the boundaries of Beed district for one year. Therefore, the mandate of provisions of Section 55 of the Maharashtra Police Act has been met/fulfilled in the facts of the present case.

10. As far as the reliance placed by the learned counsel appearing for the petitioner in support of his contention on the reported judgments in the cases of **Vijay Lalso Jadhav (supra)**, **Shri Rajwardhan Babaso Patil (supra)** and **Umar Mohammed Maibari (supra)** are concerned, the ratio laid down in the said judgments are not applicable in the facts of the present case, in as much as, in the facts of that case, it appears that, before the provisions of Section 55 of the Maharashtra Police Act were invoked, it was not shown that, the persons are acting as a gang or body of the persons. In the facts of the present case, upon perusal of the original record, there is sufficient material to hold that, before the authorities could invoke the provisions of Section 55 of the Maharashtra Police Act, it is shown that, the petitioner and other five persons are acting as a gang and indulged into various illegal and unlawful activities.

11. In the facts of the present case, as it is apparent from perusal of the discussion in the impugned orders that, the gang of six persons including the petitioner is seen to

be acting as a members of that gang or body of persons, and therefore, Section 55 of the Bombay Police Act is rightly invoked in the present case. It appears that, the petitioner is a leader of the gang and other five persons are the members of his gang.

12. As already observed, more than 30 offences are registered against the petitioner under the Maharashtra Prevention of Gambling Act, 1887 and also crime no.12 of 2016 under I.P. Code. While discussing in respect of each crime registered against the petitioner and his members of gang everywhere the petitioner is referred as head of the gang and other five persons are referred as members of the said gang. In that view of the matter, we do not find any reason to interfere in the impugned judgments and orders passed by Respondent Nos.1 and 2. Hence the Petition stands rejected.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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