

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

CRIMINAL WRIT PETITION NO. 318 OF 2017

Santshri Baba Maha Hansaji Maharaj
Age : 40 years, Occ : Social Work &
Spiritual promotion,
R/o Sant Kutiya, Manu Devi Road,
Satpuda Jangal Parisar, Aadgaon,
Tq. Yawal, Dist. Jalgaon.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Sub-Divisional Magistrate,
Faijpur Division, Faijpur,
Tq. Yawal, Dist. Jalgaon.
3. Police Inspector,
Yawal Police Station,
Tq. Yawal, Dist. Jalgaon.

..RESPONDENTS

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Advocate for petitioner : Mr.N.B. Narwade
APP for Respondent/State : Mr. S.B. Yawalkar

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

RESERVED ON : 23rd February, 2017

PRONOUNCED ON : 2nd March, 2017

JUDGMENT : (PER 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 Criminal Writ Petition is filed with the following prayer :-

B. That, by issuing appropriate writ or direction in the like nature, the order passed by Ld. Sub-Divisional Magistrate, Faijpur, Division, Faijpur, Tq. Yawal, Dist. Jalgaon in proceeding bearing outward No.DANDPR/144 (5)/ETPL/2017/2/148/91 dated 18.02.2017 may kindly be quashed and set aside.

3. It is the case of the petitioner that, on 9th February, 2017, respondent no.2 – Sub-Divisional Magistrate, Faijpur Division, Faijpur had passed the order invoking powers under Section 144(2) of the Code of Criminal Procedure, whereby the present petitioner is prevented from entering in the revenue jurisdiction of Yawal Taluka, Dist. Jalgaon. On 11th February, 2017, the petitioner filed

his say/objection but same has not been considered. It is the case of the petitioner that, on 13th February, 2017, the petitioner filed the proceedings under Section 144(5) of Code of Criminal Procedure, but as the respondents authorities were not taking any decision in the said proceedings, and as the period from 14th February, 2017 to 23rd February, 2017 is lapsing, hence the petitioner filed Criminal Writ Petition No.281/2017 before this Court and this Court disposed of the said Petition on 17th February, 2017 with direction to respondent no.2 to decide the said proceedings initiated by the petitioner. On 18th February, 2017, the proceeding filed by the petitioner under Section 144(5) of Code of Criminal Procedure came to be dismissed. Hence this Criminal Writ Petition.

4. The learned counsel appearing for

the petitioner submits that, the order passed by respondent no.2 under Section 144(2) of the Code of Criminal Procedure is without taking into consideration the fact that, out of four crimes registered against the petitioner in two crimes being Crime No.9/2008 and Crime No.40/2013, the petitioner is already acquitted. The learned counsel submits that, respondent no.2 without applying his mind has passed the order dated 18th February, 2017 as while passing the said order, respondent no.2 has considered the crime registered against the petitioner at Chopda Police Station. The learned counsel submits that, the only one crime i.e. Crime No.119/2016 is registered against the petitioner in Yawal Police Station and the same is pending and therefore, on the basis of the same, the petitioner cannot be prevented from entering in the revenue jurisdiction of Yawal taluka.

The learned counsel submits that, respondent no.2 has passed the said impugned order without taking into consideration the fact that, there is no danger to the life, health, safety or peace and tranquility of public due to the activities of the petitioner. The learned counsel submits that, due to passing of order dated 18.02.2017, the fundamental rights of the petitioner have been infringed and his right of freedom of movement is also affected. The learned counsel submits that, the petitioner is the President of Non-Government Organization namely, "Jungle Bachav Sanstha" and also President of Committee namely "संयुक्त वन व्यवस्थापन समिती" (J.F.M.). The learned counsel further submitted that, the impugned order thereby preventing the petitioner from entering in the revenue jurisdiction of Yawal Taluka for the period of 14.02.2017 to 23.02.2017, is too harsh and excessive as the freedom of

movement of the petitioner is restricted and hence the impugned order is liable to be quashed and set aside and the Petition deserves to be allowed.

5. On the other hand, the learned A.P.P. appearing for the State, relying upon the reasons assigned in the impugned orders and also the original record, submits that, the order passed by the authority is in accordance with the provisions of Section 144(2) of the Code of Criminal Procedure. There are four offences registered against the petitioner. The petitioner's presence during the elections of Zilla Parishad will cause disturbance for maintaining the public order. He is history-sheeter. He creates terror in the vicinity, and therefore, there is fear in the mind of the people residing at village Aadgaon and nearby villages.

6. We have heard the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the respondents at length. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, reasons assigned by the respondent no.2, the original record, the provisions of Section 144 of the Code of Criminal Procedure, and the judgments cited across the bar by the learned counsel appearing for the petitioner, namely the judgment of Karnataka High Court in case of **Pramod Muthalik V/s District Magistrate, Davanagere**¹ and the judgment of the Supreme Court in the case of **State of Karnataka and another V/s Dr. Praveen Bhal Thogadia**² relied upon by the learned A.P.P.

7. It appears from the reply filed by the respondent authorities before the Sub-

1 2003(3) Crimes 510

2 AIR 2004 SC 2081

Divisional Officer, Faizpur in proceeding bearing outward No.DANDPRA/144 (2)/ETPL/2017/2/148/28 that, village Aadgaon is sensitive village. Earlier there were riots and offences registered against the petitioner. The petitioner has indulged in criminal activities in past. There is a fear in the mind of the people residing in village Aadgaon and nearby villages. Nobody is ready to depose against him, and therefore, the petitioner was prevented from entering in Yawal Tahsil from 14.02.2017 to 23.02.2017. According to the respondents, the respondent authorities invoked the provisions of sub-section (2) of Section 144 of the Code of Criminal Procedure and passed the exparte order thereby preventing the petitioner for a period of 10 days from entering in Yawal Tahsil. Upon careful perusal of the original record maintained by the respondents, there are no reasons disclosed in the impugned

order that, the situation was so emergent, and therefore, preventing the petitioner from entering in Yawal Tahsil was warranted by invoking the sub-section (2) of Section 144 of the Code of Criminal Procedure. It appears from careful perusal of the order passed by the respondent no.2 that, the blanket order preventing the petitioner from entering Yawal taluka is passed, which appears to be harsh, excessive and disproportionate to the need. It is true that, the record shows that the four offences were registered against the petitioner and out of four offences, he is already acquitted of two offences. One offence, which is pending is of the year 2008 and other offence is registered in the month of November, 2016. There are no reasons assigned by the authorities in the order dated 9th February, 2017 that, the situation was so emergent and did not admit the compliance of the principles of natural

justice since before passing the order preventing the petitioner from entering in Yawal Tahsil. At this juncture, it would be useful to make reference to the judgment of the Karnataka High Court in the case of **Pramod Muthalik (supra)**. In that case, the Karnataka High Court has considered the judgment of the Bombay High Court in the case of **Mahonar Gajanan Joshi V/s S.B. Kulkarni and others**³ and the judgment of the Supreme Court in the case of **Rupinder Singh Sodhi and another Vs. Union of India and others**⁴ and reached to the conclusion in para 12, which reads as under :-

"12. Assuming for the moment hypothetically that the visit of petitioner is likely to create communal tension by his inflammatory public speeches. The blanket order debarring the petitioner from entering the district of Davanagere appears to be too harsh, excessive and

3 1989 Cri.L.J. 1364

4 (1983) 1 SCC 140

disproportionate to the need. It is evident from the order that by inflammatory speeches of the petitioner, it is likely that communal tension would build up resulting in breach of peace and public tranquility. If the act of delivering public speeches is alone to be the cause for the apprehended threat to public peace only to the extent of directing the petitioner not to address public rallies could have been a suffice solution. On the contrary, debarring the petitioner from entering the district for a period of one month by a blanket order is too excessive. The Magistrate without resorting to the debarring of the petitioner from entering Davanagere, could not directed the petitioner and all the political organisations from holding any rallies or meetings for sometime in order to allow the event of murder to die down in the memories of the public."

8. In the facts of present case, we are of the opinion that, the ratio laid down in

the above two judgments is not followed by the respondent authorities while passing the impugned order of preventing the petitioner from entering in Yawal Tahsil. In that view of the matter, the inevitable conclusion is that, the order passed by the Sub-Divisional Magistrate, Faijpur, Division Faijpur cannot sustain. Hence the impugned order dated 18th February, 2017 passed by the Sub-Divisional Magistrate, Faijpur Division, Faijpur is quashed and set aside. Though we have technically quashed and set aside the impugned order, we are unable to grant any relief to the petitioner since the period for which the petitioner was prevented is already over.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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