

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 84 OF 2017

John @ Babalu Sabstine Nair	...	Petitioner
V/s.		
Dy. Commr. of Police & Ors.	...	Respondents

Mr.U.N. Tripathi for the Petitioner.
Mr.J.P. Yagnik, APP for the State.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 17th JANUARY, 2017.

P.C. :

1] Heard Mr.Tripathi for the Petitioner and Mr.Yagnik, APP for the State.

2] This petition is filed challenging the orders dated 4th November, 2016 and 7th December, 2016 passed by the Deputy Commissioner of Police, Zone IV, Pune City and Divisional Commissioner Pune, Division Pune. By the first order passed under Section 56 of the Maharashtra Police Act, the Petitioner is externed for the period of two years from jurisdiction of the Police Commissionerate, Pune. By the second order, the period of two years is reduced to four months from 4th November, 2016.

3] We have perused the first order as well as appellate order. In order to extern the Petitioner, the Externing Authorities has relied upon total eight cases, out of those eight cases, seven cases are registered under the provisions Bombay Prevention of Gambling Act. Out of these eight cases, in three cases, the Petitioner has already acquitted and other five cases are pending for trial before the concerned Magistrate. It is settled position in law that these cases could not have been taken in to consideration while deciding the externment of the Petitioner.

4] Be that as it may, perusal of the said orders does not disclose recording of subjective satisfaction by the competent authority that witnesses are not willing to come forward to give evidence against the accused in public by reason of apprehension on their part as regards the safety of their person or property. In the absence of recording of such satisfaction, the impugned orders cannot be sustained.

5] In view thereof, Writ Petition is allowed in terms of prayer clause (a).

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]