

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1113 OF 2017

Surya @ Surendra Daulat Desai	Petitioner
versus	
The State of Maharashtra and anr.	Respondents

Mr. R. G. Bane, advocate for the petitioner.
Ms. S. D. Shinde, APP for the State.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 5th APRIL, 2017.

P. C. :

Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner has approached this Court invoking jurisdiction under Article 226 of the Constitution of India challenging the impugned order dated 10th September, 2016 passed by ACP, Zone-3, Mumbai, under Section 56(1)(a) of the Maharashtra Police Act whereby he has been externed for a period of one year from Mumbai Suburb District. This order was subsequently confirmed by the Divisional Commissioner, Konkan Division by his order dated 25th January, 2017, passed under Section 60 of the Maharashtra Police Act.

3. Learned counsel for the petitioner, at the outset, submitted that the impugned orders are required to be quashed and set-aside as the competent authority has not recorded subjective satisfaction that

the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. Learned APP does not dispute that such subjective satisfaction is not recorded by the competent authority viz. ACP, Zone-3, Mumbai, while passing an order under Section 56(1)(a) of the Maharashtra Police Act.

4. By now, it is settled position of law that the order of externment can be passed under Section 56(1)(a)(b) of the Maharashtra Police Act, only if the authority concerned is satisfied that witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. A reference can be made to the decision of the Apex Court in **Pandharinath Shridhar Rangeekar versus Dy. Commissioner of Police, State of Maharashtra, 1973 SCC(1) 372.** Since admittedly, such satisfaction is not recorded in the impugned orders passed by the competent authority, the impugned orders viz. the order dated 10th September, 2016 passed by ACP, Zone-3, Mumbai, under Section 56(1)(a) of the Maharashtra Police Act and the order dated 25th January, 2017, passed under Section 60 of the Maharashtra Police Act by the Divisional Commissioner, Konkan Division stand vitiated and the same cannot be sustained and, therefore, they are quashed and set-aside. The writ petition is, accordingly, disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]