

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2648 OF 2017

Appa @ Arjun Shambhaji Sabne.	]	... Petitioner
Versus		
The S.D.M., Malegaon & Ors.	]	... Respondents

Mr. U. N. Tripathi for Petitioner.
Mrs. M. M. Deshmukh, APP for State.

CORAM :- RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE :- 18 JULY, 2017

P. C. :-

1. Heard.
2. Taken up for final hearing by consent of the parties.
3. Rule. Rule made returnable forthwith.
4. By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the externment proceedings under the Maharashtra Police Act. By the order dated 16/05/2017 passed by the Sub-Divisional Magistrate, Malegaon Sub-Division, Malegaon, the petitioner was externed under the provisions of Section 56(1)(a)(b) of the Maharashtra Police Act. The petitioner challenged this order by filing an appeal before the Divisional Commissioner, Nashik Division, Nashik. The Divisional Commissioner, by his order dated 21/06/2017, dismissed the same and therefore the petitioner is before this Court.

5. The learned Advocate for the petitioner submits that in order to extern a person under Section 56(1)(a)(b) of the Maharashtra Police Act, the Externment Authority must be satisfied that, *'the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property'*. Further satisfaction is also required on the part of the Externment Authority 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.'*

6. Having gone through the said order under Section 56(1)(a)(b) of the Maharashtra Police Act, we find that subjective satisfaction by the Externment Authority stating that the witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property, is not recorded therein.

7. In the above circumstances, the impugned order is vitiated, cannot be sustained, and the same is accordingly quashed and set aside.

8. Rule is, accordingly, made absolute.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)