

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3982 OF 2016

Sayyednoor Jansha Irani ..Petitioner
Versus
The State of Maharashtra and anr. ..Respondents

Mr. V. L. Kalekar, advocate for the petitioner.
Ms. S. D. Shinde, APP for the State.

**CORAM : RANJIT MORE &
PRAKASH D. NAIK, J J.**

DATE : 17th FEBRUARY, 2017.

P. C. :

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

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the orders dated 7th September, 2016 and 19th October, 2016, passed by the Deputy Commissioner of Police, Zone IV, Pune City and Divisional Commissioner, Pune Divisione, Pune under 56 (1) (a) (b) and Section 60 of the Maharashtra Police Act respectively.

3. The Deputy Commissioner of Police, Zone IV, Pune City, by the order dated 7th September, 2016, externed the petitioner for a period of two years from the jurisdiction of Police Commissionerate Pune. By the

order dated 19th October, 2016, the appellate authority restricted the period of externment to six months from 7th September, 2016.

4. The petitioner is externed on the basis of registration of the following CRs:

Sr.No.	Police Station	C.R.No.	Section	Punishment
1	Khadki	3968/12	I.P.C. Sec.160	Sub judice
2	Khadki	3148/14	Mumbai Gambling Act-Section 12(A)	Sub judice
3	Khadki	3071/15	Mumbai Gambling Act-Sections 4, 5.	Sub judice
4	Khadki	262/15	I.P.C. 143, 147, 148, 149, 324, 323, 504. Mumbai Gambling Act Section 37(1) with 135 Arm Act Section 4(25), Criminal Law Amendment Section 7	Under Investigation

The first CR is registered under Indian Penal Code, 1860. The second and third CRS are registered under the Mumbai Gambling Act. The petitioner is already acquitted from two CRs. The first as well as third CR could not have been taken into consideration for the petitioner's externment.

5. Be that as it may, it is now well settled position of law that in order to extern a person under Section 56(1)(a)(b) of the Maharashtra Police Act, the competent 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 or that there are

reasonable grounds for believing that such person is engaged in the commission of the offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, 1860. It is also settled position that the competent authority must also be satisfied 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, and such satisfaction must be recorded in the notice under Section 59 and the order under Section 56(1)(a)(b) of the Maharashtra Police Act. We have perused the order under Section 56(1)(a)(b) issued by the Deputy Commissioner of Police, Zone IV, Pune City. Perusal of the same does not disclose recording of subjective satisfaction 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. In the absence of such subjective satisfaction, the impugned orders stand vitiated and the same cannot be sustained and are liable to be quashed and set-aside. The writ petition is, accordingly, allowed in terms of prayer clause (a) and is disposed of as such.

(PRAKASH D. NAIK, J.)

[RANJIT MORE, J.]