

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4098 OF 2016

Kamber Gulmirza Irani	..Petitioner
Versus	
Dy. Commissioner of Police, Zone IV, Pune	
and ors.	..Respondents

Mr. U. N. Tripathi i/b. Mr. Amit Gharte, advocate for the petitioner.
Mr. J. P. Yagnik, APP for the State.

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

DATE : 23rd JANUARY, 2017.

P. C. :

Heard Mr. Tripathi, learned counsel for the petitioner and
Mr.Yagnik, learned APP for the State.

2. By this petition, the petitioner is challenging the orders dated
2nd August, 2016 and 29th September, 2016, passed by the Deputy
Commissioner of Police, Zone IV, Pune City and Divisional
Commissioner, Pune Divisione, Pune respectively under 56 (1) (a) (b) and
Section 60 of the Maharashtra Police Act.

3. The Deputy Commissioner of Police, Zone IV, Pune City, by the order dated 2nd August, 2016, externed the petitioner for a period of two years from the jurisdiction of Police Commissionerate Pune from 2nd August, 2016. By the order dated 29th September, 2016, the appellate authority restricted the period of externment to six months from 2nd August, 2016 and the said period is to expire on 1st February, 2017.

4. By now it is 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 order stand vitiated and the same cannot be sustained and, therefore, it is quashed and set-aside. The writ petition is, accordingly, allowed in terms of prayer clause (a) and is disposed of as such.

(DR. SHALINI PHANSALKAR-JOSHI)

[RANJIT MORE, J.]