

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4305 OF 2016

Ashish Madhukar Lade.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. S. G. Rajput and Rupali Rajput for the Petitioner.

Mrs. A. S. Pai, APP for the State.

Coram : Ranjit More &

Dr. Shalini Phansalkar-Joshi, JJ.

Date : **January 19, 2017.**

P. C. :

1. Heard learned Counsel appearing for the Petitioner and learned APP for the State. By this petition filed under Article 226 of the Constitution of India the Petitioner is challenging the order dated 10th September 2016 passed by the Deputy Commissioner of Police, Zone-III, Mumbai and order dated 25th November 2016 passed by the Divisional Commissioner, Kokan Division. By the order dated 10th September 2016 the Petitioner is externed from Mumbai City and Mumbai Suburban Districts for the period of one year. By the order dated 25th November 2016 made in an appeal under section 60 of the Maharashtra Police Act, the order passed by the Competent Authority is confirmed.

2. By now it is well settled position in law that for taking action under section 56(1)(a)(b) of the Maharashtra Police Act, two requirements are required to be fulfilled, namely, (I) that

the movements or acts of person are causing or calculated to cause alarm, danger or harm to person or property and (ii) the authority is 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. Reference can be made to decision of Bombay High Court in Yashwant Damodar Patil v. Hemant Karkare [1989 (3) BomCR 240].

3. In the light of above settled law we have examined the impugned orders. Perusal of the same discloses that neither Competent Authority nor the appellate authority has recorded the 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 that view of the matter, the impugned orders cannot be sustained and the same are hereby quashed and set aside. Petition is allowed in terms of prayer clause (a).

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]