

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4479 OF 2016

Rohit Sidram Khatal	...	Petitioner
V/s.		
The State of Maharashtra & Ors.	...	Respondents

Mr.S.S. Choudhari for the Petitioner.
Mrs.A.S. Pai, APP for the State.

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

DATE : 6th FEBRUARY, 2017.

P.C. :

1] Heard Mr.Choudhari, learned counsel for the Petitioner and Mrs.Pai, APP for the State.

2] By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the orders dated 23rd August 2016 and 29th October 2016 passed by the Deputy Commissioner of Police (Zone), Solapur City, Solapur and Divisional Commissioner, Pune Division, Pune under Section 56(1)(a)(b) and Section 60 of the Maharashtra Police Act. By the first order dated 23rd August 2016, the Petitioner was externed for the period of two years from Solapur City and Solapur District. By the second Appellate order dated 29th

October 2016, the period of externment is restricted upto six months from the date of first order.

3] Mr.Choudhari, learned counsel for the Petitioner points out that initially notice dated 12th February 2016 was given to the Petitioner under Section 59 of the Maharashtra Police Act, relying upon following four CRs.

Sr.No.	Name of Police Station	CR No.	Sections
1	Faujdar Chavadi	323/2015	143, 147, 148, 149, 353 of IPC and 135 of Mah.Police Act
2	Faujdar Chavadi	259/2014	143, 336, 337, 323, 504 of IPC and 135 of Mah.Police Act
3	Faujdar Chavadi	152/2012	435, 427 r.w. 34 of IPC
4	Jodbhavipeth	48/2013	461, 380 r.w.34 of IPC

In addition to this, two in-camera statements of witnesses also came to be relied upon.

4] Final show cause notice was issued on 28th July, 2016 relying upon following three CRs.

Sr.No.	Name of Police Station	CR No.	Sections
1	Faujdar Chavadi	323/2015	143, 147, 148, 149, 353 of IPC and 135 of Mah.Police Act
2	Faujdar Chavadi	259/2014	143, 336, 337, 323, 504 of IPC and 135 of

			Mah. Police Act
3	Faujdar Chavadi	152/2012	435, 427 r.w. 34 of IPC

Ultimately, an order dated 23rd August, 2016 under Section 56 (1)(a)(b) was passed relying above three CRs.

5] Mr.Choudhari, learned counsel for the Petitioner has made following statement;

- a) In first CR No.323 of 2015, the investigation is under process and charge-sheet is not filed.
- b) In second CR No.259 of 2014, the charge-sheet is filed and case is pending.
- c) In third CR No.152 of 2012, the Criminal case is already compromised.

This statement is not disputed by Mrs.Pai, learned APP for the State.

6] Even the Appellate Authority relied upon only first CR, namely CR No.353 of 2015, registered against the Petitioner by Faujdar Chavadi Police Station for the offences punishable under Sections 143, 147, 148, 149, 353 of Indian Penal Code and Section 135 of Maharashtra Police Act.

7] So far as the CR No.353 of 2015 registered by Faujdar

Chavadi Police Station is concerned, the same is registered on 13th October, 2015 at the instance of Assistant Police Inspector and as on today no charge-sheet is filed.

8] In such situation, it can not lie in the mouth of the Respondent-Authority that 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.

9] This is especially so when the Appellate Authority itself refused to rely upon the other two cases against the Petitioner namely CR No.259 of 2014 and CR No.152 of 2012 registered with Faujdar Chavadi Police Station. In the above said circumstances, impugned orders cannot be sustained and the same are, accordingly, quashed and set-aside.

10] Writ Petition is, therefore, allowed in terms of prayer clause (a).

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]