

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.375 OF 2018

Raju s/o. Shamrao Dokale,
Age: 43 years, Occ. Labour,
R/o. Ajooba Nagar, Waluj,
Tq. Gangapur, Dist. Aurangabad **..PETITIONER**

VERSUS

- 1] The State of Maharashtra
Through Police Station, Waluj,
Tq. Gangapur, Dist. Aurangabad.
- 2] The Deputy Commissioner of Police,
Zone-1, Special Executive Magistrate,
Aurangabad.
- 3] The Assistant Commissioner of Police,
Cantonment Division, Aurangabad
Tq. & Dist. Aurangabad.
- 4] The Divisional Commissioner
Aurangabad Division,
Aurangabad. **.. RESPONDENTS**

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Mr.R.C.Bora, Advocate holding for
Mr.M.L.Wankhede, Advocate for the Petitioner
Mr.D.R.Kale, APP for the Respondent/State

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**CORAM: S.S.SHINDE &
V.K.JADHAV,JJ.**

Reserved on : 06.08.2018
Pronounced on : 09.08.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed with the following prayer:

(C) To quash and set aside the impugned order dated 30.08.2017 passed by the respondent No.2 The Deputy Commissioner of Police vide Proceeding No.3412/2016 as well as the order dated 17.02.2018 passed by the respondent No.4 in Appeal No. 2017/SR/Desk-1/Pol-1/Externment/CR - 96 and for that purpose necessary orders be passed.

3] It is the case of the petitioner that on 27th July, 2017, respondent no.3 has issued show-cause-notice, taking recourse to Section 59 of the Maharashtra Police Act, 1951 [for short 'the Act of 1951'] to the petitioner to show cause why he should not be

externed from the Aurangabad, Jalna and Ahmednagar Districts. While doing so the said Authority invoked the provisions of Section 56 [1] [a] and [b] of the Act of 1951. On 7th August, 2017, petitioner filed reply to the said notice, stating therein that the crimes mentioned in the said notice are investigated, and the petitioner has been released on bail in the above mentioned crimes. The investigation of the said crimes is completed, and the charge sheet has already been filed. The name of the petitioner is impleaded as an accused in the above mentioned crimes on the basis of suspicion. The petitioner is not involved in the activities of force violence in the society. Thereafter again on 23th August, 2017, respondent no.2 has issued another show cause notice to the petitioner, thereby once again calling his explanation. The petitioner again filed reply to the said notice, stating

therein that the crimes mentioned in the said notice are false and allegation made in the said crimes are vague. On 30th August, 2017, respondent no.2 has passed the impugned order, thereby externing the petitioner from the boundaries of Aurangabad District for a period of one year. Being aggrieved by the said order of an externment, the petitioner filed Appeal before respondent no.4. Respondent no.4, by order dated 17th February, 2018, rejected the Appeal filed by the petitioner. Hence this Petition.

4] Learned counsel appearing for the petitioner submits that, the impugned orders are passed without following the principles of natural justice. The decision of an externment of the petitioner from the boundaries of Aurangabad District is politically motivated. No specific incidents, date, time and places have been mentioned in the show cause notices, showing that the

activities of the petitioner are causing danger to the public or property. A copies of statements of the witnesses recorded in camera have not been supplied to the petitioner. While passing the impugned orders, respondents have relied upon the crimes registered in the year 2013, 2014 and 2016. No single crime has been registered against the petitioner after the Year 2016. It is submitted that the petitioner is suffering from several diseases, and he is in need of proper treatment. The cases shown in the impugned orders are pending for trial. Without considering the reply filed by the petitioner, the impugned orders are passed and same deserves to be quashed and set aside. In support of the aforesaid contentions, learned counsel appearing for the petitioner placed reliance on the ratio laid down by the Bombay High Court, Bench at Aurangabad in the case of Rohit s/o. Ramesh

Nalawade Vs. The State of Maharashtra & others in Criminal Writ Petition No.708/2017, decided on 19th July, 2017. He further pressed into service ratio laid down in the case of Kamalkishor s/o.Pusaram Bang Vs. The Superintendent of Police, Jalna & others in Criminal Writ Petition No.239 of 2018, decided on 12th April, 2018.

5] On the other hand, learned APP appearing for the respondent—State relying upon the averments in the affidavit-in-reply submits that, while initiating proceedings of an externment of the petitioner, already three offences / crimes were registered against the petitioner, and one preventive action was also pending against the petitioner, as it is evident from the contents of the show cause notices issued to him. Due to fear of the petitioner, the common citizens residing in the concerned locality as well as the witnesses are not

coming forward to lodge complaint or to give evidence against the petitioner due to fear to their person or property. It is submitted that, on number of occasions the petitioner has given threats to the people and even committed assault. On 28.06.2017, respondent no.1 submitted proposal in respect of proposed externment of the petitioner from the Aurangabad, Jalna and Ahmednagar Districts to respondent no.2. Considering the provisions of Section 56 [1] [a] [b] of the Act of 1951, respondent authorities have rightly passed the impugned orders, thereby externing the petitioner from the boundaries of Aurangabad District. Therefore, he submits that the Petition may be rejected.

6] We have considered the submissions of the learned counsel appearing for the petitioner and learned APP appearing for the respondent-State. With their able assistance, we have perused the pleadings in the

Petition, grounds taken therein, annexures thereto, and reply filed by respondents and also the original record in relation to the externment proceedings. It appears that, the statements of more than three witnesses have been recorded in-camera by the respondent authorities. Upon perusal of the contents of the said statements, it is abundantly clear that, the petitioner has indulged into the alleged activities, and he has threatened and assaulted those witnesses. 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. It is true that, in one of the offences, the petitioner has been acquitted, but it appears that, his wife was the informant who turned hostile, and therefore, the prosecution could not prove charge. We have carefully perused the reasons assigned by the respondent

authorities in the impugned orders, and we are satisfied that, those are in consonance with the material collected during the course of enquiry. The mandate of the provisions of Section 56 [1] [a] and [b] of the Act of 1951 has been met. We do not see any perversity in the findings recorded by respondent authorities in the impugned orders, and the view taken appears to be plausible.

7] In the light of discussion in the foregoing paragraphs, we are not inclined to entertain this Writ Petition, and hence same stands rejected. Rule stands discharged.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE