

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

CRIMINAL WRIT PETITION NO.541 OF 2018

Rauf Khan Wahab Khan Patel
Age : 42 years, Occ : Agriculture,
R/o Near Renukamata Kaman,
Beed Bye-Pass Road,
Satara Parisar, Aurangabad. **PETITIONER**

VERSUS

The State of Maharashtra **RESPONDENT**

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Mr.Akshay Kulkarni a/w Mr.Kuldeep Kahalekar
holding for Mr. N.S. Ghanekar, Advocate for
the Petitioner
Mr.Y.G. Gujrathi, APP for Respondent/State.

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

Reserved on : 18.07.2018
Pronounced on : 23.07.2018

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

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

3. This Petition is filed praying therein to quash and set aside the order dated 3rd March, 2018, passed by the Divisional Commissioner, Aurangabad, dismissing the appeal and confirming the order dated 16th November, 2017 passed by the Deputy Commissioner, Division-2 Aurangabad, externing the petitioner from Aurangabad district for two years.

4. The background facts for filing the present Petition, as disclosed in the memo of Petition, in brief are as under:

It is the case of the petitioner that the Assistant Commissioner of Police, Aurangabad issued show-cause notice to the petitioner on 18th/21st September, 2017, stating therein that as to why the petitioner should not be externed from Aurangabad city and adjoining districts for two years. In the

said notice it has been mentioned that, there are three matters pending against the petitioner. As there was delay in filing the reply to the show-cause notice, the office of the Authority, was not accepting the reply of the petitioner, hence the petitioner was required to send the reply by Speed Post on 9th October, 2017 to the show-cause notice, explaining the background in which the false offences have been registered against the petitioner. Thereafter, the Assistant Commissioner of Police, Aurangabad forwarded the externment proposal of the petitioner to the Deputy Commissioner of Police, Aurangabad, without affording an opportunity of hearing to the petitioner and without following principles of natural justice.

5. It is the case of the petitioner that, the Deputy Commissioner of Police, Aurangabad issued show-cause notice under

Section 59 of the Maharashtra Police Act, 1951 to the petitioner on 17th October, 2017. The petitioner filed application on 25th October, 2017 for allowing him to engage an Advocate to represent his case, however, no orders have been passed on the said application by the Authority.

6. It is the case of the petitioner that, the Deputy Commissioner of Police, Division-2 Aurangabad without considering the case of the petitioner issued externment order on 16th November, 2017, thereby externing the petitioner from Aurangabad district for a period of two years. Thereafter, the petitioner filed appeal bearing No. Externment/CR-169 before the Divisional Commissioner, Aurangabad, which came to be dismissed by an order dated 3rd March, 2018, thereby confirming the order of externment passed by the Deputy Commissioner

of Police, Division-2 Aurangabad. Hence this Writ Petition.

7. Learned counsel appearing for the petitioner invites our attention to the documents placed on record and submits that, as far as the Crime No.518 of 2016 registered with Satara Police Station, for offences punishable under Sections 323, 504, 506, 34 of the Indian Penal Code (IPC), under Sections 3 and 25 of the Indian Arms Act and under section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act dated 13th December, 2016 is concerned, the informant Rahul Namdeo Sirsath has included the names of the petitioner, his father, brother and son, and all of them have been released on anticipatory bail by Sessions Judge, Aurangabad on 21st December, 2016 and 28th December, 2016 respectively. It is submitted that, the incident in the said

crime is alleged to have taken place in December, 2016 and on the basis of the said offence, an externment order is passed in November, 2017, which is illegal. So also the allegations made in the said crime were general in nature and that was not involving the public at large, and there was no question of breach of peace and tranquility.

8. Learned counsel submits that, as far as Crime No.688 of 2015 registered with Krantichowk Police Station for the offences punishable under Sections 363, 364-A, 397 of the IPC and under sections 3 and 5 of the Indian Arms Act by one Tausif Deshmukh is concerned, the said crime is outcome of a civil dispute and money transaction in between the petitioner and Tausif Deshmukh. The petitioner had given him hand loan by cash and said Tausif has given the cheques for the said transaction, and the said

cheques were dishonoured, in turn the complaint under Section 138 of the Negotiable Instruments Act came to be filed, which is pending for adjudication. The registration of Crime by Tausif Deshmukh is clearly outcome of money dispute. This incident is of the year 2015 and the said incident is considered for passing the externment order against the petitioner in the year 2017.

9. Learned counsel submits that, the petitioner was having civil dispute in respect of his property at village Nagapur, Tq. Gangapur, Dist. Aurangabad in respect of Gut No.20 with Suleman Bandu Tayde and others. The Civil Court has granted orders in favour of the petitioner. So also the High Court has also granted bail to the petitioner. It is submitted that, the offence under section 307 of the IPC is of the year 2014 and therefore, that incident cannot be

considered by the authorities to extern the petitioner in the year 2017. It is submitted that, all criminal matters are pending before the competent courts and the petitioner is not convicted in any matter. The presence of the petitioner is also required even to attend the Court dates and to make preparation for his defence. This material aspect has not been considered by the externing authority or the appellate authority, while passing the impugned order.

10. Learned counsel further submits that, there is no evidence to show that the witnesses are not coming 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. So also there is no evidence to show that the movement or act of petitioner were causing danger or harm to person or

property. The Authorities below have not considered the fact that there are no reasonable grounds for believing that the petitioner is engaged or is about to be engaged in commission of any offence involving force or violence. The order of externment is passed mechanically without following due procedure of law and without giving proper opportunity of hearing. Therefore, the externment order is not legally sustainable and requires interference by this Court. The Authorities below have not taken into consideration the fact that, the crimes which have been registered against the petitioner are subjudice before the respective Courts and the petitioner will be required to attend the dates of the said cases. In support of his aforesaid contentions, he pressed into service the exposition of law in the cases of Hanuman Rajaram Mhatre V/s The State of Maharashtra¹,

¹ 2013 ALL MR (Cri) 1646

Praful Bhausahab Yadav V/s K.K. Pathak and others² and Akas Madhukar Patil (Rajput) V/s The State of Maharashtra and others³. Therefore, he submits that the Petition may be allowed.

11. On the other hand, the learned APP appearing for the respondent – State relying upon the original record and also the affidavit-in-reply filed by the Respondent submits that both the authorities have considered the material collected during the course of enquiry and also three pending offences against the petitioner. In-camera statements of the witnesses have also been recorded, and they have deposed that, the witnesses are not coming forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or

2 2013(3) Bom.C.R.(Cri.) 65

3 2018(1) Bom.C.R.(Cri.) 456

property. It is submitted that, the mandate of Section 56(1)(a)(b) of the Maharashtra Police Act has been met, and therefore, the Writ Petition is devoid of any merits and the same may be rejected.

12. We have given careful consideration to the submissions advanced by learned counsel appearing for the petitioner and learned APP appearing for the Respondent/State. We have also carefully perused the reasons assigned by the authorities in the impugned orders. It appears that, though the petitioner examined the witnesses in support of his contentions in the written statement, nevertheless there is no discussion about the contentions of the witnesses. Though the authorities have mentioned in the impugned orders that they have seen the statements of the witnesses, nevertheless it was necessary at least to

discuss in brief about what the witnesses have stated. The valuable remedy of appeal is available to the externee and once the appeal is filed, the appellate authority is obliged to consider the case of the externee on the facts as well as on law. To brand a person habitual criminal, it is necessary to find out his past record. In the present case, both the authorities have not considered the fact that, the petitioner is not convicted in any of the criminal cases registered against him. It appears that, in pending criminal cases, he is enlarged on bail by the trial Court and also the High Court respectively. There is no material brought on record by the respondent that liberty granted in favour of the petitioner has been misused by him. All this contentions raised by the petitioner ought to have been considered by both the authorities, and to that effect at least there should have been discussion in the

order passed by the appellate authority. Learned counsel appearing for the petitioner is right in placing reliance on the ratio laid down in the cases of Hanuman Rajaram Mhatre, Praful Bhausaheb Yadav and Akas Madhukar Patil (Rajput) (supra).

13. In that view of the matter, we are of the opinion that the order passed by the appellate authority deserves to be quashed and set aside and the appeal filed by the petitioner is required to be restored to its original file so as to consider the same afresh, by the appellate authority, on the facts as well as on law.

14. In the result, the impugned order dated 3rd March, 2018, passed by the Divisional Commissioner, Aurangabad is quashed and set aside. The appeal filed by the petitioner before the said authority is

restored to its original file. The appellate authority is directed to decide the said appeal afresh, uninfluenced by the observations made herein above on the facts as well as on law, and after summoning the original record in relation to the proceedings of externment of the petitioner, as expeditiously as possible and preferably, within eight weeks from today.

The petitioner to appear before the Divisional Commissioner, Aurangabad on 30th July, 2018. The said Authority can proceed with the hearing of the appeal on the said date or may fix the next date for hearing of the appeal.

Till the appeal is heard and decided by the Divisional Commissioner, Aurangabad, the order dated 16th November, 2017 passed by the Deputy Commissioner, Division-2

Aurangabad shall remain stayed. As a result, the petitioner would be entitled to enter within the limits of Aurangabad district. The said order shall remain in force till the appeal is decided by the Divisional Commissioner, Aurangabad afresh.

We issue the note of caution to the petitioner that he shall not indulge into any illegal activities once he enters into Aurangabad city.

(V.K. JADHAV)
JUDGE

(S.S.SHINDE)
JUDGE

sga/