

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

CRIMINAL WRIT PETITION NO.613 OF 2018

- 1] Santosh s/o.Bapurao Gujjar
Age: 35 years, Occu. Business,
R/o. Annabhau Sathe Nagar,
Near Flyover Bridge, Parbhani,
District-Parbhani.
 - 2] Sunil s/o.Laxman Shirale,
Age: 28 years, Occu. Labourer,
R/o. as above.
 - 3] Rama s/o.Bapurao Gujjar,
Age: 40 years, Occu. Municipal
Corporator,
R/o. as above.
 - 4] Ravi s/o.Prakashrao Gujjar
Age: 25 years, Occu. Labourer
R/o. as above.
 - 5] Ambadas s/o.Rama Gujjar,
Age: 22 years, Occu. Labourer,
R/o. as above.
 - 6] Deepak s/o.Prakash Gujjar,
Age: 23 years, Occu. Education,
R/o. as above.
 - 7] Mangalsing s/o.Dadarsingh Dudhane,
Age: 36 years, Occu. Labourer,
R/o. Vikas Nagar, Parbhani,
District-Parbhani
- .. PETITIONERS**

VERSUS

- 1] The State of Maharashtra
Department of Home,
Through its Under Secretary [Special]
Mantralaya, Mumbai.
- 2] The Superintendent of Police
S.P. Office, Parbhani
- 3] Sub Divisional Police Officer,
Parbhani Town, Parbhani,
District-Parbhani.
- 4] The Police Inspector,
Kotwali Police Station,
New Mondha, Parbhani,
District-Parbhani.

.. RESPONDENTS

...

Mr.S.S.Rathi, Advocate for the petitioners
Mrs.V.N.Patil-Jadhav, APP for the
Respondent/State

...

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

Reserved on : 01.08.2018
Pronounced on : 07.08.2018

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] By issuing appropriate Writ or order and directions, the Judgment and Order dated 22.11.2017 passed by Respondent No.2 i.e. Superintendent of Police Parbhani in Case Outward No.4330/LCB/2017, thereby externing present petitioners from Parbhani district for one year and the judgment and order passed by the Divisional Commissioner, Aurangabad on 03.03.2018 in Case No.2017/GA/CR-1/Pole-1/externment/CR/168 thereby dismissing the appeal of the present petitioners may kindly be quashed and set aside;

3] It is the case of the petitioners that on 29.11.2016 respondent no.3 had issued notice to the petitioners, thereby calling upon the petitioners for submitting their say regarding an externment proceedings proposed,

and initiated against the petitioners, on the basis of proposal forwarded by respondent no.4 i.e. Police Inspector of Kotwali Police Station, Parbhani. In the said notice, reference has been made to sixteen different crimes, which were allegedly registered against the present petitioners. A common notice was given to all petitioners, more particularly, when all the petitioners were not accused in all crimes referred in the said notice. Even as per notice dated 29.11.2016, out of sixteen crimes, eleven crimes were resulted into acquittal, and remaining five were pending for investigation/trial. Upon perusal of the said notice, it can be seen that respondent no.3 had proposed an externment of petitioners from Parbhani, Nanded, Hingoli and Latur Districts for a period of two years, though all above mentioned crimes have been registered within Parbhani District. The

notice further refers that, in near future there are elections of Municipal Corporation, and there was every possibility that the present petitioners may get involved themselves in illegal activities, and as such, to avoid the problem of law and order, an externment of present petitioners was proposed. Pursuant to the said notice, all the petitioners have submitted their reply separately and independently. Though the notice was common for all sixteen crimes though the accused persons were not accused in all crimes. The petitioners had submitted their reply individually and pointed out that, except Crime No.381/2016 registered with Kotwali Police Station, Parbhani, on any other case is pending against either of the petitioners. They have specifically denied that there is likelihood of any problem of law and order in the proposed Municipal elections. It was also pointed out that, the

proposal for an externment was referring to crimes, which were registered in the year 2001 onwards. It was also pointed out that, for the similar cause, already an externment order was passed by respondent authorities in the year 2012-13. The said externment order was quashed and set aside by the High Court in Criminal Writ Petition No.664/2013, and on the basis of same crimes, fresh proceedings may not be initiated. Along with the aforesaid reply, the petitioners have submitted the copies of acquittal orders of four crimes in which the petitioners were acquitted by the Competent Court of law. These cases were referred as pending cases in the show cause notice dated 29.11.2016. At the time of issuance of notice and submitting reply of the petitioners, only one Crime i.e. Crime No.381/2016 registered with Kotwali Police Station was pending for investigation.

4] It is further the case of the

petitioners that as referred above, respondent nos.3 and 4 had apprehended problem of law and order in the then Municipal elections at the hands of present petitioners, but admittedly, no such incident has taken place as apprehended by the authorities. Petitioner no.3 had contested the then Municipal elections as he was authorized candidate of Indian National Congress. Petitioner no.3 got elected in the said election, and since then he is working as a Municipal Corporator of Parbhani Municipal Corporation. Respondent no.2, vide its order dated 22.11.2017, has externed the petitioners from Parbhani District for a period of one year. Being aggrieved by the said order, the petitioners filed Appeal before the Divisional Commissioner, Aurangabad Division, Aurangabad, and the said Appeal came to be dismissed by the said Appellate Authority on 03.03.2018, thereby

confirming the order of an externment passed against the petitioners. Hence this Petition.

5] Learned counsel appearing for the petitioners submits that the impugned orders are passed in violation of principles of natural justice. Out of sixteen crimes, fifteen cases were ended in acquittal. All the petitioners were not common accused in all above cases. Only Crime No.381/2016 is pending against the petitioners. Without considering said fact, the respondent authorities have passed the impugned orders. The proposal for an externment was initiated against the petitioners thereby apprehending illegal activities in the then Municipal elections. It is matter of record that, no such illegal activities has taken place at the instance of present petitioners in the Municipal elections. On the contrary, petitioner no.3 got elected as a Municipal Corporator in the said election. In the light

of these facts and circumstances, further proceedings of an externment initiated prior to municipal elections should have been dropped by the authorities, as the same was on the basis of apprehension only. While passing the impugned judgment and order by the authorities, it appears that, they got influenced with the registration of crime against petitioners from the year 2001 onwards. At the same time, the authorities have miserably failed to consider the judgment and order passed by this Court in Criminal Writ Petition No.664/2013 [Ramas/o.Bapurao Gujar Vs. The State of Maharashtra & others] along with connected Writ Petition No.665/2013, by which earlier order of externment passed against some of the petitioners was quashed and set aside by this Court. In the earlier proceedings also, the same crimes were relied upon against the petitioners while passing the order of an

externment. This material aspect has not considered by the respondent authorities. In the show cause notice, there is no mention about in-camera statements of the witnesses. Except Crime No.381/2016 registered with Kotwali Police Station, Parbhani, no other crime was pending against the petitioner at the time of issuance of notice. The respondent authorities have relied upon the pendency of criminal case arising out of Crime No.36/2012 registered with Nanalpeth Police Station, Parbhani. There is no reference of the above mentioned crime in the show cause notice. There is no discussion in the impugned orders that the activities of the petitioners are dangerous to the safety of person or property. On the contrary, every attempt was made to deprive petitioner no.3 from participating in the municipal election. Without considering the provisions of Sections 56 and 60 of the Maharashtra Police

Act, 1951, the impugned orders are passed. Except one pending criminal case, all cases were ended in acquittal. The reasons assigned by the respondent authorities also suffer from not demonstrating live link between the offences relied upon in show cause notice, and the impugned orders. The respondent authorities have not recorded subjective satisfaction before passing the impugned orders. Without considering the above mentioned facts and circumstances, the impugned orders are passed by the respondent authorities. Therefore, learned counsel submits that, the Petition may be allowed.

In support of the aforesaid contentions, the petitioners placed reliance on the exposition of law in the cases of Rajwardhan Babaso Patil & Ors. Vs. Vijaysinha Jadhav & Ors.¹, Ahammad Mainuddin Shaikh Vs. State of Maharashtra & anr.², Rajendra

1 2013 [4] Bom.C.R. [Cri.] 22

2 2013 [4] Bom.C.R. [Cri.] 559

Karbhari Kale Vs. State of Maharashtra & others³, Nitin @ Babloo s/o. Bhagwant Gade Vs. Deputy Commissioner of Police Amravati & others⁴, Yeshwant Damodar Patil Vs. Hemant Karkar, Dy. Commissioner of Police & another⁵ and Anna Bhimrao Dhavale Vs. State of Maharashtra & Ors⁶.

6] On the other hand, learned APP appearing for the respondent-State submits that the authorities, after adhering to the procedure prescribed under the provisions of Section 55 of the Act of 1951, have rightly externed the petitioner from the boundaries of Jalgaon District. Learned APP invites our attention to the reasons assigned in the impugned orders, and also original record in relation to the externment proceedings of the petitioners and submits that the Petition may be rejected.

3 2017 [2] Bom.C.R. [Cri.] 138

4 2016 [4] Mh.L.J. [Cri.] 156

5 1989 [3] Bom.C.R. 240

6 2017 [1] Bom.C.R. [Cri.] 764

7] We have heard 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 the original record in relation to the externment proceedings. It appears that, while issuing show cause notice, the concerned Authority has not properly scrutinized the material collected during initial enquiry, and issued general notice to all accused though they are not accused in all the offences/crimes, which are mentioned in the show cause notice. It further appears from the material placed on record that, the petitioners were already acquitted by the Court in four crimes out of the crimes mentioned in the show cause notice, nevertheless those crimes were mentioned in the show cause notice. It is true that, in one crime all the petitioners

are added as accused, however, said Crime i.e. Crime No.381/2016 was pending for investigation with Kotwali Police Station, Parbhani. It further appears that, apprehension expressed by the respondent authorities that the petitioners would create law and order problem during the election period of the Municipal Council, Parbhani, was subsequently found without any basis inasmuch as there was no any untoward incident at the instance of the petitioners. On the contrary, the petitioner no.3 contested the election and declared elected. It further appears that, on earlier occasion, being aggrieved by the externment proceedings initiated against some of the petitioners, they filed Criminal Writ Petition No.664/2013 [Rama s/o.Bapurao Gujar Vs. The State of Maharashtra & others] along with connected Criminal Writ Petition No.665/2013. It is brought on record that, the orders impugned

in the said Writ Petitions were quashed and set aside by the High Court. Therefore, it was incumbent for the respondent authorities to discuss in the impugned orders that, whether there is any live link between initiation of an externment proceedings on second time, on the basis of various crimes registered from the Year 2001 till 2013, when the said crimes were also considered in earlier round of proceedings. However, there are no reasons assigned/observations made in the impugned orders, showing such live link between initiation of an externment proceedings, and the offences registered from the Year 2001 to 2013. It is well settled that, while invoking the provisions of Section 55 of the Act of 1951, pick and choose policy is not permissible and the authority has to consider the case that, whether all the proposed externees are part of the "Gang" as such. We find considerable

force in the argument of the learned counsel appearing for the petitioners that, except offence i.e. Crime No.381/2016, in other offences all the petitioners are not added as accused. This position is not disputed by the learned APP appearing for the respondent-State. It also further appears that, in some of the offences wherein some of the petitioners were accused, the said offences have been resulted into acquittal. It is not demonstrated by the respondent authorities that, during the period of election of Municipal Council, Parbhani, the petitioners were involved in such activities, which were prejudicial to the law and order. It is true that, various offences have been registered against some of the petitioners, and as rightly submitted by the counsel appearing for the petitioner, all the petitioners are accused in only one offence. The law will take its own course to take pending offence

to the logical end by proper investigation, and if necessary, by filing of charge-sheet and then trial. In case the person is externed within limits of a particular District, his/her fundamental right to reside at the place of his/her choice or move as per his/her desire gets curtailed, and therefore, the concerned authorities are bound to strictly adhere to the procedure. The law mandates that, the concerned authorities should scrupulously follow the relevant provisions and procedure.

8] In the light of discussion in foregoing paragraphs, we are of the opinion that the impugned orders passed by respondent no.2 and confirmed by the Divisional Commissioner, Aurangabad Division, Aurangabad, deserves to be quashed and set aside, and accordingly same stands quashed and set aside. Rule is made absolute in terms

of prayer clause "C" of the Petition. The Writ Petition stands disposed of accordingly.

9] However, we make it clear that an observations made herein above are confined to the adjudication of this Petition, and the parties will not be entitled to derive benefit out of the aforesaid observations in any other proceedings, including the trial, if any.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE

DDC