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

CRIMINAL WRIT PETITION NO.2144 OF 2018

Imam Mubarak Mulla ...Petitioner
Versus
The Assistant Commissioner of Police and Ors. ...Respondents

Mr.U.R.Agandsurve, for the Petitioner.

Mr.V.B.Konde-Deshmukh, A.P.P for the Respondent-State.

PSI – D.B.Lingade, Solapur City.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 2nd AUGUST, 2018

P.C. :

1. Rule. Considering the challenge raised in the above Writ Petition, taken up for hearing forthwith.

2. The order dated 18th October, 2017 passed by the Divisional Commissioner, Pune Division, Pune, dismissing the Appeal filed by the Petitioner under Section 60 of the Maharashtra Police Act, 1951 is taken

exception to by way of the above Writ Petition.

3. The Petitioner herein was issued show-cause-notices dated 22nd July, 2017 and 16th August, 2017, which are annexed to the above Writ Petition. By the said show-cause-notices, the Petitioner was asked to show-cause as to why he should not be externed from the limits of Solapur, Pune and Osmanabad Districts. The said show-cause-notices referred to the case registered against the Petitioner with the Vijapur Naka Police Station, Solapur being C.R. No.397 of 2017, for the offences punishable under Section 12A of the Maharashtra Prevention of Gambling Act and under Section 109 of the Indian Penal Code. It was alleged against the Petitioner that he was a member of the gang of one Sameer A. Karim Hundekari, which gang indulged in the activity of 'matka' which is a form of gambling. It was further alleged that on account of the said activity, the young generation was lured to gambling as also the families were ruined on account of the members indulging in the said gambling activity. The Petitioner showed cause to the said show-cause-notices by filing his reply. It was the case of the Petitioner that the allegations made against the Petitioner in the said show-cause-notices were false and that he should not

be externed only on the basis of the single offence which was registered against him and that too under the Maharashtra Prevention of Gambling Act. The Externing Authority after giving an opportunity of hearing to the Petitioner passed an order on 31st August, 2017, externing the Petitioner from the Solapur Police Commissionerate area and the Solapur District. The Externing Authority reached the subjective satisfaction as regards the need to extern the Petitioner on the basis of the material on record which included the in-camera statements of four witnesses.

4. The Petitioner aggrieved by the said order dated 31st August, 2017, passed by the Externing Authority filed an Appeal under Section 60 of the Police Act before the Divisional Commissioner, Pune Division, Pune. The Divisional Commissioner by the impugned order dated 18th October, 2017, has dismissed the Appeal. The Divisional Commissioner did not deem it appropriate to interfere with the subjective satisfaction which was reached by the Externing Authority having regard to the material on record. As indicated above, it is the said order dated 18th October, 2017, which is taken exception to by way of the above Writ Petition. During the course of the hearing of the above Petition, our attention was drawn to the notice

issued to one Sameer Hundekari, who is purported to be a gang leader of the gang to which the Petitioner allegedly belongs. Insofar as, the gang leader is concerned, the show-cause-notice issued to him discloses that there are ten offences registered against the said gang leader – Sameer Hundekari, for the offence under Section 12A of the Maharashtra Prevention of Gambling Act. Significantly, except one offence i.e. C.R. No.397 of 2017, in which he is a co-accused along with the Petitioner, all the offences which have been registered are individually against the gang leader and not along with the other members of the alleged gang. The compilation tendered to us discloses that the show-cause-notice dated 24th July, 2017, came to be issued to the gang leader – Sameer Hundekari. However, the contents of the said notice disclose that the facts mentioned therein are relating to one Imran Fayyaz Hundekari, who has been referred to as a gang leader in the said notice. Thereafter, in the compilation there is a notice dated 16th August, 2017, in which notice the cases registered against the gang leader – Sameer Hundekari as also the other gang members i.e. the remaining nine have been mentioned in a tabulated form. A perusal of the said tabulated form would indicate that the offences have been registered against all the gang members individually and not

collectively i.e. there is no offence registered wherein the gang members are shown as an accused or more than one gang leader is shown as an accused with the alleged gang leader – Sameer Hundekari. Hence, the offences registered are individualistic in nature.

5. The principal contention of the learned counsel for the Petitioner Mr. Agandurve was whether the provisions of Section 55 of the Police Act could have been invoked, having regard to the fact that the offence registered against the Petitioner is individualistic in nature and that too a single offence. This was the main thrust of the submission of the learned counsel whilst assailing the order passed by the Appellate Authority.

6. Per Contra, the learned APP Mr. V.B. Konde-Deshmukh appearing on behalf of the State would support the order passed by the Appellate Authority and confirmed by the order passed by the Extending Authority on the ground that the Petitioner along with the gang leader is involved in the offence which has been registered vide C.R. No.397 of 2017.

7. The issue therefore which arises is whether the jurisdictional fact for exercising the powers under Section 55 of the Police Act are existing for the Authorities to invoke the said provision. Insofar as, the said aspect is concerned, the issue is no more *res integra* and is covered by the ***Judgment dated 12th July, 2018, of a Division Bench of this Court (Coram:R.M.Savant and Revati Mohite Dere, JJ.) passed in Writ Petition No.2454 of 2018 in the matter of Shri Altaf Rajekhan Pathan and Others v/s The Divisional Commission, Pune Division, Pune and Others and companion matters.*** The facts in the said case can be said to be identical to the facts in the present case viz. that the offences registered against the alleged gang leader and alleged members of the gang are individualistic in nature and which offences were registered under Section 12A of the Maharashtra Prevention of Gambling Act. The Division Bench has in paragraph 21 of the said Judgment held as under:-

“21 In the context of the aforesaid issue, Section 55 would have to be revisited, the said provision has already been reproduced in the earlier part of this Judgment. The said provision as can be seen can be invoked against the movement or encampment of any gang or body of persons in the area of a Commissioner in the commissionerate area, in a district by the District Magistrate, the

Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf. Therefore the sine-qua-non for Section 55 to apply is the movement or encampment of any gang or body of persons. Hence the Section contemplates that there has to be a collective action or concerted action on the part of the gang members. Only when there is a collective or concerted action that the action of dispersal or removal of each of the gang members can be taken. The word “gang” has not been defined in the police act. It would therefore be useful to refer to the dictionary meaning of the said word “gang”.

Black's Law Dictionary “Gang” means :-

“A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes” .

Oxford Dictionary “Gang” means :-

“an organized group of criminals or disorderly young people”.

Hence going by the dictionary meaning of the word “gang” the same also indicates that a gang has to be a collection of persons or a body of persons who are acting in concert towards a common unlawful object and, just because an offence is registered against a gang leader and one member of a gang would not mean that they constitute a gang so as to come within the sweep of Section 55 of the police act. Even the meaning of the word “gang” in the Law Lexicon on which

the learned Additional Public Prosecutor sought to place reliance cannot be said to be in deviation to the meaning in the other dictionaries as above. In fact the learned Additional Public Prosecutor sought to rely upon a line from the meaning in the Law Lexicon which in our view would be reading the said line out of context.

It is required to be noted that in all the above Petitions, the offence under the gambling act is registered against the gang leader “A” with the alleged member of the gang being “B”, against “A” with “C”, “A” with “D”, “A” with “E”, but not against A, B, C, D, or E collectively or even against a substantial number of gang members collectively. It is also required to be noted that in some cases the offence registered against “A” and “B” is much anterior in point of time to the offences registered against “A” and “E” and therefore there is no proximity between the offences and therefore the test of there being a collective participation is not satisfied as they are all individualistic cases registered against the alleged gang leader and a member.”

8. The said paragraph 21 therefore covers the issue which has been raised in the above Petition. It would therefore have to be held that the jurisdictional fact for exercise of powers under Section 55 are non-existent, insofar as, the present case is concerned, as the present case involves only

one offence which has been registered against the Petitioner and which is individualistic in nature.

9. It is required to be noted that the Petitioner has been externed for a period of one year, which externment is to come to an end on 30th August, 2018.

10. For the reasons aforestated, the above Writ Petition is therefore required to be allowed and is accordingly allowed. Rule is accordingly made absolute in terms of prayer clause (b).

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)