

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

CRIMINAL WRIT PETITION NO.1792 OF 2018

Vighnesh Janardhan Koli

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

Mr.N.Y.Chavan for the Petitioner

Mrs. A.S.Pai, APP for the Respondent-State.

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

DATE : 13th JUNE, 2018

P.C.

1 The above Writ Petition has been filed challenging the order dated 4th January 2018 passed by the Appellate Authority i.e. the Divisional Commissioner, Kokan Division by which order, the Appeal filed by the Petitioner came to be partly allowed and resultantly the order passed by the Externing Authority dated 21st September 2017 externing the Petitioner from Mumbai Suburban District, Thane, Raigad and Navi Mumbai Commissionerate area was modified to the extent of deleting the reference to Raigad District from the Externment Order passed by the Externing Authority.

2 The Petitioner was issued a show cause notice in January 2017 under Section 59 of the Maharashtra Police Act (Hereinafter referred to as the

said Act). By the said show cause notice served on the Petitioner he was asked to show cause as to why an order of externment should not be passed against him. The said show cause notice makes a reference to Section 56(1)(a)(b) of the said Act. In the said show cause notice, a reference is made to the two FIRs which have been registered with the NRI Police Station, Navi Mumbai, District Thane. The subject matter of the two FIRs are the offences under Sections 143, 353, 326, 336, 504 and 34 of the Indian Penal Code amongst other offences. The said show cause notice also refers to the in-camera statements of two witnesses. In the statements, the activities of the Petitioner have been referred to by the said two witnesses. The Petitioner replied to the said show cause notice on 14th February 2017 and contested the said show cause notice by the case set out in the said reply. The Petitioner was thereafter given an opportunity by the Externment Authority to be represented by an Advocate. The Petitioner seems to have made a statement before the Externment Authority that he may be pardoned for once and not be externed. The Externment Authority considered the report of the Inquiry Officer i.e. the Assistant Commissioner of Police, Turbhe, Navi Mumbai as also the other material which was on record and on such consideration reached a subjective satisfaction that the Petitioner's activities were as such that he was required to be externed by taking recourse of Section 56(1)(a)(b) of the said Act. The Externment Authority accordingly by his order dated 21st September 2017 externed the Petitioner for a period of two years from Mumbai Suburban district, Thane, Raigad and Navi Mumbai

Commissionerate area.

3 The Petitioner aggrieved by the said order dated 21st September 2017, carried the matter by way of an Appeal under Section 60 of the said Act to the Appellate Authority. The Appellate Authority have by the impugned order dated 4th January 2018 has partly allowed the Appeal by deleting the reference to Raigad District in the order passed by the Externig Authority. The Appellate Authority in the facts and circumstances of the case and especially having regard to the material on record did not deem it fit to interfere with the subjective satisfaction that was reached by the Externig Authority and the only interference as indicated above was of deleting the reference of Raigad District from the order passed by the Externig Authority.

4 The learned counsel for the Petitioner would contend that though the show cause notice was issued in January 2017, the order has been passed by the Externig Authority in September 2017 and the delay caused in passing the said order therefore vitiates the said order. The learned counsel would place reliance on the judgment of the Division Bench of this Court reported in **2017 ALL MR (Cri) 4898 in the matter of Kishor Rambhaoji Narad Vs. The State of Maharashtra & Anr..** The learned counsel would further contend that the details as to when the in-camera statements are recorded etc. are not appearing in the show cause notice. As a result of which, the same caused an

impediment for the Petitioner to make a effective representation against the said show cause notice. The learned counsel sought to place reliance on the judgment of the Division Bench of this Court reported in **2017 ALL MR (Cri) 824 in the matter of Rajendra Karbhari Kale Vs. The State of Maharashtra & Ors..** The learned counsel lastly contended that the order externing the Petitioner from the Mumbai Suburban District is excessive as the offence has been registered only at one police station i.e. NRI Police Station, Navi Mumbai.

Per contra, the learned APP would support the impugned orders passed by the Externing Authority as well as by the Appellate Authority. The learned APP would contend that the delay, if any, has to be attributable to the Petitioner as the Petitioner filed his reply only in July 2017.

5 We have heard the learned counsel for the Petitioner and the learned APP and considered the rival contentions. As indicated above, in the instant case, the Petitioner though was served with the show cause notice in January 2017, has filed his reply only on 14th July 2017 and thereafter the Externing Authority has passed the order externing the Petitioner on 21st September 2017. Hence the delay, if any, which has occasioned is in view of the fact that the Petitioner delayed the filing of the reply and therefore, now cannot call in question the order on the ground that the same stands vitiated on account of the delay. It is required to be noted that the Externing Authority on the basis of the material on record reached a subjective satisfaction that the

Petitioner is required to be externed by taking recourse to Section 56(1)(a)(b) of the said Act. The Appellate Authority has not deemed it fit to interfere with the said satisfaction reached by the Externing Authority. We having regard to the material on record, therefore, do not deem it appropriate to interfere with the orders passed by the Externing Authority as confirmed by the Appellate Authority.

6 Insofar as the in-camera statements are concerned, a reading of the said show cause notice discloses that the statements of the witnesses have been reproduced in some detail and, therefore, no prejudice can be said to have been caused to the Petitioner and, therefore, the contention of the learned counsel for the petitioner that they are bereft of particulars cannot be accepted. In our view in the facts and circumstances of the case, the judgments of the Division Benches of this Court (supra) have no application. In that view of the matter, no case for interference with the impugned order is made out. The Writ Petition is accordingly dismissed.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]