

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

CRIMINAL WRIT PETITION NO.5421 of 2017

Samir A. Karim Hundekari

...Petitioner

Vs.

The Assistant Police Commissioner & Ors.

..Respondents

**Mr.U.N.Tripathi a/w Ms.Jayashree Tripathi i/b Mr.U.R.Agandsurve for the
Petitioner.**

Mr.K.V.Saste, APP for Respondent-State.

**CORAM : R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 13th AUGUST, 2018**

P.C.

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

2 The above Writ Petition has been filed challenging the order dated
18th October 2017 passed by the Appellate Authority by which, the Appeal filed
by the Petitioner under Section 60 of the Maharashtra Police Act came to be
dismissed and resultantly, the order dated 31st August 2017 passed by the
Externment Authority came to be confirmed. The Petitioner was issued with
the Show Cause Notices dated 22nd July 2017, 24th July 2017, 16th August 2017
and 21st August 2017 issued by the Assistant Commissioner of Police, Solapur
city and the Deputy Commissioner of Police, Solapur city respectively. 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 Usmanabad

Districts. It is alleged against the Petitioner that he is a gang leader and the cases registered against the Petitioner under the Maharashtra Prevention of Gambling Act have been mentioned in a tabulated form appearing in the first of the Show Cause Notices. The said cases have been registered with the Vijapur Naka Police Station, Solapur. It was alleged against the Petitioner that he was a gang leader of a gang, which is indulged in the activities of “Matka”, which is a form of gambling. It was further alleged that on account of said activities, the young generation was lured to gambling as also the families were ruined on account of the members of the family indulging in the said gambling activities.

3 The Petitioner showed cause to the said Show Cause Notices by filing his reply. It was the case of the Petitioner in the said reply 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 offences, which were registered against him under the Gambling Act.

4 The Externing Authority after giving the Petitioner an opportunity of hearing passed an order dated 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.

5 The Petitioner aggrieved by the said order dated 31st August 2017 passed by the Externig 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 that was reached by the Externig Authority having regard to the material on record. As indicated hereinabove, it is the said order dated 18th October 2017, which is taken exception to by way of the above Writ Petition.

6 Insofar as the offences registered against the Petitioner are concerned, they are registered against the Petitioner and one other person, who is alleged to be a member of the gang of the Petitioner. However, there are no offences registered against the Petitioner with more than one gang member or wherein more than one person is shown as an accused, who is belonging to the gang of the Petitioner. The aforesaid fact, therefore, indicates that the offences registered against the Petitioner and a gang member are individualistic in nature and, therefore, do not satisfy the requirement of Section 55 of the said Act. Hence the issue which arises is whether the jurisdictional fact for exercising the powers under Section 55 of the Police Act

exist so as to enable the Authorities to invoke the said provisions. As indicated above, the offences registered are against the Petitioner and one gang member and there is no offence registered against more than one gang member together with the Petitioner. In our view, therefore, the jurisdictional fact for exercise of the jurisdiction under Section 55 of the Act does not exist. The said issue is no more *res integra* and is covered by Division Bench of this very Court **(Coram : R.M.Savant and Revati Mohite Dere, JJ.) dated 12th July 2018 passed in Writ Petition No.2454 of 2018 in the matter of Shri Altaf Rajekhan Pathan and Others vs. 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, namely, that the offences were registered against the alleged gang leader and alleged member of the gang which were individualistic in nature and which offences are registered under Section 12A of the Maharashtra Prevention of Gambling Act. Paragraph 21 of the said Judgment is material and is therefore reproduced hereinunder,

“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.”

7 In our view, the said paragraph 21 therefore cover the issue which has been raised in the above Writ Petition. It would therefore have to be held that the jurisdictional fact for exercise of power under Section 55 is non-existent, insofar as the present case is concerned, as the present case only

concerns the offences registered against the Petitioner and one gang member, which as indicated hereinabove are individualistic in nature.

8 It is required to be noted that the Petitioner has been externed for a period of one year by the order dated 31st August 2017 and, therefore the externment is to come to an end on 30th August 2018 i.e. after a period of about 17 days.

9 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]