

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4612 OF 2018

Ashok Vijay Sonavane ... Petitioner

Versus

Superintendent of Police and Ors. ... Respondents

Mr. D.G. Khamkar for the Petitioner.

Ms.A.S. Pai, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.**

DATE : MARCH 01, 2019

P.C.:

Heard learned counsel for the petitioner and learned APP for the State.

2. Learned APP is seeking time as the original records summoned by her to explain the position to Court are not available. The person bringing it has still not reached the Court.

3. Request is being strongly opposed by the counsel for the petitioner pointing out that this court has granted last chance to the respondents on 18/12/2018. The matter was then adjourned to 10/01/2019, 08/02/2019 and on 08/02/2019 it came to be adjourned today as a last chance.

4. After hearing the counsel for the petitioner, we find that opportunity was extended to the petitioner by notice dated 20/11/2017. There it is mention that the proposal for externment in terms of section 59(1) of the Maharashtra Police Act was examined between 23/08/2017 to 24/10/2017 and during it petitioner was given necessary opportunity. Thereafter in the second paragraph, it is mentioned that in terms of section 55, action was proposed against the petitioner and others as members of a gang and accordingly opportunity was again extended to them. The petitioner along with others have given reply to this show cause notice on 22/12/2017, wherein petitioner has pointed out that he has been acquitted of three offences registered at Daund Railway Police Station vide Crime No. 11 of 2011, 09 of 2012 and 12 of 2012.

5. The first order of externment passed by the Superintendent of Police Pune does not show any consideration of this defence or then does not throw light on the necessary facts to show that the petitioner and others constitute a gang.

6. The order passed in appeal however, examines the issue at some length. The offences committed by individual members are mentioned therein and from the chart it appears that effort is

made to demonstrate that some of them are jointly involved in few offences.

7. In so far as present petitioner is concerned, the last offence committed by him is vide Crime No. 252 of 2016. His colleague however is shown as involved in Crime No.106 of 2018. That colleague Nilesh is alleged to be with him also in Crime No. 12 of 2012. However, petitioner has been acquitted of Crime No. 12 of 2012.

8. The chart brings on record the offences which are committed by the gang members (not by the petitioner) in 2018 vide Crime No. 103, 104 and 106 of 2018.

9. We find the material on record insufficient to connect the petitioner with these 2018 crimes. In any case, these crimes are after the opportunity given to petitioner to show cause i.e. after 22/12/2017. Thus material not forming the part of enquiry till then, has been looked into by the appellate authority. It is not clear whether the said material was looked into by the first authority.

10. We therefore find this a case of non application of mind. Accordingly we quash and set aside the said order passed by the first authority on 03/04/2018 and also the appellate order dated

07/07/2018.

11. Rule is made absolute accordingly. There shall be no order as to costs.

(REVATI MOHITE DERE, J.)

(B.P. DHARMADHIKARI, J.)