

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5219 OF 2018**

Santoshkumar ShriRampratap Singh
@ Babloo Thakur
V/s.

... Petitioner

The State of Maharashtra

... Respondent

Mr. Balkrishna G. Tangsali a/w. Ms Trupti Khamkar i/b Mr. Ajay
Tripathi for the Petitioner.
Mr. K.V. Saste, APP for the Respondent – State.

**CORAM : B.P. DHARMADHIKARI &
 : N.R. BORKAR, JJ.
DATE : DECEMBER 19, 2019.**

P.C.

1] Heard learned counsel for the petitioner and learned
APP. Perused the Show Cause Notice dated 17th October 2017
and the order of externment dated 7th May 2018.

2] The contention of the petitioner is that the Show Cause
Notice was only under section 56(1) of the Maharashtra Police
Act, 1951 (for short “the said Act”) while order has been
passed under the said provision as also under section 56(1)(b)
of the said Act. It is further submitted that the three in-
camera statements have been relied upon, but there is no

verification of those statements.

3] Learned APP is relying upon the impugned order to urge that the three in-camera statements finds mention therein and before referring to those statements, Dy. Police Commissioner, Zone -V has specifically referred to the fact that the witnesses, out of fear were not willing to come forward and depose. Thus, there is a subjective satisfaction already recorded.

4] Perused the provisions under section 56(1)(a) of the said Act. Satisfaction required has to be about causing or calculated causing of alarm, danger or harm to person or property on account of the movements or acts of the proposed examinee. Under sub-clause (b), satisfaction has to be about indulgence in commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, and XVII of the Indian Penal Code. However, there has to be also a finding that witnesses are not willing to come forward to give evidence in public by reason of apprehension on their part as regard to the safety of their person or property.

5] As far as Show Cause Notice is concerned, it makes reference to both the provisions. We, therefore, do not find any substance in the contention that the petitioner was not given any opportunity *qua* section 56(1)(b) of the said Act.

6] However, while passing the impugned order, the authority has not applied its mind to in camera statements and there is no subjective satisfaction reached by the said authority about unwillingness on part of in-camera witnesses to come forward to depose. The impugned order dated 7th May 2018 does not show any such consideration.

7] Learned APP, therefore, had also sought adjournment to place on record necessary affidavit. However, such satisfaction is required to be reflected in order and said lacuna cannot be filled-in by subsequent affidavit.

8] In this situation, we quash and set aside the order dated 7th May 2018 as also the appellate order dated 25th September 2018.

9] Writ Petition is allowed and disposed of .

10] Needless to mention that it is open to the respondents to proceed further in the matter in accordance with law.

(N.R. BORKAR, J.)

(B.P. DHARMADHIKARI, J.)