

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 138 OF 2018

PETITIONER :- Nitin Baliram Kamale,
Aged about 35 years, Occu.Business,
R/o.Bazar Chowk, Saoner.
Dist. Nagpur.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Khapa.
District Nagpur.
2. Superintendent of Police,
Nagpur-Rural (Gramin), Nagpur.
3. Deputy Superintendent of Police
Saoner, District Nagpur.
4. Sub-Divisional Magistrate, Saoner,
District Nagpur.
5. Police Station, Saoner, Through its
Police Station Officer, Tahsil Saoner,
Dist.Nagpur

Mr.D.V. Chauhan a/w Mr. C.B.Barve, counsel for the petitioner.
Ms.N.P. Mehata, APP for the State

**CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.**

DATE : 01.12.2020.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by consent of the learned counsel appearing for the parties.

3. The Petitioner has questioned the legality and correctness of the order of externment dated 05.02.2018 passed under Section 56(1)(a) and (b) of the Maharashtra Police Act, 1951(for the sake of brevity hereinafter referred to as the 'Act of 1951') primarily on the ground that the impugned order does not satisfy the criteria of Section 56(1)(a) and (b) of the Act of 1951.

4. The impugned order has been passed by respondent no.4 and according to learned APP, this is not a fit case for making any interference with the impugned order as it does satisfy the

requirements of the aforesaid section of the Act, 1951.

5. With the assistance of Shri. Chauhan learned counsel for the petitioner and Ms. Mehata, learned APP, we have gone through the impugned order. With the assistance of the learned APP we have also gone through the record of the proceedings under Section 56 (1) of the Act 1951, in particular, the statement of the two witnesses, who have been termed to be confidential witnesses although the name of one of them has been specifically mentioned in the impugned order itself, thereby removing that witness from the category of the confidential witnesses. On going through the impugned order as well as the record of the proceedings, we are of the view that there is not available on record enough material to reach subjective satisfaction for respondent no. 4 that the movements or acts of the petitioner are so harmful as would cause alarm or danger or harm to any person or property and that there are reasonable grounds for believing that if no action of externment is taken against such a person, it is likely that he may engage himself in commission of the offences involving force or violence or any of the offences punishable under

Chapters 12,15 or 16 of the Indian Penal Code.

6. It is now well settled law that in order to reach a subjective satisfaction as required under Section 56 of the Act of 1951, there has to be available on record some material which would offer an objective criteria for anybody to come to the conclusion that if no action of externment is taken against that person, it is likely that his harmful activities may continue and that he may indulge himself in commission of the offences or any of them as contemplated under clause (b) of sub-section (1) of Section 56 of the Act of 1951.

7. The statements of the witnesses recorded merely refer to some stray incident of indulgence in violence and act of threatening by the petitioner for which appropriate offences have already been registered against the petitioner and criminal proceedings are pending. In order that the conduct of a person falls within the scope of clause (a) or (b) of sub-section (1) of Section 56 of the Act of 1951, it is necessary that there are acts consistently committed by that person which could be considered

to be ones as would give rise to an apprehension that they are calculated to cause alarm or danger or harm to a person or property or that they may lead to a reasonable inference that if not prevented well within time, the person may go on committing the offences as contemplated under clause (b) of sub-section (1) of Section 56 of the Act of 1951. Nothing of this sort could be seen from the material considered by us. In fact, one of the essential ingredients of clause (b) of sub-section (1) of section 56 of the Act of 1951 is that in the opinion of the Officer, the witnesses must not be willing to come forward to give evidence out of fear generated by activities of the person proposed to be externed. So, these deficiencies would make the impugned order vulnerable at law.

8. In the present case, out of two confidential witnesses, name of one witness has been disclosed in the impugned order itself. This would mean that this witness cannot be considered as confidential witness and such a witness as would be unwilling to come out openly for deposing against the petitioner. On this ground also, we find that the impugned order cannot be sustained

in the eye of law.

9. Then, the petitioner has been externed from the entire district of Nagpur, while the alleged activities of the petitioner were confined to local limits of Police Station Khapa. If an expansive externment order is to be passed, there must be some material showing larger reach of those activities. There is no material whatsoever available on record which would show that the alleged activities of the petitioner have more areas of influence than just the local limits of police station Khapa so as to justify his externment from the entire district. There must be a reasonable nexus between the externment from a larger area and the purpose sought to be achieved by it and this nexus could be built only if there is material available on record, which would make it necessary for the authority to pass such an omnibus order and that material, as we have gone through the record of the proceedings, is not available here. (*see Sumit Ramkrishan Maraskolhe Vrs. Deputy Commissioner of Police Zone-1 reported in 2019(2) Mh.L.J.745*)

10. In the result, we find that the impugned order deserves to be quashed and set aside, it being against the requirements of law. The petition is allowed and the impugned order is quashed and set aside. Rule is made absolute in these terms. No costs.

JUDGE

JUDGE

Kavita