

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1608 OF 2021**

Rohit S. Kamble
Aged 23 years, Occupation : Student
Residing at Room No.6, Laxmi Chawl,
Muranjanwadi, Tungagaav, Sakivihar
Road, Powai, Mumbai

...Petitioner

Versus

1. Deputy Commissioner of Police Zone-X,
M.I.D.C., Andheri (East), Mumbai
2. Divisional Commissioner, Konkan
Division, Home Department (Special),
Konkan Bhavan, Government of
Maharashtra
3. State of Maharashtra
Through Government Pleader, Cri.
Appellate Side, High Court, Bombay.

...Respondents

Mr. Abhishek L. Tripathi, for the Petitioner.
Mr. J. P. Yagnik, APP for the State/Respondent.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON: 8th JULY, 2021.
PRONOUNCED ON: 4th AUGUST, 2021.**

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has assailed the legality and validity of the

order dated 2nd March, 2021 in Appeal No.79 of 2020, passed by the Divisional Commissioner, Konkan Division, confirming the externment order passed by the Deputy Commissioner of Police, Zone-X, Mumbai, dated 10th December, 2020, against the petitioner and other three persons, for the period of one year thereof, from Mumbai city and sub-urban districts under Section 55 of the Maharashtra Police Act, 1951 ("the Act, 1951").

3. The petition arises in the backdrop of the following facts:

(a) On 17th March, 2020, the Assistant Commissioner of Police, Sakinaka Police Station, Mumbai, initiated a proposal to direct removal of the petitioner Rohit, allegedly the gang leader, and his associates Rajesh, Sandeep and Ajay, alleged members of his gang, as their movement was causing or calculated to cause danger or alarm or reasonable suspicion that unlawful designs were entertained by the said gang. A show cause notice under Section 59 of the Act was served on the petitioner and the alleged gang members. The petitioner gave reply to the notice and participated in the hearing which was afforded to him.

(b) The Deputy Commissioner of Police, Zone-X, Mumbai, the appropriate authority, after considering the offences registered against the petitioner and the members of his gang, the statements of witnesses recorded in-camera and the

relevant material arrived at a satisfaction that the petitioner and the members of his gang had created a reign of terror in Powai, Mumbai; they used deadly weapons indiscriminately and committed grave offences armed with deadly weapons. Thus, by order dated 10th December, 2020, the petitioner and his abovenamed associates were ordered to remove themselves from the limits of Mumbai city and sub-urban districts for a period of one year by invoking the power under Section 55 of the Act.

(c) The petitioner and two others preferred an appeal, being Appeal No.79 of 2020, before the Divisional Commissioner under Section 60 of the Act. By the impugned order dated 2nd March, 2021, the Appellate Authority found no substance in the appeal and consequently the appeal came to be dismissed by confirming the order passed by the Deputy Commissioner of Police.

(d) Being further aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

4. We have heard Mr. Tripathi, the learned Counsel for the petitioner and Mr. Yagnik, the learned APP for the State, at length. We have also perused the documents relied upon by the learned Counsel for the petitioner and the original record tendered by the learned APP.

5. Mr. Tripathi would submit that the orders passed by the appropriate authority as well as the appellate authority are wholly unsustainable as they suffer from the vice of manifest non-application of mind. The subjective satisfaction arrived at by the Deputy Commissioner of Police is thoroughly vitiated as the said authority completely misconstrued the object of Section 55 of the Act and the import of the material relied upon by the sponsoring agency. A perusal of the said material, especially the nature of the offences arrayed against the petitioner, would indicate that the proceeding was initiated with an oblique motive to advance the private interest of the uncle of the petitioner, Mr. Prakash Kamble, who has been at logger heads with the petitioner and his family members. All offences registered against the petitioner and his alleged associates are individualistic in nature and thus the resort to the provisions under Section 55 of the Act, where there was no element of alarm or danger to public, was wholly unwarranted, urged Mr. Tripathi. An earnest endeavour was made to demonstrate that there has been a running feud between the petitioner and his family members and that of his uncles. In the circumstances, according to Mr. Tripathi, the agency of the State was channelized by Mr. Prakash Kamble so as to keep the petitioner away from his family and home.

6. In opposition to this, Mr. Yagnik submitted with tenacity that the subjective satisfaction arrived at by the appropriate authority is borne out by the material on record. A number of offences have been registered against the petitioner and the members of his gang. Moreover, the appropriate authority has taken into account the confidential statements of the witnesses, who for fear of reprisal were not willing to come forward and give evidence against the petitioner and the members of his gang in public. Mr. Yagnik would further urge that the question of subjective satisfaction is in the realm of the appropriate authority and the adequacy of material for arriving at such subjective satisfaction cannot be tested in exercise of writ jurisdiction.

7. Section 55 finds place in Part II of Chapter V of the Act, 1951, which deals with Dispersal of Gangs and Removal of Persons. Section 55 reads as under:

“55. Dispersal of gangs and bodies of person:

Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the [Superintendent] empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the

members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction [or such area and any district or districts, or any part thereof, contiguous thereto] within such time as such officer shall prescribe, and not to enter to area [for the areas and such contiguous districts, or part thereof, as the case may be,] or return to the place from which each of them was directed to remove himself.”

8. From the phraseology of Section 55, it becomes abundantly clear that the occasion to exercise the power thereunder arises upon the satisfaction of the appropriate authority that the movement or encampment of any gang or body of persons, is causing or is calculated to cause (i) danger or alarm, or (ii) reasonable suspicion that unlawful designs are entertained by such gang or body or members thereof. Evidently, the existence of a gang or body of persons operating as such gang or body is the condition precedent. If such gang or body of persons is engaged in the activities which justify the apprehension that it would cause danger or alarm, or that unlawful designs are entertained by such gang or members thereof, the appropriate authority is empowered to take two measures; (1) direct the members of such gang or body so to conduct themselves as shall seem necessary to prevent violence and alarm, (2) to remove each of such members beyond a defined area so as to ensure that the potential mischief is averted.

9. Section 55 of the Act proposes to address such collective or concerted action of members of gang or body of persons, acting as a gang or body or members thereof, which has the propensity of causing alarm or danger or giving rise to reasonable suspicion that unlawful designs are entertained by such gang or body or members thereof. At the heart of Section 55 is the prejudicial action by the gang or body of persons. Collective action by the gang or body of persons stokes potentiality of alarm or danger. Thus there ought to be material to show the elements of system, continuity or repetition in the action of the members of the gang or any one or more of them to designate them as gang or body of persons. Mere clubbing together diverse cases registered against two or more persons without such element of nexus, collective or concerted action, may not be sufficient.

10. An useful reference, in this context, can be made to a Division Bench judgment of this Court in the case of *Ahmed Mainuddin Shaikh vs. The State of Maharashtra & anr.*¹, wherein the import of Section 55 was enunciated in the following words:

“In the entire section, there is common thread of participation by all and collective action against all that holds together all it's parts. The section starts with gang or body of

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persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively.”

11. In the light of the aforesaid enunciation, reverting to the facts of the case, it appears that two sets of material weighed with the appropriate authority in invoking Section 55. One, the offences registered against the petitioner and the members of his gang. Two, the in-camera statements of the witnesses who deposed to the prejudicial activities of the petitioner and his associates. The offences registered against the petitioner and his associates are tabulated as under:

Offences under Indian Penal Code	Gang Leader and names of its members			
	Rohit Kamble (Gang Leader)	Suresh Suresh Kamble	Rajesh Sandeep Javaharlal Bharadwaj	Ajay Govind Makwana
Powai Police Station CR No.75/2019, Sections 325, 324, 323, 504, 506, 143, 147, 149 IPC	√	√		
Powai Police Station CR No.149/2019, Sections 506(2), 504, 34 IPC	√	√		
Powai Police Station CR No.312/2018, Sections 323, 509, 506(2), 504,34 IPC		√		
Powai Police Station		√		

CR No.332/2018, Sections 324, 323, 504, 506, 143, 147, 149 IPC				
Powai Police Station CR No.597/2019, Sections 342, 324, 323, 504, 506, 143, 147, 149 IPC	√		√	√
Powai Police Station CR No.10/2020, Sections 324, 323, 504, 506, 34 IPC	√	√	√	
Powai Police Station CR No.619/2020, Sections 325, 506(2), 341, 323, 504 IPC	√			
Powai Police Station CR No.607/2020, Sections 324, 504,34 IPC				√
Total crimes registered in the Year 2018, 2019 & 2020	05	5	2	2

12. We have considered the broad nature of the accusation as borne out by the copies of the first information report, in each of the aforesaid cases, tendered for our perusal. We find that the submissions on behalf of the petitioner that the familial feud between the petitioner's family and Mr. Prakash Kamble, his uncle, furnished the trigger for the impugned action cannot be said to be unfounded. The cases at Serial nos.2, 3 and 4 arise out of the said dispute. Mrs. Radha Kamble, the paternal aunt of the petitioner lodged FIR No.149 of 2019 against the petitioner and his family members including his mother, brother Rajesh

(alleged gang member) and sister Sneha. Another paternal aunt, Smt. Sangeeta Kamble, the wife of Prakash Kamble, lodged FIR No.312 of 2018, against the petitioner, his parents, brother Rajesh and sister Sneha. Mr. Prakash Kamble lodged FIR No.332 of 2019, against his brother Suresh and latter's family members. Three of the offences registered against the petitioner and his brother Rajesh are thus directly connected with the familial dispute between Suresh Kamble, the father of the petitioner, and his brother Prakash Kamble.

13. On a perusal of the rest of the cases, registered against the petitioner and his alleged associates, we find that there is a close connection between FIR No.619 of 2020 lodged by Mr. Swapnil Dhuri and FIR No.607 of 2020 lodged by Swapnil's friend Mr. Sai Waghmare. Both FIR's refer to a prior dispute between Swapnil Dhuri and Rohit, the petitioner. FIR No.10 of 2020, lodged by Ravindra Bidlan, betrays the design to invoke the preventive measures as it begins with a statement that the first informant is aware of the number of crimes registered against the petitioner and his associates in respect of bodily offences. Interestingly, the said FIR, lodged on 3rd January, 2020, was in respect of an incident which occurred on 23rd September, 2019.

14. From the aforesaid analysis, it becomes explicitly clear that the cases registered against the petitioner and his brother Rajesh are primarily on account of the dispute the petitioner's family has had with his uncle Prakash. By the same token as the family members of the petitioner, namely his parents and sister Sneha, were arraigned in three FIRs registered by the petitioner's uncle and aunt, they could be designated as the members of the gang. This works out the retribution of the claim that these offences reflect that the petitioner had been operating as a gang leader.

15. Rest of the cases registered against the petitioner and his alleged associates also appear to be more individualistic in nature in contradistinction to collective operation as a gang. The material on record does not justify an inference that the petitioner and his associates indulged in prejudicial activity as a group.

16. Resultantly, the foundational premise of the petitioner and his associates operating as a gang or as a body of persons and indulging in criminal activities as such cannot be said to have been made out. The appropriate authority and the appellate authority passed the impugned orders without posing unto themselves the pertinent question as to whether the material

arrayed against the petitioner and others brought their acts and conduct within the mischief of Section 55 of the Act.

17. The upshot of the aforesaid consideration is that the satisfaction arrived at by the appropriate authority is vitiated by non-application of mind. The appellate authority also failed to correct the error which the appropriate authority had fallen into. Thus, both the orders deserve to be quashed and set aside.

18. Hence, the following order:

: ORDER :

- (i) The petition stands allowed.
- (ii) The impugned order passed by the Divisional Commissioner, Konkan Division, dated 2nd March, 2021, in Appeal No.79 of 2020 and the order passed by the Deputy Commissioner of Police, Zone-X, Mumbai, dated 10th December, 2020, stand quashed and set aside.
- (iii) It is clarified that the observations made hereinabove are for the limited purpose of determination of the legality and validity of the impugned order and they may not be construed as expression of opinion on the merits of the cases registered against the petitioner, and the competent Court seized with

those cases shall decide the same on their own merits uninfluenced by the aforesaid observations.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]