

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

CRIMINAL WRIT PETITION NO. 190/2021

PETITIONER : Sayyad Nazim Sayyad Salar,
aged about 33 years, Occ. Labour,
R/o. Rahul Nagar, Bichhu Tekadi,
Tah. and District Amravati.
At present Baba Layout, Tayde Nagar,
Yavatmal, District - Yavatmal

...VERSUS...

RESPONDENTS: 1. Divisional Commissioner, Amravati,
Tah. and District Amravati.

2. Deputy Commissioner of Police,
Zone-I, Amravati, Tah. and Dist. Amravati.

3. Assistant Police Commissioner, Frezarpura
Zone, Amravati, Tah. and District -
Amravati.

4. Police Station Officer, Police Station
Frezarpura, Amravati, Tah. and District
Amravati.

Mr. R.Siddartha, Advocate h/f Shri PV.Navilani, Advocate for
petitioner

Mr. A.S.Fulzele, Addl PP for respondent nos.1 to 4

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

DATE : 10/03/2021.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1] Heard learned counsel for the petitioner and Shri Fulzele, learned Additional PP. who appears by waiving notice for the respondents.

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2] By the impugned orders, the petitioner has been externed from Amravati District for a period of one year. The first impugned order has been passed on 11.09.2020 and the second which is an order by the appellate authority is passed on 07.12.2020. These orders are passed against the the petitioner under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951.

3] According to the learned counsel for the petitioner, these orders are arbitrary, as they fail to consider the basic fact which affects this case. This fact is of absence of any live link between the alleged crime and prejudicial activities of the petitioner and the purpose sought to be achieved by passing an externment order.

4] Shri Fulzele, learned Additional Public Prosecutor submits that the petitioner is a notorious criminal and there are witnesses who are stating that they feel afraid of the petitioner because of which the witnesses do not come forward to give any evidence against the petitioner.

5] The impugned orders show that they take into consideration five criminal cases registered against the petitioner and this consideration appears to be lying at the core of satisfaction that has been reached in this case by the respondents. These five cases have been registered at Police Station Frezarpur during the period from 12.12.2013 and 13.01.2020. The first crime came to be registered against the petitioner on 12.12.2013, the second on 15.11.2014, third on 11.05.2017, forth on 07.05.2018 and fifth on 13.01.2020. So all the offences which were registered in the year 2013, 2014, 2017 and 2018 are certainly stale. The last of the offences registered in January, 2020, with a gap of around 8 months between registration of this crime and passing of the impugned order, is also of the same kind and does not have any live link with the

object sought to be achieved by externing the petitioner. It is well settled that in order that a criminal activity of a proposed externee is considered as prejudicial to the public interest, it must have a recurring character or such a character as would create an impression in the mind of the public that if no preventive action is taken, the person is likely to go on indulging in similar or even severe kind of criminal activities. But, with the passage of time, if nothing happens, the apprehension so generated by the earlier criminal activity decimated, losing its significance. This is what has happened in the present case and therefore, on this ground alone, we are of the view that the impugned orders are bad in law and deserve to be quashed and set aside.

6] If the criminal activity which is considered against the person is not found to be relevant for forming an impression regarding creation of fear or terror in the mind of public, the other consideration of the witnesses not coming forward out of fear to depose against such person would not arise.

7] Viewed in this way, we find that the impugned orders which ignored the fundamental facts affecting the whole case cannot be sustained in the eyes of law.

8] The writ petition is allowed. The impugned orders dated 11.09.2020 and 07.12.2020 are hereby quashed and set aside.

Rule is made absolute accordingly. No costs.

JUDGE

JUDGE

Rvjalit