

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETN. NO. 238 OF 2021

PETITIONER :- Bholu Alias Shakir S/o Nur Mohammad,
Aged about 47 years, Occ-Labor, R/o.
Aadiwasi Nagar, New Town, Badnera, Tq.
& District Amravati.

...VERSUS...

RESPONDENTS :-

1. Deputy Commissioner of Police, Zone-I,
Office at – Camp, Amravati.
2. Divisional Commissioner Amravati Office
at – Camp, Amravati, Tq. & Dist.
Amravati.
3. Police Station Officer, PS Badnera,
Amravati.

Ms Maira Ateeb, Advocate a/w Mr. A.A.Syed, Advocate
for the petitioner.

Mr.S.P. Deshpande, A.P. P. for the respondents.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 06.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.

3. At the oral request of the Advocate for the petitioner, the petitioner is permitted to amend designation of the respondent No.1 by substituting "Assistant Commissioner of Police, Zone-1" by "Deputy Commissioner of Police, Zone-I". The amendment shall be carried out forthwith.

4. The petitioner has questioned legality and correctness of the order dated 09/09/2020 passed by the respondent No.1, thereby externing the petitioner from the limits of Amravati District for a period of one year. The said order is confirmed by the respondent No.2 by order dated 30/10/2020 in Appeal No.53 of 2020. The order of externment passed by the respondent No.1 was in exercise of power under section 56(1)(b) of the Maharashtra Police Act, 1951. The learned counsel for the petitioner submits that the orders impugned are unjust, infringe the fundamental right of freedom of movement guaranteed to the petitioner but, it also in an arbitrary manner without any material warranting any such externment of the petitioner. It is submitted that the adverse Police Report is not based on any material.

5. Mr. S.P. Deshpande, the learned A.P.P. for the respondents, submitted that the respondent Nos.1 and 2 have rightly passed the orders against the petitioners, as the criminal history noted in the impugned order shows dangerous activities of the petitioner and the

order was necessary to bring under control the criminal activities of the petitioner.

6. We have carefully considered the impugned orders passed by the respondent Nos.1 and 2. On careful scrutiny of the impugned orders, it appears that the respondent Nos.1 and 2 have considered as many as eleven cases registered against the petitioner from the year 2008 till the year 2019. The order of externment is also based on preventive action taken against the petitioner on four occasions. On analyzing the crime registered against the petitioner, it appears that the last offence registered against the petitioner was non-cognizable Crime No.1140 of 2019 under sections 323, 504 and 506 of the Indian Penal Code. Another offence registered against the petitioner was of 30/04/2019 bearing Crime No.324 of 2020, registered under section 65(E) of the Maharashtra Prohibition Act. The other offences registered against the petitioner are under the provisions of the Maharashtra Prevention of Gambling Act. We are therefore of the opinion that the offence of 2016 and prior to it did not provide any live link to the so called dangerous activities of the petitioner as of 21/08/2020, which is the date of show cause notice. It therefore appears that there is huge gap of more than four years in the offences registered against the petitioner and the action taken against the petitioner. An overall

consideration of the offences registered against the petitioner, we are satisfied that the process of reaching subjective satisfaction as required under section 56(1)(b) of the Maharashtra Police Act has been vitiated. We do not find any relevant material available on record for recording satisfaction as required under section 56(1)(b) of the Maharashtra Police Act and therefore, the impugned orders cannot stand the scrutiny of law.

7. In the result, we pass following order.
 - i. The order dated 09/09/2020 passed by the respondent No.1 under section 56(1)(b) of the Maharashtra Police Act, 1951 and the order dated 30/10/2020 passed by the respondent No.2 in Appeal No.53 of 2020 are quashed and set aside.
8. Rule is made absolute in the aforesaid terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

Ghanshyam
Khunte

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Ghanshyam Khunte
Date: 2021.04.09
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