

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

CRIMINAL WRIT PETITION NO. 591 OF 2020

Ankush S/o Gyansingh Varma,
Aged about 32 years, Occu. - Business,
R/o. Kannamwar Ward, Ballarshah,
District – Chandrapur.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Police Officer,
Rajura, District – Chandrapur.
- 2) The Sub-Divisional Magistrate,
Ballarpur, District - Chandrapur

.... **RESPONDENTS**

Shri R. M. Daga, counsel for the petitioner.
Shri S. M. Ghodeswar, Addl.PP for the respondents.

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

DATED : 18th January, 2021.

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

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing
for the parties.

3. The petitioner has been externed by the order passed on 26.10.2020 by the respondent No.2 from six districts of Chandrapur, Gondia, Gadchiroli, Bhandara, Wardha and Nagpur.

4. The impugned order has been criticized by learned counsel for the petitioner on various grounds. He submits that out of 17 offences which have been registered against the petitioner from the year 2006 to 2019, only 4 offences were registered in 2012-2013, 2016 and 2019 were under the provisions of Indian Penal Code covered under Section 56(1)(b) of the Maharashtra Police Act and rest of the offences were under the provisions of Maharashtra Prohibition Act and, therefore, these offences could not be said to have provided a reasonable ground for believing that the petitioner was engaged or about to be engaged in the commission of these offences inasmuch as, the last of the offences registered under the provisions of Indian Penal Code was of June 2019 about 16 months prior to issuance of the show cause notice dated 23.10.2020. He also submits that the impugned order is excessive.

5. Learned Addl.PP. submits that the crime record of the petitioner is pretty long and it has to be considered as a whole. He submits that considering the crime record of the petitioner, one would find that the impugned order has been correctly passed. He also

submits that there are statements of confidential witnesses to support the conclusions made by respondent No.2 in the matter.

6. On going through the impugned order, we find that there is great substance in the argument of learned counsel for the petitioner and no merit in the submissions of learned Addl.PP for the State.

7. The impugned order shows that in all 17 crimes registered against the petitioner from the year 2006 to 2019 have been considered. But, out of these 17 crimes, only 4 related to those which involved offences punishable under the relevant provisions of the Indian Penal Code in terms of Section 56(1)(b) and rest of the offences, having been registered under the provision of Maharashtra Prohibition Act were absolutely irrelevant for the purposes of Section 56(1)(b). Section 56(1)(b) requires that there should be reasonable grounds for believing that the proposed externee is engaged or is about to engage in the commission of an offence involving force or violence or an offence punishable under Chapters 12, 16 and 17 of the Indian Penal Code or in the abetment of any of these offences. In addition to these requirement, there is one more requirement which is about the formation of an opinion by the officer that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their

person or property. So, there must be a reasonable relation between the consistent criminal behavior and the object sought to be achieved that is the assurance to be given to the members of public or witnesses about safety of their person or property.

8. Now, if we consider the relevant crimes involving various sections of Indian Penal Code, which have been considered relevant for the purpose of passing of an order under Section 56(1)(b), we would find that at the most only one out of these 4 crimes, which could be taken up for consideration, if it is to be considered at all, for the reason that rest of the 3 crimes were of the years 2012, 2013 and 2016 respectively, having not even a remote connection with the object sought to be achieved in the present matter. Now, if 2019 offence is to be considered, we would find that even this offence having been registered on 14.06.2019, about 16 months prior to issuance of the show cause notice, has lost its relevancy from the view point of achieving the object of an externment order under Section 56(1)(b) of the Maharashtra Police Act. The object is, as stated earlier, to instill in the witnesses a sense of security as regards their property or person. This sense of security can be created if immediate action after the commission of the offence is taken. But, if no such promptitude shown and during the interregnum, no criminal offence has been committed

by the proposed externee, the passage of time would result in gradual dissipation of fear of members of public thereby showing that there is no need for giving any more assurance to them. This is the reason why this Court has consistently taken a view that there must be a proximate relation between the offences committed and the object sought to be achieved by the externment order. Such proximate relation in the present case is absent so far as concerned the pressing into service of Section 56(1)(b) of Maharashtra Police Act by respondent No.2 against the petitioner. Thus, on this count, we find that the impugned order is not sustainable in law.

9. The impugned order has also been passed under Section 56(1)(a) of Maharashtra Police Act. The requirement of this provision of law is the subjective satisfaction of the Authority that movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property. In the present case, the only material which has been considered is sourced from the Indian Penal Code offences committed way back in the years 2012, 2013, 2016 and also in the year 2019. We have already found that none of these offences bears any reasonable and proximate relation with the object sought to be achieved by externing the petitioner. After June 2019, no criminal activity of the petitioner has been noticed except for the one stated about by confidential witnesses. We have gone through the record of

this case and we find that there are two confidential witnesses, both of whom are stating about only one incident which had taken place about four months prior to issuance of the show cause notice. Both of these witnesses refer to an incident of the same date and they have nothing to say about the criminality or criminal tendencies of the petitioner consistently over a period of time. Therefore, just one stray incident, even if it is assumed to be true, could not be so relevant a ground as to form an objective criteria for any authority to reach the subjective satisfaction in terms of Section 56(1)(a) of the Maharashtra Police Act. Thus, we find that the impugned order must go.

10. In the result, the petition is allowed. The impugned order is hereby quashed and set aside.

Rule accordingly.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)