

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

CRIMINAL WRIT PETITION NO. 592/2020

PETITIONERS: 1. Wajid Khan Aliyar Khan,
aged 32 years, Occ. Business.

2. Javed Khan Aliyar Khan,
aged 34 years, Occ. Business,
Both R/o. Nawab Pura, Old Town
Akola, Tq. and Dist. Akola.

...VERSUS...

RESPONDENTS: 1. The Divisional Commissioner,
Amravati District, Amravati.

2. The Superintendent of Police, Akola,
Tq. and District Akola.

3. Sub Divisional Police Officer, Akot,
District Akola.

4. The State of Maharashtra through
the Police Station Old Town Akola,
Dist. Akola.

Shri S.V.Sirpurkar, Advocate for petitioners
Shri S.M.Ghodeswar, APP for respondent nos.1 to 4

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

DATE : 16/02/2021.

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

Heard.

Rule. Rule made returnable forthwith. Heard

finally by consent of learned counsel appearing for the parties.

2] Both the petitioners have been externed for a period of two years from Akola District by the order impugned herein.

3] According to the learned counsel for the petitioners, the impugned order dated 07.08.2020 and the other impugned order passed in appeal by the Divisional Commissioner, Amravati, on 02.09.2020, both suffer from the vice of arbitrariness and non application of mind, which has been disagreed to by the learned APP appearing for respondents.

4] We have gone through the impugned order dated 07.08.2020 and other impugned order dated 02.09.2020. On careful consideration of both these orders, we find that there is a substance in the argument of learned counsel for the petitioners and no merit in the submission of the learned APP.

5] The impugned orders are passed upon a detailed enquiry conducted by Sub Divisional Police Officer, Akot and the report dated 31.07.2020 submitted by him. While the

impugned orders consider two offences collectively committed by the petitioners, namely Crime No. 100/2012 and Crime No. 309/2019, the impugned orders do not consider in any manner the statements of the confidential witnesses, which in fact have been dealt with properly by the S.D.P.O when he submitted his enquiry report dated 31.07.2020. The recommendation made by the S.D.P.O. was not only because, in his opinion, there was a continuous criminal activities engaged in by both the petitioners, but also because there was some other material in the nature of statement of confidential witnesses, who gave vital information of a nature which was considered, would lead to an inference that the movement or encampment of both the petitioners would or was likely to cause danger or alarm or reasonable suspicion about criminal designs of the petitioners. But the impugned orders completely ignore the statement of the confidential witnesses and only consider two offences collectively committed by the petitioners and one of them being as old as eight years at the time of passing of the first impugned order.

6] The first crime considered by these authorities was registered against both the petitioners in the year 2012 and second crime was registered against both of them in the year 2019. Thus, there was a gap of about 7 years between commission of these two offences collectively by the petitioners and with such a gap in commission of the offences, it is difficult to accept the proposition that the petitioners as a group or body of persons are continuously engaged in such activities as could be called as causing or likely to cause danger or alarm or giving rise to an apprehension that some unlawful designs are entertained by them. With such a big gap between commission of two offences by the petitioners as a group, it was necessary that there was some material available on record which shows that even though apparently no offences were registered against both the petitioners, during the interregnum, their criminal activities continued clandestinely and such material could have been found, if some of the confidential witnesses had stated something relevant in that regard.

7] In the present case, statement of confidential witnesses were indeed recorded, but not considered by the authorities while passing both the impugned orders. So we are of the view that the impugned orders have been passed without consideration of the relevant material even though it was available and this shows the non application of mind while passing the orders. The impugned orders also suffer from the vice of arbitrariness, as there is no material considered whatsoever by the authorities which would fill up the gap between two offences, one of the year 2012 and the last one of the year 2019.

8] In the result, we find that this petition deserves to be allowed and it is allowed accordingly. The impugned orders are hereby quashed and set aside.

9] Rule is made absolute in these terms. No costs.

JUDGE

JUDGE