

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

CRIMINAL WRIT PETITION NO. 657 OF 2020

PETITIONER :- Jitendrasing Surjitsingh Patwa, Aged about 33 years, Occup.Private, R/o Ward No.11, Mul, Dist.Chandrapur. At Present at Nagpur.

...VERSUS...

RESPONDENT :- State of Maharashtra, Through the Sub-Divisional Officer, Mul Having its Office at Administrative Building, Mul, District Chandrapur.

Mr.R.K.Tiwari, counsel for the petitioner
Mr.N.R.Patil, APP for the respondent/state.

CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 05.03.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

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

3. By the impugned order dated 12.11.2020, the petitioner has been extenuated by the respondent for a period of two years.

4. The basic contention of the learned counsel for the petitioner is that the impugned order is arbitrary in nature as no opportunity to show cause has been granted to the petitioner in an effective manner. He submits that while the impugned order relies upon the confidential witnesses, there is no mention whatsoever of the confidential witnesses in the show cause notice issued to the petitioner. He also submits that out of 11 crimes, relied upon by the respondent, only one crime registered way back in the year 2018 is relevant and the rest of the crimes are irrelevant, they either being under the various provisions of Maharashtra Prohibition Act or though under the provisions of the Indian Penal Code having not been charged against the petitioner. Learned APP submits that the impugned order is self-explanatory and it generally takes into account the relevant material and therefore he supports the impugned order.

5. We find great substance in the argument of the learned counsel for the petitioner. In the show cause notice there is no mention whatsoever of the confidential witnesses but, while passing the impugned order, reliance has been placed upon the versions of the confidential witnesses. The material which is sought to be relied upon while passing an externment order, is required to be generally mentioned in the show cause notice that is issued to the proposed externee so that the proposed externee gets a general idea of the manner in which the proceedings against him would take place. This has not been done in the present case and therefore, we find that there is a fundamental error in the impugned order which has caused great prejudice to the petitioner and this is why the impugned order has to be termed as arbitrary.

6. Besides, the crimes which are registered for offences under Maharashtra Prohibition Act or though registered under Indian Penal Code offences are the ones, which are not charged against the petitioners have also been considered while passing the impugned order, which is not permissible in law. So far as

Maharashtra Prohibition Act offences are concerned, this Court has already taken a view in Writ Petition No.948 of 2018 decided on 12.12.2018 that this is not permissible. As regards one Indian Penal Code offence which has been considered, we find that the offence having been registered way back in the year 1918 had no live link with the purpose sought to be achieved by passing externment order on 12.11.2020.

7. In the result, we are of the view that the impugned order being arbitrary deserves to be quashed and set aside and is quashed and set aside. The Writ petition is allowed thus.

Rule is made absolute accordingly.

JUDGE

JUDGE