

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.354 OF 2022

- 1) Bhuryasingh Chtursingh Chavan,
Age 60 years, Occupation Business,
- 2) Hirasingh Bhuryasingh Chavan,
Age 35 years, Occupation Business,
- 3) Dipakour Bhuryasingh Chavan,
@ Dipakour Oamsingh Khiche,
Age 20 years, Occupation Household,
R/o Loha, Taluka Kandhar,
District Nanded.
- 4) Kamalkour w/o Bhuryasingh Chavan,
Age 58 years, Occupation Household,
- 5) Balu @ Abhijit @ Avinash Kailas Khandare,
Age 21 years, Occupation Business,

Petitioner No.1, 2, 4 and 5 All R/o
Shikalkari Vasti, Railway Station Road,
Vasmat Taluka Vasmat, Dist.Hingoli.

...Petitioners

VERSUS

- 1) The Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 2) The Superintendent of Police,
Hingoli, Taluka Dist.Hingoli.
- 3) The Sub-Divisional Police Officer,
Vasmat, Taluka Vasmat,
Dist. Hingoli.

- 4) The Police Inspector,
Vasmat City Police Station,
Taluka Vasmat, Dist.Hingoli.

...Respondents

.....
Advocate for Petitioners : Mr. S. S. Gangakhedkar
APP for Respondents-State : Mr. R. B. Bagul
.....

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 01-07-2022

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard learned counsels by consent finally.
2. By invoking the Constitutional powers of this Court under Article 227 of the Constitution of India, the petitioners challenge order dated 01-11-2021 passed by respondent No.1 in File No.2021/GA/Room-1/Pol-1/Externment/CR-51 as well as order dated 30-12-2020 passed by learned respondent No.2 in proceeding No.1527/Local Crime Branch-01/MPA Section 55/2020, thereby externing all the petitioners from Hingoli District for a period of two years from 21-10-2019.
3. Heard learned Advocate Mr. S. S. Gangakhedkar for petitioners and learned APP Mr. R. B. Bagul for respondents-State.

4. It has been vehemently submitted on behalf of the petitioners that all the petitioners are the relatives. Petitioner No.1 is the father of petitioners No.2 and 3 and petitioner No.4 is the wife of petitioner No.1, it cannot be therefore said that they formed a gang. The show cause notice that was given on 11-10-2019 had no particulars stated therein, but then in the show cause notice dated 21-10-2019 it was mentioned that there are 11 offences against the four persons named therein. In notice dated 21-10-2019 there is no name of petitioner No.2 Hirasing. However, at the time of passing the order their cases have been separated and the external authority had not even taken into consideration the decisions in the matters. In their say, the petitioners had stated that certain cases against them have been decided in acquittal, however, no note has been taken in respect of the same. Even if we consider the record of the cases stated in the order passed by learned respondent No.2, yet it can be seen that they are registered only with Vasmat City Police Station and not beyond that. There is absolutely no reason given by the concerned authority as to why the petitioners were externalized from entire district. In appeal that was preferred by the petitioners, the appellate authority had considered the decisions about acquittal of

the petitioners, yet no due waitage has been given in respect of the same nor it was considered as to why it was necessary to extern all the petitioners. Even in the affidavit-in-reply there is no reason given for the same. It cannot be then stated that the concerned authorities had reached to the substantive assessment of the matter.

5. Learned Advocate for the petitioners has relied on the decision of the Division Bench of this Court in *Limbaji @ Vijay s/o Govind Ghobale vs. The State of Maharashtra and others, (Criminal Writ Petition No.994 of 2019)*, wherein reliance was placed from the observations in *Criminal Writ Petition Nos.1356/19* thus :-

“13) The externment order is a serious thing and it affects fundamental rights. The provision of Article 19 and 21 of Constitution of India show that the fundamental right of freedom of movement guaranteed by clause (d) of Article 19 is in addition to the fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India. One has to go with the presumption that externment order has violated these rights unless the law and the procedure given for permissible restrictions is followed. To ascertain as to whether the order of externment is as per law prescribing restrictions, the Court has power to

scrutinise the material on the basis of which the order is made. Though it is a matter of subjective satisfaction, it is the duty of the Court to ascertain as to whether there were malafides behind the order and whether the order can sustain in law, whether it is as per the provisions of law, creating restrictions on fundamental rights.”

“14) The provision of Article 19 of Constitution of India shows that there must be 'law in existence' for putting restriction. The restriction needs to be reasonable and the term reasonable restriction applies to substantive reasonableness and also procedural reasonableness. From that angle also while ascertaining the aforesaid things, the Court needs to consider various aspects like object behind the order and that needs to be considered in relation to the conditions which were prevalent at the time when the order was made. Such order can be made only when 'evil' exists and for that there needs to be material. Then it needs to be ascertained as to whether the restriction is proportionate to the evil. The Court is also expected to ascertain the extent and urgency in respect of evil. At the time of consideration of challenge to the externment order, the Court is expected to keep all these things in mind, otherwise there will be no protection to the fundamental rights.”

6. Further reliance was placed on the decision in *State of N.C.T. of Delhi and Anr. vs. Sanjeev alias Bittoo*, reported in AIR 2005 Supreme Court 2080, wherein the Hon'ble Apex Court laid down that the judicial review of administrative action can be on the ground of illegality, irrationality and procedural impropriety, and therefore, it was held that, when there is no material to fulfill the conditions as laid down in Section 55 of the Act, the order itself becomes illegal, without jurisdiction. The learned Advocate for the petitioner, therefore, prayed for allowing the petition and quashing of the impugned orders.

7. The learned APP strongly opposed the petition and also relied on the affidavit-in-reply filed by Police Inspector, Vasmat City Police Station, Taluka Vasmat, District Hingoli, Mr. Chandrashekhar Anandrao Kadam. It was then submitted that though in the reasoning part respondent No.2 had not given reasons as to why he was externing the petitioners from the entire district, yet those reasons have been given by him in the operative order. It was stated that their externing from the entire district is necessary as the possibility cannot be ruled out that if they are externed only from the city then from the district they may come to Vasmat city,

commit the offence and then go back. That consideration has been considered by the authority. The petitioners are committing offence within Vasmat City Police Station area from 2003 onwards and lastly it was in 2018. The nature of the offence in which they were involved are under Section 379, 307, 324, 395, 326, 353 etc., of Indian Penal Code. The illegal activities of the petitioners were bound to be taken into consideration when they were committing the said offence as member of a "gang" can be of relatives, and therefore, it cannot be said that merely because they are relatives they cannot form a 'gang'. Petitioner No.1 is the head of the gang and others are members, therefore, the action taken by the concerned authorities is perfectly correct.

8. At the outset, it is to be noted that the statement of the witnesses which was considered by respondent No.2 i.e. a confidential statement are before this Court would show that one of them had lodged the report and another states that he has not lodged, but he could not dare to lodge the report due to the terror of the gang and according to him the incident was of 2019. Notice appears to have been issued by the Deputy Superintendent of Police Office, Hingoli on 11-10-2019 and it was against five persons.

Thereafter, the show cause notice has been issued on 21-10-2019 but it was against four persons only dropping the name of Hirasing, but then the order is passed against Hirasing also. This shows the non-application of mind by respondent No.2. Further respondent No.2 had considered the acquittal of the petitioners which was brought to the notice by way of written say, but then there is no reflection of that intimation or information in the further reasoning part of respondent No.2. In show cause notice there is absolutely no mention of any offence under Section 302, 120-B, 201 read with 34 of Indian Penal Code lodged in the year 2019. In fact, in the order respondent No.2 has not even considered which was the crime number of that offence and what was the date of the First information Report, which was the police station in which that offence was registered, and interestingly that was not included in the show cause notice. That means, for some extraneous consideration the order has been passed which is impermissible in law. Further, the show cause notice does not bifurcate the offences against each of the member but in order that bifurcation has been taken into consideration. If bifurcation would have been given, it would have been proper for the petitioners to give their say, and therefore, on this count also a proper opportunity appears to be not given to the

petitioners to put forth their say.

9. The impugned order passed by respondent No.2 does not specifically state in reasons part as to why he was considering externing the petitioners from the entire district. It cannot be given in operative part. When the alleged activities of petitioners were restricted to Vasmat City Police Station area, how there could have been the restrictions on their movements in the entire district, it is definitely unconstitutional. The appellate authority/respondent No.1 had the opportunity to take into consideration all those aspects, but a very cryptic order appears to have been passed by respondent No.1. In the chart of cases he has also considered alleged inclusion of Vasmat City Police Station Crime No.351 of 2019 under Section 302, 120B, 201 read with 34 of Indian Penal Code which was not included in show cause notice dated 11-10-2019. In fact, that offence appears to be lodged only against petitioner No.2 Hirasing, and as aforesaid, the show cause notice dated 21-10-2019 does not mention that he was served with the said notice as his name is not appearing and it was given only against four persons. This Court does not agree with the submission on behalf of the petitioners that relatives themselves cannot form a 'gang', certainly they can form a

'gang', but the other requirements are fulfilled, they cannot be externed.

10. The record and proceedings which has been submitted by the prosecution shows that one more notice was issued to petitioner No.2 Hirasing Chavan on 03-02-2020. In that notice also there is no mention of Crime No.351 of 2019 under Section 302 , 120B, 201 read with 34 of Indian Penal Code. Prior to that a one more separate notice appears to have been given by the Superintendent of Police Office, Hingoli to petitioner No.2 on 18-11-2019. How many times he was supposed to answer the notices, is a question. Further, on 18-02-2020 respondent No.2 appears to have taken statement of petitioner No.2 and question No.4 is in respect of the cases filed against him. In that list also there is no mention of the offence under Section 302 of Indian Penal Code against him, yet for the said offence also he has been externed which is extraneous consideration.

11. The ratio laid down in *Limbaji @ Vijay s/o Govind Ghobale (Supra)* is definitely applicable here, and therefore, the writ petition deserves to be allowed, accordingly following order is passed.

ORDER

- 1) The Writ Petition stands allowed.
- 2) The orders of externment passed against the petitioners by respondents No.1 dated 01-11-2021 in File No.2021/GA/Room-1/Pol-1/Externment/CR-51 as well as order dated 30-12-2020 passed by learned respondent No.2 in proceeding No.1527/Local Crime Branch-01/MPA Section 55/2020, are hereby quashed and set aside.

Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.