

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1214 OF 2021

Bhushan s/o Anil Thakre,
Age : 29 years, Occu.: Agriculturist,
R/o.: Village Fagne, Tal. & Dist.: Dhule PETITIONER

VERSUS

1. The State of Maharashtra
2. The Superintendent of Police Dhule
3. Sub Divisional Police Officer,
Dhule Rural, Sakri
4. The Police Inspector,
Dhule Taluka Police Station, Dhule. ...RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO.1215 OF 2021**

Bhikan s/o Deelip Jadhav,
Age : Major, Occu.: Labour,
R/o.: Village Fagne, Tal. & Dist.: Dhule PETITIONER

VERSUS

1. The State of Maharashtra
2. The Superintendent of Police Dhule
3. Sub Divisional Police Officer,
Dhule Rural, Sakri
4. The Police Inspector,
Dhule Taluka Police Station, Dhule. ...RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO.1216 OF 2021**

Lakhan s/o Devidas Sonar,
Age : Major, Occu.: Agriculturist,
R/o.: Village Fagne, Tal. & Dist.: Dhule PETITIONER

VERSUS

1. The State of Maharashtra
2. The Superintendent of Police Dhule
3. Sub Divisional Police Officer,
Dhule Rural, Sakri
4. The Police Inspector,
Dhule Taluka Police Station, Dhule. ...RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO.1241 OF 2021**

1. Kunal s/o Raju Thorat,
Age : 28 years, Occu.: Driver,
R/o.: Village Fagne, Tal. & Dist.: Dhule
2. Sanjay s/o Shivaji Patil,
Age : 24 years, Occu.: Driver,
R/o.: Village Fagne, Tal. & Dist.: Dhule
3. Banti @ Nilesh s/o Nandkishor Patil,
Age ; 28 years Occu.: Centering work,
R/o.: Village Fagne, Tal. & Dist.: Dhule ...PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Superintendent of Police Dhule
3. Sub Divisional Police Officer,
Dhule Rural, Sakri

4. The Police Inspector,
Dhule Taluka Police Station, Dhule. ...RESPONDENTS

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Advocate for Petitioners : Mr. Chaitanya C. Deshpande
APP for Respondents-State : Mr. R. V. Dasalkar
....

CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 09/02/2022
PRONOUNCED ON : 09/03/2022
....

JUDGMENT : (Per : Sandipkumar C. More, J.) :

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. All these petitions have been filed by the concerned petitioners to whom respondent no.3 in all the petitions had issued notice under Section 59 of the Maharashtra Police Act in respect of proposal under Section 55 of the said Act. On perusal of the said notice dated 19/08/2020 it appears that the same is common for all the petitioners in the present writ petitions. Further the order in respect of these notices has also been passed by present respondent no.2 on 04/11/2020 in common for all the petitioners. Though the Divisional Commissioner, Nashik entertained separate appeals mentioned in these petitions under provisions of Section 60 of the

Maharashtra Police Act against the order dated 04/11/2020 passed by respondent no.2, but since the notice dated 19/08/2020 and first order dated 04/11/2020 appear to be common for all the petitions, we have decided to dispose of all these petitions by common judgment.

3. Background facts are as follows :

Under notice dated 19/08/2020 respondent no.3 has proposed two years externment of the petitioners from the limits of Dhule, Jalgaon and Nashik districts as the presence of the petitioners in the aforesaid limits was found dangerous to public at large and law and order in the respective districts. So far as criminal record of all these petitioners is concerned, the crimes registered against all the aforesaid petitioners are mentioned in the said notice. On receiving the notice, the petitioners except the petitioner in Writ Petition No. 1214 of 2021 i.e. Bhushan Anil Thakre i.e. a gang leader, appeared before respondent no.2 i.e. Superintendent of Police, Dhule and submitted their statements. However, the petitioner Bhushan Anil Thakre despite service of notice through his father as well as brother, did not appear. Thereafter, respondent no.2 by considering the entire material and the statements of the petitioners, came to the conclusion that the petitioners being members of a gang, have

indulged into various criminal activities relating to the offence involving forming of an unlawful assembly, abusing, use of weapon for attempt to commit murder, spreading of communal dissatisfaction, sexual harassment of children, etc. Ultimately, respondent no.2 has externed all the aforesaid petitioners from District Dhule, Talukas Amalner, Parola and Chalisgaon of Jalgaon District and Malegaon Taluka of Nashik District for a period of two years on service of the order dated 04/11/2020.

4. Feeling aggrieved with the said order, the petitioners have filed their respective appeals under Section 60 of Maharashtra Police Act before Divisional Commissioner, Nashik. However, the Divisional Commissioner, Nashik under orders dated 25/06/2021 in the Externment Appeal Nos.104 of 2020, 103 of 2020, 105 of 2020 and 106 of 2020 after considering submissions of the petitioners, dismissed the appeals and confirmed the order dated 04/11/2020 passed by respondent no.2. Hence, the petitioners have filed these petitions challenging both the orders passed by respondent no.2 and the Divisional Commissioner, Nashik dated 04/11/2020 and 25/06/2021 respectively.

5. Learned counsel for the petitioners submits that the alleged gang leader Bhushan Anil Thakre in Writ Petition No. 1214 of 2021

was not even served with the notice dated 19/08/2020 and still he has been externed without being given an opportunity of hearing. It is further submitted by the learned counsel for the petitioners that all these petitioners cannot be said to be habitual offenders as there are no conviction recorded against them in any case. He further submits that both the authorities have considered the crimes registered against the petitioners in the year 2016 for their externment. According to him, the pendency of cases against the present petitioners cannot be said to be criminal activities in a group of persons referred as a gang and therefore, power under Section 55 of the Act cannot be exercised against them. As such, he prayed for setting aside the orders dated 04/11/2020 and 25/06/2021 passed by respondent no.2 and Divisional Commissioner, Nashik respectively. Learned counsel for the petitioners in addition to his submissions at bar also relied on the judgment of this court in the case of **Lalookhan Haideralikhan vs. M. M. Kamble, Special Executive Magistrate, Byculla Division, Bombay and others, 1996 Cri.L.J. 801.**

6. On the contrary, the learned APP strongly opposed the submissions made on behalf of the petitioners and pointed out that there are serious crimes against the present petitioners and on

perusal of respective crimes against the petitioner as mentioned in the notice dated 19/08/2020 it is evident that some of those crimes have been committed by the present petitioners being members of one and same gang. He further submits that all the petitioners are harden criminals and also used dangerous weapons. There is fear in the mind of public at large due to criminal activities of the petitioners. Moreover, there are also in-camera statements of the persons to whom the aforesaid petitioners have threatened. With these submissions the learned APP supported the impugned orders.

7. It is important to note that under both the impugned orders, the present petitioners have been externed from limits of entire Dhule District, Talukas Amalner, Parola and Chalisgaon of Jalgaon District and Malegaon Taluka of Nashik District by considering their criminal activities in view of Section 55 of the Maharashtra Police Act. We would like to reproduce the said Section 55, which reads as thus :

"55. Dispersal of gangs and bodies of persons :

*Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under Section 7 to the Commissioner and in a district to the District magistrate, the Sub-Divisional Magistrate or the (Superintendent)(* * *) empowered by the State Government in that behalf,*

that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction (or such area and any district or districts, or any part thereof, contiguous thereto) within such time as such officer shall prescribe, and not to enter to area (for the areas and such contiguous districts, or part thereof, as the case may be) or return to the place from which each of them was directed to remove himself'.

8. Learned counsel for the petitioners has raised an objection that all these petitioners cannot be said to be habitual offenders as there is no conviction recorded against them in any case mentioned in notice under Section 59 dated 19/08/2020. For that purpose, he also relied upon the case of **Lalookhan Haideralikhan** (supra).

9. On careful perusal of the aforesaid judgment, it appears that this court in the said case held that the show cause notice under Section 111 of Cr.P.C. being wholly illegal and unsustainable since mere registration of cases about the alleged offences cannot be a proof of fact that the person is a habitual offender. It is further held that the said observation in respect of the habitual offender will only be available after a person is found guilty of the charges levelled against him. However, the aforesaid observation of this court has mainly come in respect of the show cause notice issued to the petitioner in that case under Section 111 of Cr.P.C. and not under Section 59 of the Maharashtra Police Act or Bombay Police Act. On careful reading of Section 55 as mentioned above, it is evident that the scope and purview of Section 55 of Maharashtra Police Act is altogether different than the scope of Section 111 of Cr.P.C. As per Section 55 of the said Act dispersal of gangs and bodies of persons is considered specially if it is found that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members there, then that gang or body of persons can be removed outside the area within the local limits of the jurisdiction wherein such movement occurs. Nothing is mentioned in this section that

the members of such gang or the persons of the said body need to be convicted for the offences alleged against them. Therefore, the aforesaid judgment relied upon by the learned counsel for the petitioners is not at all helpful in the instant case.

10. Learned counsel for the petitioners also raised an objection that out of the petitioners, the petitioner Bhushan Anil Thakre named as leader of the gang was not given any opportunity to put-forth his say in the proceeding before respondent no.2 who has passed one of the orders i.e. order dated 04/11/2020. However, on perusal of the said order, it is clearly evident that Bhushan Anil Thakre was served twice through his father and brother but still remained absent. Even the other petitioners at the time of making statements before respondent no.2 were asked to keep petitioner Bhushan Anil Thakre for hearing. The order further indicates that despite such intimation to other petitioners about keeping Bhushan Anil Thakre present for the hearing, he remained absent. Moreover, it is most important to note that petitioner Bhushan Anil Thakre in the appeal heard by the Sub-Divisional Commissioner, Nashik had filed his statement in writing for assailing the order dated 04/11/2020. Therefore, we do not find any substance in the submission of learned counsel for the petitioners that petitioner

Bhushan Anil Thakre termed as gang leader was not given any opportunity to put-forth his submissions in respect of the impugned order dated 25/06/202. Further it appears that he intentionally remained absent before respondent no.2 while passing the first order dated 04/11/2020. As such, it cannot be held that he was denied an opportunity of being heard.

11. Further, it is extremely important to note that all the petitioners except petitioner Bhushan Anil Thakre before respondent no.2, had not disputed the fact in respect of the crimes mentioned in the notice being registered against them. It appears that they had specifically admitted before respondent no.2 at the time of hearing that they would not commit any criminal activities further. Even the petitioner Bhushan Anil Thakre has also not denied registration of crimes as mentioned in the notice against him in his written submission filed before the Divisional Commissioner, Nashik Division in Externment Appeal No. 104 of 2020. He only claimed that since those offences were registered against other persons including the petitioners, the petitioners cannot be termed as a gang indulged in so many criminal activities. Thus, it is not denied by the petitioners that the aforesaid crimes mentioned in the notice dated 19/08/2020 are registered against them.

12. In the notice dated 19/08/2020 the crimes registered against all the petitioners are mentioned in detail and the registration of the same is also not denied by the petitioners. On perusal of those crimes it is evident that all the petitioners appear to be involved in the serious crimes relating to commission of rioting being members of an unlawful assembly, abusing, criminal trespass, use of dangerous weapon for committing an attempt of murder, spreading of communal dissatisfaction, outraging modesty of child etc. Moreover, it appears that all the petitioners are common accused in Crime Nos.268 of 2016 and 110 of 2020 registered at Dhule Taluka Police Station. Further, most of the petitioners appear to be involved in other crimes also. Those crimes have taken place during the period from 2015 to 2020. As such, on the basis of those crimes it can easily be inferred that all the petitioners have involved in serious criminal activities being the members of gang. Therefore, considering all these activities the prime requirement of Section 55 of the Maharashtra Police Act appears to be satisfied. Moreover, it is also evident from the impugned orders that the gang leader petitioner Bhushan Anil Thakre is also involved in the Crime No.119 of 2019 for the offence punishable under Sections 328, 420, 468 of IPC and under Section 65(b)(c) of the Maharashtra Prohibition Act registered at Parola Police Station and has absconded to avoid his

arrest. Not only this but there are also chapter cases against all the petitioners under Section 110 and 107 of Cr.P.C. registered at the instance of Dhule Taluka Police Station. In addition to that there are also in-camera statements of witnesses which indicate that how there is an intimidation in the area of these petitioners in the mind of common public.

13. Further on perusal of both the impugned orders it is evident that respondent no.2 as well as the Divisional Commissioner, Nashik have arrived at a conclusion that the petitioners in all the present petitions are required to be dispersed from the area mentioned in those orders as they were fully satisfied about the same. On going through these orders we have also found that considering crimes registered against the petitioners being the gang leader and gang members are required to be dispersed as their presence in the area mentioned in the orders is dangerous to the public at large. Thus, we are satisfied about the observations mentioned in the impugned orders by the concerned authorities.

14. Thus, on perusal of entire material on record, it has been revealed that the petitioners being the gang members have indulged into so many serious criminal activities and therefore, we find that they are required to be dispersed from the area mentioned in the

impugned orders as contemplated in Section 55 of the Maharashtra Police Act. Therefore, we find no merit in all the aforesaid petitions as the petitioners are rightly externed from the places mentioned in the impugned orders. Hence, we proceed to pass the following order.

O R D E R

- I) All the writ petitions are hereby dismissed and disposed of accordingly.
- II) Rule stands discharged accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-