

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

CRIMINAL WRIT PETITION No. 242/2022.

Alim Patel Wahid Patel,
Aged about 45 years, Occupation-
Retired Left.Commander and
Social Workr, resident of Taj bag,
Camp, Amravati, Taluq
and District Amravati.

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PETITIONER.

VERSUS

1.Divisional Commissioner,
Amravati Division, Amravati.

2.Deputy Police Commissioner,
Amravati, Taluq and
District Amravati.

3.Police Station Officer, Police
Station, Gadge Nagar, Amravati,
Taluq and District Amravati.

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RESPONDENTS.

Mr. S. Agrawal, Advocate h/f. Shri S.V. Sirpurkar, Advocate
for the Petitioner.

Mr.S.M. Ukey, Addl.P.P. for Respondents.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 19, 2022.

ORAL JUDGMENT :

Heard learned counsel for the parties. By their consent, Writ Petition is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner has been externed by respondent no.2 – Deputy Police Commissioner, Amravati for a period of two years from Amravati District vide order dated 31.01.2022. The order of externment has been passed in terms of Section 56[1][a][b] of the Maharashtra Police Act. The said order was challenged in Appeal, however, the appeal came to be dismissed by the Divisional Commissioner, Amravati, which order is also impugned herein.

3. The action of externment has been challenged on the ground that particulars of in-camera statements have not been supplied in statutory notice, action is based on stale offences and

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most of the offences, does not fall within Chapter XII, XVI and XVII of the Indian Penal Code. Lastly, it is contended that the Authority has not recorded subjective satisfaction, while passing excessive order and thus, the action vitiates.

4. The learned Addl.P.P. has supported the impugned order by stating that in all 11 offences have been registered against the petitioner. Though the offences at Sr.Nos.1 to 3 and 5 to 9 does not fall within the requisite parameters, however, the Authority can consider those offences while passing the order. He took me through the impugned order to satisfy that subjective satisfaction has been recorded.

5. I have been taken through the statutory notice issued under Section 59 of the Police Act, which is silent regarding the particulars of in-camera statement. The action of externment is based on total 11 offences, out of which the offence at Sr.Nos. 1, 10 and 11 only meet the requirement. The learned Counsel appearing for the petitioner submitted that since irrelevant consideration also

forms part for basing action, the entire order vitiates. To substantiate said contention, he relied on the decision of this Court in case of **Shabbir @ Shahu Mohammad Shaikh .vrs. The State of Maharashtra and others – 2013 SCC OnLine Bom 1069**. In this case, it is observed that if the order is based on mixed consideration, i.e. partly relevant and partly irrelevant, then such action would be bad, as it is not possible for the Court to decide as to what extent the irrelevant grounds have been considered. Besides that, while passing the order for maximum period of two years, the Authorities have not recorded subjective satisfaction, which is also against the decision of Supreme Court in case of **Deepak Laxman Dongre .vrs. The State of Maharashtra and others – Criminal Appeal No.139/2022 decided on 28.01.2022**.

6. In view of above, the impugned action does not sustain in the eyes of law, hence, the order of externment passed by respondent no.2 Deputy Police Commissioner, Amravati dated 31.01.2022 is hereby quashed and set aside. The authorities are at liberty to initiate fresh action, if circumstances warrants so, however,

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strictly in accordance with the law.

7. Writ Petition is accordingly allowed and disposed of.

Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE