

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

CRIMINAL WRIT PETITION NO. 882/2021

Hitesh @ Bittu Naresh Sawadiya,
aged about 25 years, Occ. Private,
R/o. Tekdi Line, Gawlipura, Nagpur.

... **PETITIONER**

VERSUS

1. Divisional Commissioner Nagpur
Division, Dist. Nagpur.
2. Deputy Commissioner of Police
Zone-2, Nagpur City.
3. State of Maharashtra through
PSI Sitabuldi, Police Station,
Sitabuldi, Nagpur, Dist. Nagpur

... **RESPONDENTS**

Mr. Virendra Surendra Mishra, Advocate for petitioner.
Mrs. M. H. Deshmukh, APP for respondent/State.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **11.08.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner has been externed by the respondent No. 2 Deputy Commissioner of Police Zone-2, Nagpur City for a period of one year from the entire Nagpur district. The order has been passed in terms of Sections 56(1)(a)(b) of the Maharashtra Police Act.

4. The learned counsel appearing for the petitioner would contend that the impugned order is based on the stale offences and thus, the Externing Authority erred in recording subjective satisfaction about the anticipated threat to the Society. It is contended that the externment is based on six offences out of which offence at Serial No. 1 to 3 are only bodily offences covered under Chapter XVI of the Indian Penal Code which are of the year 2017 to 2018. He would submit that the rest of the offences at Serial Nos. 4 to 6 pertain to the affray offence under the Motor Vehicles Act and non-obedience of public order which could not have been considered. Thus, the prime contention is that the offence at Serial No. 1 to 3 which are preceding to the year 2019 whilst the impugned action is taken after two years. In support of said contention, the petitioner has relied on the decision of the Supreme Court in case of *Deepak Vs. State of Maharashtra and others, 2022 SCC Online SC 99*, wherein the Supreme Court observed that on the basis of stale offences, the impugned action of externment would not sustain.

5. Per contra, the learned Additional Public Prosecutor resisted the petition by submitting that there is sufficient material for passing externment order. It is submitted that the offence at Serial No. 5 though under the Motor Vehicles Act, it still falls under Chapter XVI of the Indian Penal Code as the provision of Section 337 of the Indian Penal Code has been invoked. Moreover, it is submitted that the Authority has recorded subjective satisfaction and thus, the order is unimpeachable.

6. The petitioner was served with statutory show cause notice and on receipt of reply, the impugned order has been passed on 02.11.2021. The externment has been based on total six offences as provided in the chart incorporated in the order itself. Undisputedly, the offences at Serial Nos. 1 to 3 which are having crime Nos. 178/2017, 414/2017 and 451/2018 pertain to bodily offences falling under Chapter XVI of the Indian Penal Code. Though it is submitted that offence at Serial No. 5 bearing crime No. 476/2020 relates to Section 337 of the Indian Penal Code, however it is apparent that out of rash and negligent driving, the said offence was committed, wherein hurt has been caused. Thus, though technically the said offence falls under Chapter XVI of the Indian Penal Code, however, the import of crime was relating to the rash and negligent driving. As regards to the

offences at Serial Nos. 4 and 6 are concerned, they are of petty nature. Thus, the offences which could be considered are at Serial Nos. 1 to 3 and the last offence is registered in the month of November 2018. Apparently, the impugned action has been taken after two years from the said crime. Admittedly, no bodily offence falling under Chapter XVI and XVII of the Indian Penal Code has been registered within two years against the petitioner, besides offence at Serial No. 5 which is dealt above. Thus, the impugned action is based on the stale offences meaning thereby, there is no live-link for recording subjective satisfaction about likelihood of danger to the public order.

7. In view of above, impugned order would not stand in the eyes of law. The petition is allowed. Impugned orders dated 05.12.2021, 02.11.2021 and show cause notice dated 25.10.2021 are hereby quashed and set aside.

8. Petition stands disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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