

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 137 / 2023

Taufiq @ Kalya S/o Nizam Shaikh
Age : 24 years, Occu.: Labour,
R/o. Near Old Panchayat Samiti,
Pathardi Road, Tal. Pathardi,
Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Divisional Commissioner,
Nashik Division, Nashik,
Tal. & Dist. Nashik.
3. Externment Tribunal @ Superintendent of Police,
Sub-Division, Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar.
4. Sub-Divisional Police Officer,
Sub-Division, Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar.
5. The Police Inspector,
Pathardi Police Station,
Tal. Pathardi, Dist. Ahmednagar.

...Respondents

AND

Criminal Writ Petition No. 1352 / 2022

Faruk S/o Sharif Shaikh

Age : 43 years, Occu.: Agriculture,

R/o. Pathardi, Tal. Pathardi,

Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,

2. The Divisional Commissioner,
Nashik Division, Nashik.

3. The Superintendent of Police,
Dist. Ahmednagar.

4. The Police Inspector,
Pathardi Police Station,
Tal. Pathardi, Dist. Ahmednagar.

...Respondents

AND

Criminal Writ Petition No. 1353 / 2022

Afridi @ Zuber s/o Faruk Shaikh

Age : 20 years, Occu.: Student,

R/o. Pathardi, Tal. Pathardi,

Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
2. The Divisional Commissioner,
Nashik Division, Nashik.
3. The Superintendent of Police,
Dist. Ahmednagar.
4. The Police Inspector,
Pathardi Police Station,
Tal. Pathardi, Dist. Ahmednagar. **...Respondents**

AND

Criminal Writ Petition No. 1349 / 2022

Bhaiyya s/o Usman Shaikh
Age : 21 years, Occu.: Business,
R/o. Pathardi, Tal. Pathardi,
Dist. Ahmednagar. **...Petitioner**

Versus

1. The State of Maharashtra,
2. The Divisional Commissioner,
Nashik Division, Nashik.
3. The Superintendent of Police,
Dist. Ahmednagar.
4. The Police Inspector,
Pathardi Police Station,
Tal. Pathardi, Dist. Ahmednagar. **...Respondents**

Mr. K.N. Shermale a/w Mr. Sayyed Umair Pasha A. Quader,
Advocate for petitioner in Writ Petition No.137/2023.

Mr. P. M. Kulkarni, APP for Respondent/State in Writ
Petition No.137/2023.

Mr. Nilesh S. Ghanekar, Advocate for the petitioner in Writ
Petition No.1349/2022, 1352/2022, 1353/2022.

Mr. S.R. Yadav Lonikar, APP for Respondent/State in Writ
Petition No.1349/2022.

Mr. P.N. Kutti, APP for Respondent/State in Writ Petition
No.1352/2022, 1353/2022.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 17th MARCH, 2023.
PRONOUNCED ON : 19th APRIL, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally with consent of the parties.
3. These petitions are arising out of similar set of facts and are originated from same order and therefore are taken up together.

4. The competent authority and Superintendent of Police, Ahmednagar received a proposal from the police inspector, Pathardi police station, for taking action of externment against these petitioners under Section 55 of the Maharashtra Police Act. The proposal was sent by following procedure as prescribed under the Act. After receipt of the proposal show cause notices came to be issued to all the petitioners. Hearing was given and after hearing order was passed. All the petitioners came to be externed from Ahmednagar District for a period of 15 months.

5. The petitioners namely Taufiq @ Kalya s/o Nizam Shaikh in petition no.137/2023 and Bhaiyya Usman Shaikh in petition no.1349/2022 filed appeal no.44/2022 before the Divisional Commissioner, Nashik. The petitioner in petition no.1352/2022 filed an appeal bearing appeal no.50/2022, whereas the petitioner in petition no.1353/2022 filed appeal bearing appeal no.48/2022. All the said appeals came to be decided on 02.08.2022. The petitioners are thus before this Court.

6. The action was initiated by issuing a notice dated 29.12.2021 under Section 55 of the Maharashtra Police Act. The petitioner in petition no.137/2023 is shown to be leader of the gang in the said notice. They were asked to furnish explanation as to why action should not be taken against them by externing them from Taluka Paithan District Aurangabad, Taluka Ashti District Beed and entire District of Ahmednagar. It was stated in the notice that petitioners are involved in the offences stated in the notice. It is stated that all these petitioners are engaged in the activities, thereby they are a threat to peace in Ahmednagar. It is also stated that there are statements recorded of some persons, wherein they have stated that those persons are not ready and willing to openly give statements against the petitioners because of the terror. After receipt of the notice, petitioners replied the notices saying that there is no live link between the offences. In most of the offences, petitioners are already acquitted. The offences mentioned against the petitioners are not of serious

nature. In most of the cases, complaints are only at the stage of investigation. There is no conviction recorded in any of the cases against the petitioners etc.

7. The learned authority after hearing of the petitioners, recorded that the explanation is not found to be satisfactory. The petitioners were represented by the advocates, their arguments were heard. The authority formed opinion that it was fit a case to pass order of externment. He recorded that there are total eight cognizable offences pending against the gang. The gang leader has committed 18 offences, wherein dangerous weapons like knife are used. The members always keep with them dangerous weapons and they are engaged in giving threats to the common people. It is also further recorded that action is also taken against them under Section 107 and 110 of the Cr.P.C. and passed an order. The petitioners therefore preferred appeals to the learned Divisional Commissioner, Nashik mainly contending that the authority has not considered the defence of the

petitioners. Most of the offences are at the stage of investigation of police. There is no conviction recorded in any of the offences and still authority has drawn conclusion that the petitioners are liable for action as illegal against the record.

8. The learned Divisional Commissioner concluded that all the petitioners are members of the gang. They are engaged into activities those are dangerous for the society. Though there is no conviction recorded against any of the members, however it is necessary to take action in extra ordinary circumstances. The main reason given by the learned Commissioner is that the proper procedure was followed before taking action. He also concluded that there is threat to the life and property of common people. The learned Commissioner came to conclusion that looking to the nature of the offences and the area in which the offences are committed, it would be proper only to extern the persons from limits of Pathardi Taluka and modified the order accordingly by his judgment and order dated 02.08.2022.

9. In petition no.1349/2022, it is argued that only offence is shown against him to be pending under is Section 307. However except that there is no material against him. There is also a cross complaint in the said offence. It is submitted that there is no material to show that he is acting as a member of the gang. When only offence is pending against one of the alleged member under Section 307, cannot be used for taking action under Section 55. It is necessary to show that all the alleged activities are by all the members of the gang to show that they are acting as a member of the gang. He submits that there was no cause of action to take action of externment. The alleged secret statement does not show that those are serious in nature. Thus impugned order deserves to be quashed and set aside.

10. In writ petition no.137/2023, it is submitted that it is clear that though the offences alleged against petitioner are only in Pathardi Taluka, still the action proposed was for entire district of Ahmednagar and three Taluka from

adjoining district clearly shows that the authorities were predetermined to take action. From the table in the notice, it is clear that he is acquitted from five cases and there is no conviction recorded in other cases and most of the cases are only at the stage of investigation. He submitted that though secret statements were recorded, there is no detail description given in the notice and thus he could not get an opportunity to defend his case.

11. Learned Advocate for the petitioner in Writ Petition No.1352/2022 submits that as per the chart, petitioner is shown accused only in the crime registered no. 342 for the offences punishable under Sections 307, 324, 337, 338, 323, 504, 143, 147, 148, 149 of the Indian Penal Code and Sections 4, 25 of the Arms Act. Further he is shown as accused in crime no.3/2015 for the offences punishable under Section 142 of the Maharashtra Police Act and another crime no. 196/2013 for the offences punishable under Sections 323, 504, 506 and 3(1)(10) of the Atrocities Act.

The first offence is only at the stage of investigation. The second offence i.e. crime no.63 is pending trial and in the third offence, he is acquitted. Thus there is no conviction recorded against the petitioner in this petition. So far as petitioner/Afridi in petition no.1353/2022 is concerned, he is shown as accused only in one crime that is Crime No.342/2021 for the offence punishable under Sections 307, 324, 337 of the Indian Penal Code. He thus submits that there is no sufficient material to take action under Section 55 of the Mumbai Police Act. The action initiated itself is thus without sufficient material. None of the requirement or condition is fulfilled.

12. The learned Advocate relied upon the judgment in the case of **Pravin B. Mane and Ors. Vs. State of Maharashtra and Ors.**, wherein this Court by relying upon the judgment in the case of **Ahammad Mainuddin Shaikh Vs. State of Maharashtra** reported in 2013(4) Bom.C.R.(Cri.) 559. While dealing with Section 55 of the Act, the impugned action is

quashed. The following paragraph from the judgment in the case of Ahmmad Mainuddin Shaikh (supra) is useful for the purpose of this petition.

“For invoking the provision of Section 55 of the Bombay Police Act, it has to be shown that persons are acting as gang or body of persons. It is further observed that Section 55 of the Act contemplates a collective action against the gang or body of persons and, therefore, the final direction that is required to be issued in terms of this section would also have to be necessarily against each member of the gang and not against one or a few of them on selective basis.”

13. He further relied upon the judgment of this bench in the case of **Abasaheb Balasaheb Warkhede Vs. State of Maharashtra and Ors.**, delivered in Writ Petition No.1428/2021 dated 03.03.2022, wherein this Court has considered that though the petitioner therein is shown to be involved in five offences, he was not convicted in any of offence registered against him. There was no sufficient material on record to show that the criminal activities in

concert with the other members as a gang or body of persons. In the said case, this Court had quashed the order of externment against the petitioner therein.

14. Further reliance is placed upon a judgment in the case of **Shoeb @ Sharif @ Shafya Khan Aasif Khan and Ors. Vs. The State of Maharashtra and Ors.** delivered in Criminal Writ Petition No.638/2021. It was held that the material relied upon by the authority in that case was not sufficient to make out any case against the petitioners as member or the chief of the gang or a body of persons. It is further held that involvement of petitioners in two offences cannot be taken to be sufficient material to brand them as gang members or chief of gang.

15. Learned Advocate for the petitioner in petition no. 1352/2022 submits that against Farukh, there are only two cases pending at present and from one case, he is acquitted. So far as petitioner/Afridi is concerned, only one case is pending against him and certainly no case is made out to

take action against these two petitioners.

16. The learned APP in support of externment order submitted that already the learned Divisional Commissioner has taken reasonable view. Though the petitioners were externed from the entire district of Ahmednagar, still the Commissioner looking to the facts, has limited the order only from one Taluka i.e. Pathardi. He submits that before taking action by the competent authority, sufficient opportunity was given to the petitioners and it is only thereafter action is taken and no interference is called for.

. Looking to the material and the judgments of the High Court, this Court has to see as to whether there is sufficient material or the ground to sustain action of externment against the petitioners. For the same purpose, we need to see Section 55 of the Maharashtra Police Act, which is reproduced as below.

"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 specially 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."

. It is necessary for the said purpose to see whether the prior requirement is fulfilled. Considering this, the Hon'ble Apex Court in the recent judgment in the case of **Deepak s/o Laxman Dongre Vs. The State of Maharashtra & Ors.**, reported in 2022 LiveLaw (SC) 93, has held that the action of externment affects the liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. The Hon'ble Court considered the case of **Pandharinath Shridhar**

Rangnekar v. Dy. Commr. of Police, State of Maharashtra, (1973) 1 SCC 372, in which it is held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision. It is further held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For

passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapter XII, XVI or XVII of the IPC. In that case the Hon'ble Court had allowed the appeals by quashing the order of externment as well as the judgment of the High Court.

17. In this view, we need to test the material on record in the present case. From the chart, it is seen that not in a single case, there is conviction recorded by the Court against the petitioner/ Taufiq in petition no. 137/2023. The offences shown to be pending are total 6 in number. In two cases that is crime no.47/2016 and 33/2016, he is acquitted. In three cases, there is investigation in progress. Only one case is pending against him. The learned

Commissioner while considering appeal has mainly considered that the competent authority has given sufficient opportunity to the petitioners. Though it was pointed out that in case of Taufiq, petitioner in petition no.137/2023, he is acquitted in four offences out of seven offences filed against him and in respect of Bhaiyya, petitioner in petition no. 1349/2022, there is only one case pending, still has confirmed the order by reducing the area of operation of the order. That it was necessary for the Commissioner to consider that mere involvement in one crime certainly is not sufficient to take action of externment. Thus the action against both these petitioners in petition no.137/2023 and petition no.1349/2022 is without sufficient material.

18. The action under Sections 107 and 110 appears to have been taken against the accused person that is chapter case. It is seen that against Taufiq/petitioner in petition no.137/2023, such action is taken in three cases. Two are of 2016 and one is of 2019. In the case of Farukh, action

under Section 110 is taken only in one case and the externment action was taken in 2014 under Section 56(1)(a) (d). Thereafter a chapter case is registered against him after 2018. This Court holds that there was no live link and sufficient material against both these petitioners to take action of externment.

19. Coming to the petition no.1352/2022 and petition no.1353/2022, though it was pointed out in case of Farukh that there are only two offences mentioned in the notice and he was not convicted in any of the offences still offences in this case also, the learned Commissioner has mainly considered that a notice was given by the competent authority and after notice he was given an opportunity and on that ground, has maintained the order by reducing the area of operation. In case of Farukh, there are no chapter cases pending or filed against him and still the action was maintained. So far as Afridi is concerned, only one offence was shown against him that is Crime No.342/2021 in which

all members are shown as accused. There are also it is mainly considered by the Divisional Commissioner that the opportunity was given of hearing pursuant to the notice and justified the action by reducing area of operation of the order.

20. Taking over all view and the facts and record of the case, it is seen that the material though was available against the persons, it was not sufficient enough to take drastic action so as to take away liberty of the petitioners. Before the learned Divisional Commissioner, all these grounds were taken about the sufficiency of the material, it was necessary for the authorities to have consider and discuss as to how this material was sufficient to show the subjective satisfaction of the authorities. The learned Divisional Commissioner has mainly considered, mainly as already discussed that the opportunity of hearing was given, certainly that cannot be sole criteria to uphold the order. It was necessary to consider as to whether really the

subjective satisfaction is reflected from the order. Merely following procedure is not sufficient in taking the action of externment. As held by the Hon'ble Apex Court in the case of Deepak s/o Laxman Dongre (supra), the action of externment is a drastic action taking away liberty of a person and therefore utmost care is required while taking such action. In this view of the matter, this Court finds that the impugned action deserves to be quashed. The petitioner therefore deserves to be allowed. Hence the following order.

O R D E R

- (i) All the petitions are allowed. Rule is made absolute in terms of prayer clause 'B'.
- (ii) With this, all petitions are disposed off.

[KISHORE C. SANT, J.]