

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

15 CRIMINAL WRIT PETITION NO.229 OF 2023

**MILIND AVCHIT BAISNE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.Sanket N. Suryawanshi, Advocate for the petitioner.
Mrs.D.S. Jape, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 01.03.2023**

PC :-

01. Heard for some time. The learned Advocate for the petitioner submits that the impugned order passed by the Sub-Divisional Officer externing the petitioner from Dhule Taluka for six months is passed without proper application of mind. No proper procedure is followed. There is no mention of certain offences in the notice. In some of the offences, even he is not named, which are referred in the order etc. Therefore, the order is arbitrary.

02. The learned APP raised preliminary objection as to maintainability of the petition, since the petitioner has directly approached this Court without availing alternative remedy. He points out that there is

remedy under section 60 of the Bombay Police Act to file an appeal against the impugned order. He submits that no special case is made out to give go-bye to the alternative remedy.

03. The learned Advocate for the petitioner relies upon judgment in the case of **Shri Manjit Singh Moolsingh Sethi & Anr. Vs. State of Maharashtra & Anr., reported in 2008 ALL MR (Cri) 2701**, wherein the Division Bench of this Court has held that though alternative remedy is available, it will not be absolute bar to entertain the petition by relying upon judgment reported in the case of Umar Mohammed Malbari Vs. K. P. Gaikwad, 1988(2) Bom.C.R.724 and also in the case of Dhananjay Manohar Sapkal Vs.State of Maharashtra & Anr., 2005 (2) MLJ 384. In that case it is observed that in case where the petitioner is able to establish that the exercise of power under section 56 or 57 of the Act has been arbitrarily done and that the order has been passed without application of mind and bias on the part of the authority is apparent on the face of record, nothing could prevent the petitioner from seeking relief from the High Court in writ jurisdiction. The learned Advocate further invites attention wherein the Court has considered in the order that established fundamental right of the petitioner is taken away and on that

count also the Court had considered that alternative remedy is no bar. This proposition need not be controverted. However, it needs to be seen that when the alternative remedy is available, normal rule is to avail alternative remedy, unless case is made out of fundamental defect in the procedure followed by the authority passing the order or that the remedy of appeal cannot be exhausted etc.

04. This Court finds that no exceptional case is made out to entertain the petition directly by this Court. Therefore, this Court is not inclined to entertain the petition. On this, the learned Advocate for the petitioner prays that the authority be directed to dispose off the appeal in case it is presented before the appellate authority within stipulated period. He submits that the petitioner's main activity is a television anchor and he is also a law student and therefore his case be considered by the appellate authority within stipulated period. In view of the same following order :-

05. The petitioner is at liberty to avail alternative remedy. In case the petitioner approaches the appellate authority with appeal challenging the order, the authority shall make endeavour to decide the appeal as early as

possible and preferably within a period of two weeks from the date of its presentation.

06. The petition is disposed off.

[KISHORE C. SANT, J.]