

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

74 CRIMINAL WRIT PETITION NO.243 OF 2023

**SAGAR @ SHAKTIMAN TUKARAM KOKANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. K. N. Shermale, Advocate for the petitioner
Mr. P. M. Kulkarni, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 23rd MARCH, 2023

P. C.

1. Heard the learned advocates for the parties.
2. By way of this petition, the petitioner is challenging an order passed by the learned Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No.135/2022 dated 26-12-2022 wherein the appeal filed by the petitioner challenging the order of externment passed by the Sub-Divisional Officer, Sangamner dated 04-10-2022 is confirmed. The petitioner is externed from entire district of Ahmednagar for a period of one year i.e. from 06-10-2022 to 05-10-2023.

3. Learned advocate for the petitioner submits that said action is taken after issuing notice dated 30-08-2022. There are eight offences pending against the petitioner as per the chart given in show cause notice. He submits that out of 8 offences, 3 offences are chapter cases and out of 5 offences in 2 offences investigation is yet in progress and in three offences the trial is pending. He submits that in none of the matters he is convicted. He further submits that in all the offences he was on bail. He submits that all the offences are against person or property. The offence only in respect of 379 of IPC with Sections 3 & 15 of Environment (Protection) Act cannot be said to have deterrent effect on the society.

4. Learned advocate for the petitioner submits that though he had filed reply still same was not properly considered by the learned SDO and he passed the order. It is a specific case that all the offences are registered either with the Sangamner City Police Station or with Sangamner Taluka Police Station and

still the order is passed in respect of entire Ahmednagar District which is certainly excessive. He further submits that in reply he had submitted before the Sub-Divisional Officer that he has to attend the court on the date in the trial. However, that was also not considered. He further submits that taking the order as it is, it is seen that there is no sufficient material to attract the provision of 56(1) of the Bombay Police Act and hence the order is without sufficient material. On all these grounds he had filed an appeal before the learned Divisional Commissioner, Nashik. He submits that even the Divisional Commissioner, Nashik has failed to appreciate the case properly and confirmed the order.

5. Learned advocate for the petitioner further relies upon the judgment delivered by the Hon'ble Apex Court in the case of Deepak Laxman Dongre Vs State of Maharashtra and others in Criminal Appeal No. 139/2022. The Hon'ble Apex Court in that case, by considering the provision of Section 56(1) of the Bombay Police Act held that it needs to see as to whether the activities alleged against the petitioner satisfy the condition

under Section 56(1). If those conditions are not fulfilled then the order of the externment needs to be set aside. It is further observed that such order directly affects the right of the citizen guaranteed under Article 19(1)(d) of the Constitution of India. It was further held that authority has to consider the material properly before passing an order of the externment which is drastic action.

6. Learned advocate for the petitioner further relies upon the judgment delivered by the Division Bench of this court in Criminal Writ Petition No. 878/2017 dated 28-07-2017 wherein this court by considering the judgment in the case of *Pandharinath Shridhar Rangnekar Vs Dy. Commissioner of Police, State of Maharashtra* reported in AIR 1973 SC 630 set aside the action of externment. He further relied upon the judgment delivered by the Division Bench of this court in writ petition No. 97/2022 dated 25-03-2022 wherein this court had held that in none of the cases there was a conviction that is mentioned in the externment order & conclusion was recorded

against the petitioner. Though it was a case that in four cases there was acquittal but still what is material is that there is no conviction in that offence. In this case also this court finds that there is no conviction recorded by any of the courts.

7. Looking to the allegations as it is, it is seen that none of the offences can be said to be attracting the provision of section 56 of the Act.

8. Learned APP vehemently opposes the petition by submitting that both the authorities below have rightly considered the material. The petitioner is sand mafiya in the area. He invited attention by producing on record the secrete statements of witnesses A & B. The persons therein have stated that they were threatened by the petitioner and because of the threats they are not willing to give statement openly and they have also not filed any complaint against the petitioner. This court finds that taking those statement as it is no sufficient material is shown by the prosecution to take such an action.

9. This court finds that a case is made out to quash and set aside the impugned order. The petition, therefore, is allowed in terms of prayer clause-B.

[KISHORE C. SANT, J.]

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