

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CRIMINAL WRIT PETITION NO.439 OF 2022

ATISH RAVIKANT (RAVINDRA) KHARAT AND OTHERS
VERSUS
THE DIVISIONAL COMMISSIONER, NASHIK DIVISION, NASHIK AND
OTHERS

Mr.A.M. Karad, Advocate for the petitioners.
Mr.S.R. Yadav-Lonikar, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 05.01.2023

PC :-

01. Heard learned Advocates for the parties. The petition is taken up for final hearing by consent of the parties.

02. The petitioners against whom the externment order is passed and subsequently confirmed by the Divisional Commissioner, Nashik, are before this Court. Petitioner Nos.1 to 4 are real brothers and petitioner No.5 is not belonging to same family. The Sub-Divisional Officer issued show cause notice on 25.02.2021 to the petitioners under section 59 of the Maharashtra Police Act, who conducted enquiry. It is noted that various offences are pending against the petitioners and therefore he submitted report to the Superintendent of Police, Jalgaon. After receipt of report, the Superintendent

of Police issued show cause notice to the petitioners on 10.06.2021 asking as to why action should not be taken against them under section 55 of the Act and why they should not be externed from the District of Jalgaon for a period of two years. In the show cause notice total seven offences are mentioned. Six offences are registered with Bhusawal City Police Station and one offence is registered with Bhusawal Bajarpeth Police Station and there are three proceedings in the nature of preventive action taken against each of the petitioners excluding petitioner No.4. After issuing notice, the petitioners submitted reply dated 19.06.2021. After receipt of the reply, the Superintendent of Police, Jalgaon passed an order dated 05.08.2021 externing the petitioners for a period of two years from Jalgaon district.

03. Being aggrieved by the order, the petitioners approached the Divisional Commissioner, Nashik by filing Externment Appeal No.92 of 2021. The Divisional Commissioner after hearing the parties, confirmed the order passed by the Superintendent of Police by its order dated 20.12.2021. It is this order, which is challenged by the petitioners in this petition.

04. Learned Advocate for the petitioners submits that though there

are seven offences mentioned in the show cause notice, except offence No.377 of 2020 registered with City Police Station, Bhusawal, there is no offence wherein all the petitioners are shown as accused persons. He further submits that in reply it is specific case of the petitioners that in not a single offence, the petitioners are held guilty and trials are still going on. It is also stated that petitioner No.3 and 5 are directed to give attendance to the police station on particular days during 11.00 am to 02.00 pm. It is submitted that if the petitioners are externed, it would be against the conditions imposed by the Court while granting bail. The statements of the witnesses are recorded, however, no opportunity is given to cross-examine those witnesses. It is further stated that the proposal to extern the petitioners from entire Jalgaon district is excessive. They have not committed any breach of any condition. The learned Advocate further submits that hearing was given to the Advocate. The learned Superintendent of Police, without considering the reply and without considering the arguments has passed the order without application of mind. He submits that while issuing notice, seven offences were mentioned in the notice. However, while passing the order, the authority has taken into consideration the subsequent events allegedly taken place on 19.07.2021. Thus, an extraneous material is considered while passing the order. The order

shows that the authority has considered only report submitted by the Sub-Divisional Officer and has not properly considered the reply and the arguments. He further pointed out that certain aspects, which are not mentioned in the show cause notice are also considered by the Superintendent of Police. Thus, ultimately the order is passed externing the petitioners for a period of two years from Jalgaon district. He submits that section 55 of the Act contemplates the order against a gang. In this case, except offence No.377 of 2020 registered with City Police Station, Bhusawal, in none of the offence, all these petitioners are shown to be members of one gang. There is nothing on record to show that there is gang of these petitioners. The action is taken only because of political affiliation of these petitioners with certain political party. He submits that father of petitioner Nos.1 to 4 was a Corporator and unfortunately he was murdered. Petitioner No.2 was also elected as Corporator, whose terms has recently expired. Thus, it is a political rivalry, which has made the authorities to take action against the petitioners.

05. Learned Advocate for the petitioners submits that in appeal also the learned Divisional Commissioner has failed to consider the case of the petitioners especially on the ground that there is no material to show that

there is gang of the petitioners or they are members of the same gang. The Divisional Commissioner has also not applied his mind properly. The order does now show application of mind. The Divisional Commissioner has considered subsequent incidents which were not mentioned in the show cause notice issued by the Superintendent of Police. The action can be taken only on the basis of material that was available at the time of initiation of enquiry. No subsequent incident or alleged offence has been taken into consideration. He prays for quashing and setting aside the impugned order.

06. Learned APP has vehemently opposed the petition. He justified the action taken by the authorities. He submits that there is voluminous material against the petitioners showing that because of their activities and their nature, no one is coming forward to give statement against them openly. All the petitioners are engaged in dangerous antisocial activities. He further pointed out that it is not that the authority has considered subsequent material after issuance of show cause notice. The subsequent incidents are only mentioned to show that inspite of preventive action, the petitioners have continued to indulge into such activities, which in-fact justifies the action at the hands of the authorities. It is seen that now the offences are registered

against the petitioners. However, those are registered with police station outside Jalgaon district i.e. Akola, Thane etc. He, thus, prayed for rejection of the petition.

07. Learned Advocate for the petitioners placed reliance on the judgment in Criminal Writ Petition No.531 of 2017 in the case of Ravi s/o. Raju Bhalerao Vs. The State of Maharashtra & Ors., decided by Division Bench of this Court, judgment of the Hon'ble Apex Court in the case of Deepak s/o. Laxman Dongre Vs. The State of Maharashtra & Ors., Criminal Appeal No.139 of 2022, Kamalkishor s/o. Pusaram Bang Vs. The Superintendent of Police, Jalna & Ors., 2018 ALL MR 3688, Shri Rajwardhan Babaso Patil Vs. Shri Vijaysinha Jadhav & Anr., 2015 ALL MR (Cri) 2936 and Nisar @ Nigro Bashir Ahmed Khan Vs. Dy. Commissioner of Police, Zone-VI, Mumbai & Ors., Criminal W.P. No.3259 of 2012 of this Court at Principal Seat at Mumbai.

08. In the case of Ravi s/o. Raju Bhalerao (Supra) this Court has held in para 9 that it is necessary that the officer concerned must be satisfied that the witnesses are not willing to come forward to give evidence against the

person. Notice of such satisfaction must also necessarily be given to the proposed externee under section 59 of the Bombay Police Act. It was held in that case that though notice was given, no such notice was given in so far as ground mentioned in second part of section (i) (b) is concerned. It was thus held that it was necessary to give notice to the proposed externee on the ground that he is engaged in the commission of offences punishable under Chapter XVI of the Indian Penal Code.

09. In the case of Deepak s/o. Laxman Dongre (Supra), the Hon'ble Apex Court has held that the State is empowered to make a law enabling the imposition of reasonable restriction on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by passing an order of externment must stand the test of reasonableness. In that case the Apex Court 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. It is further held that when clause (b)

is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. Further, the Hon'ble Apex Court held while considering the nature of power under Section 56, the competent authority is not expected to write a judgment containing elaborate reason. However, the competent authority must record its subjective satisfaction of the existence of the grounds in sub-section (1) of section 56 on the basis of objective material placed before it. Though the competent authority is not required to record reasons on par with judicial order, however, when challenged, the competent authority must be in a position to show the application of mind.

10. The Division Bench of this Court in the case of Kamalkishor (Supra) observed that whenever it appears to the competent authority that the movement or encampment of any gang or body of person in the area under 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 of persons or by its members, such officer may by notification addressed to the

leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. Thus, it is clear that satisfaction must be reflected in the order.

11. In the case of Nisar @ Nigro (Supra), the Division Bench of this Court has accepted the arguments of the petitioner that the exterment order was excessive as alleged activities were confined to the jurisdiction of only one police station within the area. Therefore, it was held that exterment of the petitioner in that case from other district was found to be excessive.

12. Considering all the material and the judgments cited above, this Court also forms opinion that the impugned orders passed by the authorities does not show sufficient application of mind. In the show cause notice there was reference to seven offences, registered with Bhusawal Police Station and Bhusawal Bajarpeth Police Station. These activities are confined to city of Bhusawal. However, action is taken against the petitioners and they are externed from entire Jalgaon district. Secondly, it is seen that except one offence, all these petitioners are not shown to be accused. Therefore, the petitioners cannot be said to be members of same gang. One thing needs to

be considered that petitioner Nos.1 to 4 are real brothers and they are staying in same family. Even if they are together, they cannot be said that they have formed gang. There is no sufficient material on record or at least discussed by the authorities to show that they have formed gang or they are members of a gang. Considering the orders, it further becomes clear that even the subsequent events have been taken into consideration while passing the order and no separate notice was given to the petitioners. For this reason also this Court forms an opinion that the impugned action is not taken strictly in accordance with the provisions of section 55 of the Act and in accordance with law laid down by this Court as well as by the Hon'ble Apex Court. The impugned action, therefore, needs to be set aside.

13. The Criminal Writ Petition is, thus, allowed in terms of prayer clause (B) and disposed off accordingly.

[KISHORE C. SANT, J.]