



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

CRIMINAL WRIT PETITION NO.1540 OF 2023

Sachin @ Sambhaji Nanasaheb Chaugule
Age 43 years, Occu. Automobile Battery
Dealer, R/o Asasne Vasti, Shirdi Sakuri
Shiv Road, At Shirdi, Tq. Rahata,
District Ahmednagar

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through the Principal Secretary,
Home Department,
Mantralaya, Bombay – 32
(Copy to be served on Public
Prosecutor, High Court of
Bombay, Bench at Aurangabad)
- 2) The Sub-Divisional Police Officer (SDPO),
Shirdi Division, Shirdi,
Tq. Rahata, Dist. Ahmednagar.
- 3) Sub-Divisional Magistrate,
Shirdi, At Shirdi, Tq. Rahata,
Dist. Ahmednagar
- 4) The Hon'ble Minister for Revenue &
Dairy, Mantralaya, Bombay – 32

... RESPONDENTS

.....
Mr. V.R. Dhorde, Advocate with
Mr. S.P. Nimbalkar, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents – State
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 11th DECEMBER, 2023

ORAL JUDGMENT (PER SANJAY A. DESHMUKH, J.) :

This Writ Petition is directed against the show-cause-notice dated 15/7/2023, issued by learned Sub-Divisional Magistrate, Shirdi Sub-Division, District Ahmednagar under Section 56(1)(A)(B) of the Maharashtra Police Act, for taking necessary action for externment of the petitioner for a period of two years from Ahmednagar, Nasik, Aurangabad and Pune districts.

2. Learned counsel for the petitioner pointed out that, earlier a similar show-cause-notice dated 15/7/2022 was issued to the petitioner, in which three crimes bearing (1) N.C. No.376/2016 for offence punishable under Section 427 of the Indian Penal Code, 1860 (for short IPC) (2) C.R. No.59/2017 for the offence punishable under Sections 143, 147, 341, 427 read with 34 of the IPC, and Section 7 of the Criminal Law Amendment Act and (3) Chapter Case No.53/2017 under Section 110(a), (g) of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) were considered and lastly it was held that the petitioner cannot be externed. The learned counsel further pointed out the impugned show-cause-notice dated 15/7/2023, in which those three crimes as well as two more Crimes bearing (1) C.R. No.234/2018 for the offence punishable under Sections 143, 145, 147, 148, 149 of the IPC and Section 37(1)(3) of the Maharashtra Police Act and (2) C.R. No.398/2023 for the

offence punishable under Sections 353, 323, 143, 147, 149 of the IPC are considered. From the cases arising out of C.R. Nos.173/2018, 160/2018, 176/2018 and 234/2018 the petitioner is acquitted. Learned counsel for the petitioner pointed out that, C.R. No.398/2023, which is registered about the incident dated 26/8/2022, the alleged crime is registered after four months, which is relied upon while issuing a show-cause-notice. Learned counsel further pointed out statements of secret witnesses who are referred in the show-cause-notice at Pages 51 and 52 of the Paper Book that they have not specifically stated the date and time as to when the petitioner threatened them. Lastly the learned counsel for the petitioner submitted that the action of issuing of notice by the respondent No.2 is malicious, illegal and unsustainable. He, therefore, prayed to quash the impugned show-cause-notice. In support of his contentions, he is relying upon the following authorities :-

- (1) Dnyaneshwar s/o Sopan Gite Vs. State of Maharashtra
2020 All M.R. (Cri) 3353, in which it is held that there must be material to justify the application of Section 56 of the Act.
- (2) Asif Gulam Rasool Patel Vs. R.B. Gavit & anr.
2000 All M.R. 942, in which law is laid down by this Court that if there is no material to establish proximity in the commission of earlier crime and issuance of notice under Section 59 of the Maharashtra Police Act, 1950, it has to be quashed.

3. Learned A.P.P. for the State strongly opposed the

application and pointed out the affidavit-in-reply and the grounds that equally efficacious remedy of appeal to the Divisional Commissioner under Section 60 of the Maharashtra Police Act is available. He submitted that, the question of law and order was on anvil, hence the legal action of issuing the show-cause-notice is taken. The notice contains all the reasons with supportive material. He submitted to dismiss the Writ Petition.

4. Perused the impugned notice and the documents relied upon by the both sides.

5. Section 56 of the Maharashtra Police Act reads as under :

“56. Removal of persons about to commit offence :

(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the official Gazette, extend the provisions of this Section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf –

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or

(b) 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 an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980 or (2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as “the specified area or

areas”) from which he was directed to remove himself.

(2) An officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such person that during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State send a report in writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to the State he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer in-charge of the police station nearest to the place where he may be staying.”

6. Sub-clause (b) of Section 56 of the Act requires that there must be reasonable grounds for believing that prospective defence is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII etc. of the IPC.

7. In this case, the earlier notice is compared with the impugned notice, then it reveals that, those three crimes were also considered while issuing the impugned notice. Admittedly, the petitioner is acquitted from Crime Nos.160/2018, 176/2018 and

234/2018 of Shirdi Police Station. The last crime which is relied upon by the respondent No.2 was registered about the incident which had taken place on 26/8/2022, of which the crime was registered in the year 2023. Thus, the notice does not establish proximity of crimes with the proposed detention action. According to that crime, it is alleged that, the petitioner along with his colleague went to the gate of Saibaba temple and entered into the queue of the persons standing for Darshan forcefully and obstruction was caused to the public.

8. The statements of confidential witnesses are vague in nature and not specific as to when the petitioner had threatened them. On such insufficient material against this petitioner, the respondent No.2 arrived at a conclusion to issue the show-cause-notice for action of externment. Those allegations are not establishing the essential ingredients of Section 56(b) of the Maharashtra Police Act.

9. Considering the ratio laid down in the case of Dnyaneshwar Gite (supra), the Writ Petition is maintainable against impugned notice even though equally efficacious remedy is available under Section 60 of the Maharashtra Police Act. Therefore, the arguments of learned A.P.P. is not acceptable in this regard. The impugned notice is illegal and not sustainable in the

eye of law. The petition deserves to be allowed and the same is allowed in terms of prayer clause (B).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-