



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1745 OF 2023

Suratram Harisingh Rathod and Others ...Petitioners

VERSUS

The State Of Maharashtra And Others ...Respondents

Mr. B. S. Kudale, Advocate for the Petitioners.

Mr. S. B. Jadhav, APP for Respondents.

CORAM : R.M. JOSHI, J.

DATE : DECEMBER 20, 2023

PER COURT:

1. Rule. Rule made returnable forthwith. With consent, heard finally.

2. Petitioners, who are family members, take exception to the order dated 04.08.2023 passed by Superintendent of Police, Hingoli invoking powers under Section 55 of the Maharashtra Police Act, 1951 (for short '**the said Act**') externing them for period of two years from Hingoli, District and the order passed by Appellate Authority i.e., Divisional Commissioner, Aurangabad dated 03.11.2023 modifying the said order and reducing the period of externment to one year.

3. Petitioners are resident of village Palsona, Dist. Hingoli. Petitioners nos. 2 and 3 are sons of Petitioner No. 1, while Petitioner No. 4 is his brother. Petitioner No. 5 is son of Petitioner No. 4. They claim to be agriculturist. It is claimed that they are activist of political party. It is also claimed that wife of the Petitioner No. 1 was Sarpanch for substantial period. He himself claims to be member of Grampanchayat for last 35 years. According to him, proceedings of externment were initiated at the instance of Datta Jadhav, who is political opponent of Petitioner No. 1. It is the case of Petitioners that except for one crime, which is registered in the year 2023 other two crimes are stale and there is no live link to order of externment. It is also claimed that there is no crime committed by all Petitioners together and as such, there is no evidence to show that the Petitioners operate in a gang for commission of crime in order of invoke Section 55 of said Act.

4. Learned Counsel for Petitioners submit that for invocation of Section 5 of the Act the collective action of gang is a *sine qua non*. It is submitted that

only because number of offences are registered, the same is not sufficient to prove nexus and collective action of the gang. To support his submissions, he placed reliance on the judgment of Division Bench in case of Rohit S. Kamble Vs. Deputy Commissioner of Police, Zone-X, Mumbai and Ors, 2022 ALL MR (Cri) 2181. By referring to the order impugned and material placed on record, it is contended that crime bearing nos. 53/2016 and 31/2019 have no live link and as such, they could not have been considered for the purpose of externment. It is submitted that offences of the year 2022 and crime no. 368/2022 registered with Hingoli Police Station though is registered for the offences punishable under Section 292 of IPC, *prima facie* no offence is made out on the basis of allegation made by the informant against Petitioner. It is his submission that there is no evidence in order to show that the Petitioners have committed crime as a member of gang. To support his submissions, he placed reliance on the judgment in case of Sachin Sanjay Raut Vs. The Divisional Commissioner, Amravati and Others, 2023 ALL MR (Cri) 2880.

5. Learned APP opposed the Petition by contending that the number of offences are registered against the Petitioner No.1 and considering the fact that they are members of family, there is no fault of the concerned authority in coming to the conclusion that all are operating together for commission of crimes.

6. Record indicates that the concerned authority has sought invocation of Section 55 of the said Act only. For ready reference, same is reproduced as under:

55. Dispersal of gangs and body of persons.

Whenever it shall appear in Greater Bombay and in areas in which a Commissioner is appointed under Sec. 7 to the Commissioner and in a district to the District Magistrate the Sub-Divisional Magistrate or the Superintendent 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 which in such time as such officer shall prescribe, and not to enter the area for the area 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.

7. Perusal of said provision indicates that whenever it appears to the authority appointed under the provisions of this Act 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 initiate action in this regard. For the purpose of invocation of powers under Section 55 of the Act there has to be prejudicial collective action by a gang, it being a *sine qua non*. In absence of any such evidence to show that the Petitioners have collectively acted as a gang, powers under Section 55 of the Act cannot be invoked. Merely because, other offences are registered against one of the Petitioners, it would not be sufficient to prove

the nexus and collective or concentrated action against all of them. Except one crime bearing no. 164/2023 registered with Basamba Police Station, Hingoli, there is no crime registered against Petitioners other than Petitioner No. 1. Thus, in the fact of the case Authority lacks jurisdictions for initiating action under Section 55 of the Act.

8. Herein this case, Section 56 of the Act is not invoked. Thus, criminal cases against Petitioner No. 1 would not be relevant for consideration. Even otherwise, except for one offence registered bearing no. 164/2023, which is under investigation, other offences are stale in nature. There is absence of live link between crimes registered against Petitioner No. 1 and action of externment. In any case, except for four NC and one crime of year 2023, there is no evidence in order to show that even Petitioner No. 1's presence independently is likely to be prejudicial to the society at large. This Court is of view that the invocation of powers under Section 56 of Act in this case, is nothing but abuse of powers.

9. In the light of above discussion, orders impugned cannot sustain. The Petition, therefore, deserves to be allowed. Resultantly, order dated 04.08.2023 passed in O.No. 1960 / MPK-55 / externment / Order/LCB/2023 by Superintendent of Police, Hingoli and order passed by Appellate Authority i.e., Divisional Commissioner, Aurangabad in 2023/GAD/Desk-1/Pol-1/Externment/CR-88 dated 03.11.2023 are hereby quashed and set aside.

10. Petition stands allowed in terms of prayer clause 'B'. Rule made absolute in above terms.

(R.M. JOSHI, J.)

Malani