

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.775 OF 2023

Haroon Rashid Mohammed Hussain
Shaikh

... Petitioner

V/s.

The State of Maharashtra and Ors

... Respondents

Adv. Manoj R. Gowd with Adv. Kavita Durgapal for the
petitioner.

Mr. Arfan Sait, APP for the State.

Mr. Monkane, API Trombay Police Station.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2023

P.C.:

1. The petition takes exception to the order of externment passed by respondent No.2 externing the petitioner along with his gang members for a period of 18 Months in exercise of power under Section 55 of the Maharashtra Police Act, 1951.

2. The respondent No.2 issued a show cause notice to the petitioner and other gang members which was served on the petitioner on 25th October 2021. The petitioner filed reply to the said show cause notice and explained that Crime No.215 of 2021 has been registered against him when the son of his sister went to bring food for them. He is released on bail by order of Sessions Court.

3. The respondent No.2 based on offences committed by gang and statement of secret witness recorded a subjective satisfaction that the movement of gang consisting of petitioner is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful desires are entertained by such gang. The order was passed against the petitioner along with four other accused as of gang. Appeal against the order by the petitioner has been rejected. Hence, the petitioner has filed present petition.

4. The learned advocate for the petitioner submitted that, there is no livelink in the date of show cause notice and passing of order by respondent No.2. The action is politically motivated. The gist of statements of secret witness has not been furnished. The co-accused has been acquitted of one of the offence registered against him. There is delay of four and half months in deciding the appeal. In support of his contentions. He relied on following judgments in the case of **Subhash Jethu Patil Vs. State of Maharashtra and Anr**, in Criminal Writ Petition No.1406 of 2011 decided on 27th August, 2012, **Mr. Masiullah Mohid Idrishi Vs. The Assistant Commissioner of Police Zone IV, Bhoivada Division Mumbai and Ors**, in Criminal Writ Petition No.760 of 2010 decided on 15th July, 2010, **Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra**, reported in 1972 ALLMR OnLine 759 (S.C), **Abdul Wahab Vs. The Sub-Divisional Magistrate Malegaon And Another**, reported in 1991 ALLMR ONLINE 853, **Dhondiram Appa Hatkar Vs. State of Maharashtra**, reported in 1987 ALLMR ONLINE 597, **Santosh Ramprasad Sharma Vs. Dy. Commissioner of Police Crime Branch and Anr**, reported in 1992 ALLMR ONLINE 821, **Balu**

Shivling Dombe Vs. The Divisional Magistrate, Pandharpur and Anr, reported in 1968 ALLMR ONLINE 415, **Mr. Kishor Rajaram Durge Vs. The Deputy Commissioner of Police & Ors**, reported in 2003 ALL MR (Cri) 2023, **Felix Ambrosa D'Souza Vs. State of Karnataka**, reported in 2003 ALL MR (Cri) 2025 (S.C.).

5. *Per contra*, learned APP for the State submitted that the satisfaction which is madatory under Section 55 of the Maharashtra Police Act, 1951 has been recorded by respondent No.2 based on objective material and sufficiency of material is no ground to interfere as essentially the order of respondent No.2 is administrative decision. Unless such decision is shown to be arbitrary, capricious or perverse, the scope of judicial review is extremely limited. In support of his submission he relied on the judgment of Apex Court in the Case of **State of NCT Delhi and Anr. Vs. Sanjeev @ Bittoo** reported in (2005) 5 SCC 181.

6. I have carefully considered submissions of the learned counsel for the parties. On perusal of the material on record and on perusal of the statements of secret witnesses, it appears that four secret witnesses have graphically described the incident wherein the petitioner along with other co-accused were moving in the area with deadly weapon of sword. They threatened the secret witnesses with dier consequences and tried to kidnap some of the witnesses. It is stated that when the persons tried to intervene the petitioner threatened them. It is stated that the act of gang of the petitioner has caused danger in the area by their encampment.

7. The impugned order passed by the respondent No.2

indicates that three cognizable and four non-cognizable offences have been registered against the petitioner. Crime No.215 of 2021 is registered under Sections 307, 324, 323, 504, 143, 146, 147, 149 of the Indian Penal Code, 1860. The offences are either under Chapter 15 or 17 of the Indian Penal Code, 1860. Based on such collective wisdom, the respondent No.2 has recorded a subjective satisfaction on objective material including statements of four secret witnesses. As held in the case of **Sanjeev @ Bittoo** (supra), the insufficiency of material is no ground to interfere.

8. The judgments relied upon by the petitioner arise out of peculiar facts of each case. Based on independent consideration, this Court set aside the order.

9. In the facts of the present case, considering the nature of offence registered against the petitioner and other members of his gang, no reason to interfere with the subjective satisfaction is made out.

10. Therefore, The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)