

VRJ

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

WRIT PETITION NO.973 OF 2023

Abdul Rehman Akhlaq Peerzade ... Petitioner
V/s.
Divisional Commissioner Konkan Region
& Ors. ... Respondents

Mr. Rajas Naik for the petitioner

Mr. A.R. Patil, APP for the respondent No.3/State.

CORAM : AMIT BORKAR, J.

DATED : MAY 2, 2023

P.C.:

1. This petition takes exception to the order passed by the Divisional Commissioner, Mumbai, Konkan Division on 15th February 2023 in appeal an appeal filed by the petitioner challenging order passed by the Deputy Commissioner of Police Zone-2, Bhivandi, Thane dated 17th October 2022 externing the petitioner from areas of Thane, Mumbai City, Mumbai Suburbs and Palghar district for a period of one year from the date when he removes himself from those areas, in exercise of power under section 56(1)(a)(b) of the Maharashtra Police Act, 1951.

2. On 10th August 2022, the respondent No.2 issued show cause notice to the petitioner seeking explanation as to why the

petitioner shall not be externed from Thane, Mumbai City, Mumbai Suburbs, Palghar and Raigad. The petitioner filed reply to the show cause notice. On 17th October 2022, respondent No.2 externed the petitioner for a period of one year in exercise of power under section 56(1)(a)(b). The appeal against said order has been dismissed by the impugned order hence the petitioner has filed present petition.

3. The first contention raised before this Court is that there is no role attributed to the petitioner in C.R. No.212 of 2017 and in F.I.R. No.407 of 2021, petitioner is not named. It is submitted that in camera statements are stereotype and, therefore, the material which has been taken into account by the competent authority cannot be said to be sufficient to take recourse to draconian provision such as section 56 of the Act which restricts the locomotion of the petitioner to enter particular area which in turn infringes upon his fundamental right. To support above preposition, reliance was placed by the petitioner on decision in the case of **Balu Ramasubbu Swami vs. The Divisional Commissioner Konkan Division and Others** in Criminal Writ Petition No.1937 of 2021 dated 6th July 2021 and **Rahmat Khan Alias Rammu Bismillah vs. Deputy Commissioner of Police** in Criminal Appeal No.912 of 2021 delivered on 25th August 2021.

4. Per contra, Learned APP for the State submitted that the in-camera statements indicate that the petitioner had threatened the residents and shop keepers and collected extortion money and residents of the area are apprehensive of petitioner and not willing

to depose against him. The competent authority had recorded subjective satisfaction that the movements of the petitioner was causing or calculated to cause alarm, danger to the residents of the area. He submitted that order directing externment does show existence of material and sufficiency of material cannot be gone into. He relied on judgment in the case of **State of NCT of Delhi and Anr. vs. Sanjeev @ Bittoo** reported in (2005) 5 SCC 181.

5. Having considered rival submissions and going through the record, in my opinion, the petition is devoid of merits. The show cause notice specifically refers to four offences under Chapter 16 and 17 of the Indian Penal Code, 1860 which are covered under section 56(1)(a)(b) of the Act. The show cause notice then refers to the in-camera statements which indicate that the petitioner moves in the locality threatening the residents and shop keepers, collecting extortion money and the residents are apprehensive of petitioner and not willing to depose against him. Specific instances are referred by the two witnesses whose in-camera statements have been recorded about movements of the petitioner. It is on that basis the matter was considered by the appropriate authority and subject to satisfaction has been reached that the movements and acts of the petitioner were causing or calculated to cause alarm, danger or harm to the person or property or that there are reasonable grounds for believing that the petitioner was engaged in commission of offence punishable under specified Chapter of the Indian Penal Code, 1860 and witnesses were not willing to come forward to depose against the petitioner. Therefore, it is not possible to hold that there was no material to take action against

the petitioner.

6. The scope of Judicial review in the matter of externment has been delineated by the Apex Court in the judgment of **Sanjeev @ Bittoo** (supra), wherein the Apex Court in paragraph No.24 and 25 held as under:

“24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with the question mere repetition of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.

25. As observed in **Gazi Saduddin case** [(2003) 7 SCC 330 : 2003 SCC (Cri) 1637] satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.”

7. The argument then proceeds that there is absolutely no role attributed to the petitioner in C.R. No.212 of 2017 and in FIR No.407 of 2021 anticipatory bail is granted to the petitioner. As held in **Sanjeev @ Bittoo** (supra) some material must exist warranting an order of externment. Reference needs to be made to some material on record and if such exercise is done, requirements are met. It is not the sufficiency of material but the existence of material which is sine qua non.

8. The judgment relied by the petitioner in the case of **Rahmat Khan** is the case where the demand of ransom by threat was held to be concocted to give the complaint colour of intense gravity. The complaints lodged against the petitioner which arose out of disputes between the parties, the Apex Court recorded a finding that the FIRs in the facts of the said case were clearly vindictive, retaliatory and aimed to teach a lesson to the appellant to stifle his voice. In the facts of the case, apart from registration of offence, two secret witnesses deposed against the petitioner hence the judgment in the case of **Rahmat Khan** is not applicable in the facts to the petitioner.

9. In **Balu Ramasubbu Swami**, two crimes were registered against the petitioner. This Court found that the order of externment was essentially based on registration of C.R. No.59 of 2020. It was held in the said case that genesis of occurrence of said crime was the act on the part of first informant to relieve himself near the dwelling houses. And considering the manner of assault it was found that the act of the petitioner was not found to be sufficient to draw an inference of the Act or conduct of petitioner to create sense of terror or alarm in the society. The statements of secret witnesses were discarded holding them to be committed post registration of C.R. No.59 of 2020. However, in the facts of the present case, the statements of secret witnesses indicate that the petitioner was carrying deadly weapon of knife. At the time of incident referred in the statement, the petitioner took out knife with the result passers by ran away in fear of the petitioner. Therefore, it is not open for this Court to ignore two in-camera

statements which have been relied upon by the authority which graphically described the position attracting provisions of section 56(1)(a)(b) of the Act. Viewed in this perspective, there is no substance in this petition having regard to limited scope of judicial review against the order of externment passed by the competent authority, which has been confirmed by the appellate authority.

10. In this view of the matter, writ petition fails. The same is dismissed. No costs.

(AMIT BORKAR, J.)