

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

CRIMINAL WRIT PETITION NO. 1214 OF 2017

Alarakkha Moiuddin Quereshi

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Smt. Vrishali R. Raje for Petitioner.

Mr. N. B. Patil, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 12 JUNE 2023

PC :

1. In this matter, Rule is already issued on 29/03/2017.

Vide said order, the interim relief was granted to the Petitioner thereby staying the operation of the impugned order of the Externment.

2. Heard Smt. Vrishali Raje, learned counsel for the Petitioner and Shri. N. B. Patil, learned APP for the State, for final hearing.

3. The Petitioner has challenged the order dated 21/11/2016 passed by the Respondent No.2 Sub Divisional

Magistrate, Dahanu Region, Dahanu; externing the Petitioner from the limits of Palghar district for a period of two years.

4. The Petitioner was served with a show cause notice U/s.59 of the Maharashtra Police Act dated 03/10/2016 mentioning two offences registered at Talasari police station vide C.R.No.8 of 2015 and 150 of 2015. The show-cause notice mentioned that a few people had given statements 'in camera' and that witnesses were not willing to come forward to give evidence against the Petitioner. The Petitioner had responded by filing his say. After that the impugned externment order was passed. The said order was challenged by the Petitioner before the Appellate Authority by filing Appeal U/s.60 of the said Act. The said Appeal was dismissed vide order dated 20/02/2017.

5. Learned counsel for the Petitioner submitted that, though, the show-cause notice mentions that certain people had given their statements 'in camera', but absolutely no particulars regarding those statements are given in the show-cause notice. The Externment Authority recorded its subjective satisfaction that the

activities of the Petitioner were causing alarm in general public and, therefore, nobody was coming forward to give evidence against him. The Externment Authority had relied on the report submitted before it by the Sub Divisional Police Officer, Dahanu after enquiry.

6. Learned APP submitted that, there was sufficient material in the enquiry report on which the Externment Authority had based its subjective satisfaction.

7. I have considered these submissions. The show-cause notice does not give basic minimum particulars about the statements recorded 'in camera'. Thus, the Petitioner is deprived of making proper representation to defend himself against the proposed externment proceeding.

8. Learned counsel for the Petitioner relied on the order passed by a single Judge Bench of this Court in the case of *Iqbal Hussain Abid Hussain Qureshi Vs. State of Maharashtra & Ors.*¹ She particularly relied on paragraph-7 of the said Judgment which reads thus:

¹ Cri. W.P.No.1450 of 1998 decided on 20.11.1998.

7. I will take the last ground first namely that in so far as in camera statement of witness “B” is concerned that no particulars of the place have been given and in the light of that petitioner was denied proper opportunity to show cause. Statement of witness “B” only shows that incident took place on 20th November, 1997 at 11.25p.m. In Abdul Kadir Razzaque Beg v. Sub-Divisional Magistrate, Nasik and others, 1991 Mah. L. J. 474 = 1991(1) Bom.C.R. 589 = 1991(2) Mah. L.R. 671 the Division Bench of this Court has observed that the time, the date, the place and the nature of incident should be circumscribed within such reasonable limits in order to enable the petitioner to meet the allegations against him. Whereas the in camera statement of witness “A” apart from showing the date and time shows also the place. No such particulars are set out in so far as in camera statement of witness “B” is concerned. The petitioner therefore was denied a reasonable opportunity of meeting the said ground. Once it is held that the petitioner was denied reasonable opportunity, the said ground could not have been the basis of formation of opinion. It is also clear that when the order of externment is based on the several grounds and one of the grounds cannot be sustained, the Court cannot decide which ground weighs with the Externment Authority and it cannot substitute the decision over that of the Externment Authority. The order on that count is liable to be quashed and set aside.”

9. The observations and the ratio of this order is squarely applicable to the present case. Therefore, the petition deserves to be allowed.

10. Hence, the following order:

O R D E R

i) Rule is made absolute in terms of prayer clause

(A) which reads thus:

“A) This Hon’ble court be pleased to quash and set aside the order dated 21/11/2016 passed by the Respondent No.2 in the externment proceedings bearing no. DP/MAG/PE./SR-02/16.”

ii) The Petition is disposed of.

(SARANG V. KOTWAL, J.)