

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 292 OF 2023

Abhishek Kishor Parteki
 Age – 20 years, Occ. Private,
 R/o. Zenda Square, Takia,
 Dhantoli

} ... Petitioner

Versus

1. The State of Maharashtra,
 Ministry of Home,
 Through its Secretary,
 Mantralya, Mumbai – 32.
2. Deputy Commissioner Of Police,
 Zone No.2, Nagpur.
3. Police Officer,
 Through P.S. Dhantoli,
 Nagpur.

} ... Respondents

Mr. N.P. Singhania, Advocate for petitioner.

Mr. V.A. Thakare, APP for respondent Nos.1 to 3.

**CORAM : VINAY JOSHI, AND
 VALMIKI SA MENEZES, JJ.**

RESERVED ON : 10.07.2023.

PRONOUNCED ON : 12.07.2023.

JUDGMENT: (PER: Valmiki Sa Menezes,J)

Rule. Rule made returnable forthwith. Heard finally
 by consent of both the learned counsel for the parties.

(2) This is a writ petition invoking jurisdiction under

Article 226 of the Constitution of India, seeking to quash and set aside an externment order dated 25.03.2023 passed by respondent No.2 under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951. By the externment order, the petitioner has been externed from the district of Nagpur for a period of one year.

(3) The main grounds as stated in the petition raising a challenge to the impugned order are that there was no live link between the alleged crimes and criminal activity of the petitioner necessitating the passing impugned of the order ; that the impugned order of externment was passed, operating within an area which was unjustified, since the alleged crimes on the basis of which the order was passed were registered at and restricted to the jurisdiction of Police Station Dhantoli in Nagpur City, but there was no justification for the petitioner to be also externed from the precincts of the entire Nagpur district. The further contention raised in the petition was that there was a gross unexplained delay in passing the impugned order, the last criminal act alleged against the petitioner being of the nature of a proceeding under Section 107 of the Cr.P.C. on 24.01.2023, the impugned order being passed on 25.03.2023.

(4) The petition was opposed by the respondents, who have supported the impugned order, by filing an affidavit dated 14.06.2023 of Shri Rahul Madane, the District Commissioner of Police, Zone – 2, Nagpur City, who has contended as there was no delay on the part of the authority in passing the impugned order since the last incident alleged against the petitioner which formed part of a Case No.41/20222 was a proceeding under Section 107 of the Cr.P.C. ending on 24.01.2023, the show cause notice having been issued to the petitioner in terms of Section 59 of the Act on 14.03.2022 while the impugned order was passed on 25.03.2023, after hearing the petitioner. It was further contended by the respondents that the jurisdiction of this Court under Article 226 of the Constitution of India would not be exercised as if it were an appellate jurisdiction, to re-appreciate the material on record or to come to a conclusion different from the one arrived at by the authority, which was subjectively satisfied while passing the impugned order. It was further contended that there was enough material on record for justifying the passing of an externment order, restricting his operation to the district of Nagpur, and the discretion of the authority in externing the petitioner from Nagpur district has been based upon the material on record, and

cannot be termed as arbitrary or suffering from any perversity.

(5) We have gone through the record of externment Proceeding No.23/2022, the impugned order dated 17.03.2023 and the record of the petition. We have heard these submissions of the learned counsel for the parties.

(6) From the record, the show cause notice dated 14.03.2023 refers to three alleged criminal acts of the petitioner, the first being Crime No.71/2022 under Section 24 read with Section 34 of the Indian Penal Code dated 14.03.2022, the second being under Crime No.335/2022 under Section 294, 506 (b), 427 and 34 of the Indian Penal Code dated 04.12.2022 and third being Non-cognizable Case No.394/2022 under Section 504 and 506 of the Indian Penal Code dated 14.12.2022. The last two referred offences within a span of ten days, wherein the allegations are of issuing threat to members of the public, causing public nuisance by using offensive language and threatening the life of members of the public. These would be offences which would be against public order. Immediately after registration of these offences, the petitioner was required to execute a bond in proceedings under Section 107 of the Cr.P.C., which case bearing

No.41/2022 was closed on 24.01.2023, prior to which another proceeding under Section 151 of the Cr.P.C. was also instituted against the petitioner in which orders and bond were taken on 05.12.2022.

(7) Perusal of the above record clearly demonstrates that the various acts of the petitioner relied upon for passing of the impugned order were of the nature which were disruptive of the maintenance of public order under Section 56 (bb) or were offences punishable under Chapter XVII of the Indian Penal Code, 1860.

(8) The record further reveals that the respondents relied upon two statements of witnesses, whose names are not disclosed and were not willing to come forward to give evidence against the petitioner due to apprehension expressed by them as regards their safety. The in-camera statements which we have perused have clearly deposed that they were threatened at knife point by the petitioner, who has extorted money from them at a public place, the first witness having deposed about the incident at 10:30 at night on 12.09.2022 on a public street in the Dhantoli area, while the second witness described the incident which has taken place on 08.10.2022 at 11:00 p.m. at night whilst walking on a public road in Dhantoli

area. In both incidents the petitioner has extorted money at knife point from these witnesses, threatening their life and causing panic and alarm in the area. These acts are clearly of a nature disruptive of public order and cannot be termed to be very old or not having a live link with the purpose of passing of the impugned order which was on 25.03.2023.

(9) The statements of the in-camera witnesses have been verified by the respondent No.2 while the respondent No.3 has then further verified with the officer who has taken the statements down to confirm their genuineness. This has been especially asserted by the authority by recording so on the complaint itself. We are therefore of the opinion that the impugned order has considered all the material placed before the authority and the authority has arrived at its subjective satisfaction after considering all the material which has established the live link between the incidents, which were of recent nature, and the purpose of passing of the order in terms of Section 56 of the Act.

(10) The second contention raised by the petitioner that the impugned order is passed in excess of jurisdiction vested in it by

extending its area of operation to the whole district of the Nagpur, when the crimes alleged were only within the jurisdiction of Dhantoli Police Station is also without any substance. The authority has considered the criminal activity alleged against the petitioner and has concluded that the area within which the petitioner is causing a threat to the citizens is not just in Dhantoli but in the entire city of Nagpur. The impugned order has considered the possibility that the petitioner's criminal activity which was a direct threat to the maintenance of public order would cause disturbance within the city of Nagpur and has in its discretion applied the order of externment to the precincts of an area beyond Nagpur city which is the district boundaries. We do not see any perversity or arbitrariness in the exercise of powers under Section 56 of the Act, by the authority in considering the material on record, much less for the petitioner to make out a case for interference in our writ jurisdiction under Article 226 of the Constitution of India. The impugned order does not call for any interference.

(11) For reasons cited above we hereby dismissed the writ petition. No order as to costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]