



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

CRIMINAL WRIT PETITION NO.760 OF 2023

Petitioner : Pramod @ Mukesh s/o Moreshwar Borkar,
Aged about 35 Years, Occupation : Labour,
R/o. Dahegaon (Joshi), Tah. Parshioni,
District Nagpur

– Versus –

Respondents : 1. State of Maharashtra,
Through Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
2. The Collector & District Magistrate, Nagpur,
Home Section, Nagpur
3. The Superintendent of Police, Nagpur (Rural),
Civil Lines, Nagpur.
4. The Sub Divisional Magistrate, Ramtek,
Tah. Ramtek, District Nagpur.
5. Police Station Officer, Police Station Parshoni,
Tah. Parshoni, District Nagpur.

Mr. A.R. Ingole, Advocate for the Petitioner.

Mr. M.J. Khan, A.P.P. for the Respondents.

CORAM : **VINAY JOSHI AND M.W. CHANDWANI, JJ.**

DATE : **12th DECEMBER, 2023.**

J U D G M E N T : *(Per Vinay Joshi, J.)*

Rule. Rule made returnable forthwith. Heard finally with the
consent of the learned Counsel for the parties.

02] The petitioner has been externed for a period of six months from Nagpur District. The said order has been passed in terms of Section 56(1)(b) of the Maharashtra Police Act.

03] The petitioner was involved in four offences as stated in the chart annexed to the impugned order. The concerned police sent a proposal on which the Sub Divisional Police Officer has made enquiry and has filed report before the Executive Magistrate. After considering the entire material, the Executive Magistrate came to the conclusion that there are reasonable grounds to believe that the petitioner is engaged in commission of various offences and the witnesses are not willing to come forward, which resulted into passing of an externment order.

04] The learned Counsel appearing for the petitioner would submit that the first three offences shown in the chart relate to theft of sand, which does not fall in Chapter XII, XVI and XVII of the Indian Penal Code. He would submit that the forth offence pertaining to Section 323 of the Indian Penal Code is of private nature and, therefore, the action is not in accordance with law. Particularly, our attention has been invited to the impugned order, wherein the Authority has specifically come to the conclusion that Crime No.265/2020 and Crime No.44/2021 cannot be considered, as the petitioner

has been acquitted. The Authority has mentioned that the third crime i.e. Crime No.46/2022 is subjudice. The Authority came to the conclusion that those offences do not fall under Chapter XII, XVI and XVII of the Indian Penal Code and, therefore, they cannot be considered. Particularly, the Authority recorded a finding that the offences punishable under Sections 323, 504 and 506 of the Indian Penal Code relate to private dispute and, therefore, they cannot be considered.

05] It appears that though the Authority has passed the externment order, the findings are inconsistent. The Authority has observed that some of the offences do not meet the legal requirement, whilst others are of private nature. Thus, there is no material to hold that the witnesses are not willing to come forward to give evidence against the petitioner. Since the impugned order is not based on the substantial material, it needs to be quashed.

06] In view of that, the writ petition is allowed. We hereby quash and set aside the impugned order dated 29/08/2023. Rule is made absolute in the aforesaid terms.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

**sandesh*