



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

968 CRIMINAL WRIT PETITION NO. 765 OF 2024

GORAKH @ KALU DON GAJABAPU KARANDE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Mr. Hemant U. Dhage.

AGP for Respondent-State : Mr. S. P. Sonpawale.

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CORAM : S. G. MEHARE, J.

DATE : 16.08.2024

PER COURT :-

1. Heard learned counsel for the petitioner and learned APP for the respondent-State.

2. The applicant has impugned the order of externment passed by SDPO, Ahmednagar. The learned APP has stated that against the order of externment, appeal under Section 60 of the Maharashtra Police Act ('The Act' for short) has been provided. However, instead of exhausting that remedy, the applicant has directly come to this Court. Therefore, this petition could not be entertained.

3. The learned counsel for the applicant relying on the case of *Darshan Arun Barhanpure Vs. State of Maharsashtra ; 2021 SCC Bombay 218* argued that in that case, the case of Umar

Mohamed Malbari Vs. K. P. Gaikwad, Dy. Commissioner of Police & Anr., 1988 MH.L.J. 1034 was referred to, in which it was held that the petitioner has not exhausted all his remedies does not bar the jurisdiction of the Court to entertain and dispose of the petition but, the factor to be taken into account for considering whether the discretion should or should not be exercised in favour of the petitioner.

4. The learned counsel for the petitioner argued that since the details of the camera witnesses have not been supplied that affected his fundamental right. He also submitted that during the pendency of the proceeding before the SDPO in few cases he has been acquitted. It is the violation of his fundamental right. Hence, this petition is maintainable.

5. It is not the case of the applicant that the show cause notice under Section 59 of the Act was not served upon him. Perusal of the notice reveals that the details of the crimes registered against the applicant were given and he was informed that due to his acts, the witnesses are not coming forward to state against him.

6. In Umar Mohd. (supra), the High Court held that the rule that the High Court will not issue a prerogative writ when

an alternative remedy is available does not apply when a petitioner comes to the Court with an allegation that his fundamental rights have been infringed. The petitioner has no case to believe that his fundamental rights have been infringed. On the contrary, the procedure appears to have been followed. Whether the procedure is legal, correct or proper that may be examined by the Appellate Authority. Since there was no violation of fundamental rights, the only option lies before the petitioner is to prefer the appeal under Section 60 of the Act.

7. For the above reasons, writ petition stands dismissed. The petitioner is at liberty to prefer appeal, if he desires. On preferring the appeal, the period spend here should be considered for condonation of delay.

(S. G. MEHARE, J.)

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vmk/-