



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 990 OF 2024

Subodh @ Bablu s/o. Sunil Wadgaonkar,
Age 21 years, Occu. Education,
R/o. Near Shani Mandir, Hudco,
Nanded, Tq. and Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai - 32
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Superintendent of Police,
District Nanded
4. The Sub Divisional Police Officer,
Sub Division Itwara, District Nanded
5. The Police Inspector,
Police Station, Rural, Nanded
Taluka and District Nanded

.. Respondents

Mr. Shailendra S. Gangakhedkar, Advocate for Petitioner;
Ms. S. S. Joshi, A.P.P. for Respondents

CORAM : S. G. MEHARE, J.
Reserved on : 22-07-2024
Pronounced on : 14-08-2024

PER COURT :-

1. Heard the learned counsel for the petitioner and the learned
A.P.P. for the respondents.

2. By this writ petition, the petitioner has impugned the orders of respondent No.2, the Divisional Commissioner, Aurangabad, in Outward No. 2024/SaPra-Kaksha-1/Pol-1/ Haddapar / CR-44, dated 10.05.2024 confirming the order of respondent No.3, the Superintendent of Police, Nanded in File No.850/StaGuSha/ Kalam-55/Nanded Gra.Pra.Kra 02/23/Antim Aadesh/1756/2024 dated 06.03.2024, whereby the petitioner was externed from four districts for two years, under Section 55 of the Maharashtra Police Act, 1951 (for short, "the Act").

3. The facts of the case are that the proceeding for externment against the petitioner was initiated on the report submitted by Local Crime Branch, under Section 55 of the Act. After the inquiry a proposal was submitted to Respondent No.3. Respondent No.3, by notice dated 12.09.2023, called for the petitioner to explain why he should not be externed for two years from the limits of Nanded, Parbhani, Hingoli and Latur districts. An opportunity was granted to him to produce evidence within seven days. By the said notice, the petitioner was made aware that he was involved in two crimes bearing No.680 of 2022 and 695 of 2022 registered under Sections 395, 397, 394, 427 of the Indian Penal Code, which was under investigation, and another was under Section 394 read with Section 34 of the Indian Penal Code and Sections 4/25 and 4/27 of the Arms Act, which was pending before the Trial Court.

4. The petitioner was also informed by the said notice that he was committing crimes against the body and property of the persons. It was also brought to his notice that he was committing crimes of robbery and dacoity by forming a gang and causing injuries to the persons by confining them. Due to their activities, the complainants are not coming forward to lodge reports against them. Since repeated crimes were registered against them, the life and property of the people were in danger. Due to their public tranquillity is disturbed. The said notice was served on the petitioner on 25.03.2023. The petitioner replied to the notice bearing No.2836 of 2023 dated 16.12.2023 and submitted written submissions. He denied the contents of the show-cause notice and submitted that he has no concern with the crimes mentioned in the notice. After registering the said crimes, no crime was registered against him. One of the matters is pending before the Court. He is the only breadwinner of his family. He has family responsibilities. Before that he received notice under Section 144(2) of the Code of Criminal Procedure on 25.09.2023. He obeyed the said notice.

5. Respondent No.3 issued a show- cause notice under Section 59 of the Maharashtra Police Act to the petitioner. After the report was submitted to respondent No.3, he again called upon the petitioner to explain. He reiterated the same explanation as submitted before respondent No.4.

6. Learned counsel for the petitioner has vehemently argued that the chapter case registered against the petitioner was not taken to its logical end. The notice of Respondent No.4 dated 04.01.2024 does not contain the offences under which the crimes have been registered. In the show-cause notice, the petitioner was not made aware of the chapter case. He did not record subjective satisfaction. Without disclosing the seven crimes against the petitioner, respondent No.3 failed to record the finding that from 2020 to 2023, there were seven crimes registered against the petitioner under Chapters - XVI and XVII of the Indian Penal Code. Without recording any objective satisfaction, he jumped to the conclusion that the petitioner committed serious crimes that may affect the public tranquillity and danger to the property and life of the people. There was no live link or proximity between the crimes, and registering the externment proceedings. The petitioner was not shown continuing to commit the crimes. There was no material that prompted the authorities the possibility of committing another crime. Respondent No.3 passed the order mechanically and, for the first time, recorded the findings that the witnesses were not willing to come forward to give evidence against him. This is in violation of Sections 55 and 56 of the Act. The authority had no camera statements of the witnesses. He relied on the following case laws:-

- (i) *Pandharinath Shridhar Rangnekar Versus Dy. Commissioner of Police, The State of Maharashtra, 1973 AIR (SC) 630,*
- (ii) *Hussain Alias Bantu Mohdd. Bashir v. Deputy Police Commissioner Nagpur and Ors., AIR Online 2023 Bom 1803,*
- (iii) *Deepak s/o. Laxman Dongre v. State of Maharashtra and Ors., AIR 2022 SC 1241,*
- (iv) *Judgment in case of Shri. Sachin Yeshwantt Pokre Versus Shri. Jayprakash M. Jadhav, Asst. Commissioner of Police and others, Writ Petition No.1507 of 2007 with another W.P., dated 14.06.2016,*
- (v) *Judgment of Division Bench of this Court in Criminal Writ Petition No.143 of 2022 (Mohamad Malik Abdul Sabbir Chavan Vs. The Divisional Commissioner Aurangabad Division Aurangabad and others) dated 08.04.2022, and also*
- (vi) *Judgment of Division Bench of this Court in Criminal Writ Petition No.1448 of 22021 (Farukh Khan @ Pappu s/o. Zahir Khan Qureshi vs. The State of Maharashtra), dated 07.04.2022.*

7. Learned A.P.P. supported the impugned orders. He argued that since the last offence was committed on 22.11.2022, it was sufficient to believe that there was a live link and proximity between the crimes committed and initiating the externment proceeding. The authority had verified the incamera statements of the witnesses. It was a case under Section 55 of the Act, which

does not require disclosure of not coming forward the witnesses to state against them. It was an action against the persons who committed the offence under the gang or body of persons. A fair opportunity was granted to the petitioner. The objective material was available before the authorities. The impugned orders were passed after the subjective satisfaction.

8. The State has proposed action under Section 55 of the Maharashtra Police Act. It empowers the competent authority to disperse a gang and body of persons, whenever it appears to the Competent Authority that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or a reasonable suspicion that unlawful designs are entertained by such a gang or body or by members thereof. The officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by the beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm, or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or such area and any district, or districts or any part thereof, contiguous there to within such time as such officer shall prescribe.

9. To initiate an action under Section 55 of the Act, there should be material to make out the case against the accused that he was a member or chief of such gang or body of persons. Normally, where there is no live link or proximity between registration of the offence or initiation of the externment proceeding, the stringent action under Section 55 of the Act is not initiated. There must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that movements or acts of any person are causing harm, alarm, or danger to the persons and property.

10. The record reveals that respondent No.4/Sub-Divisional Police Officer issued the show-cause notices on the same day to the applicant and other persons. In the body of the show-cause notice it was mentioned that the proposal has been referred that by forming a gang with other co-accused, he is committing the crimes. Further, it is mentioned in the notice that looking at the two crimes registered against the petitioner, he was obstructing the public, assaulting them with deadly weapons and habituated to commit theft and dacoity. The preventive action was taken against him but there were no improvement in his conduct. Since the crimes are repeatedly registered against him, there is a danger to the life and property of the public.

11. Respondent No.3 - the Superintendent of Police, Nanded in

an order dated 06.03.2024 giving the list of the crimes against the applicant and three more co-applicants, recorded that Section 59(1) of the Act has been complied with. Referring to Section 55 of the Act he recorded that the externee did not satisfactorily explain the notices. They did not satisfactorily explain how more than one crimes were registered consecutively against them. He also noted that one of the co-externees, Vaibhav was imprisoned in another crime. Therefore, the proposal against him was dropped. He formed an opinion based upon the report of the S.D.P.O. that the possibility of committing the offences against body and property cannot be ruled out and ordered them to extern for six months.

12. The appellate authority recorded that two crimes were registered against the applicant. He did those acts with the gang. The crimes against him are serious. He accepted the order of the Superintendent of Police.

13. In a chart given to the order of respondent No.3/ the Superintendent of Police, in two crimes, wherein C.R.Nos.618 of 2022 and 695 of 2022 and crimes registered against the applicant Vaibhav Raju Hunde and Manav Balaji Murkute and Rohit Vijaykumar Kadam. However, in Crime No.695 of 2022, Rohit Vijaykumar Kadam was not the co-accused. A chart further shows that individual crimes were registered against Vibhav Raju Hunde

and Manav Balaji Murkute in 2020. Two crimes were registered independently against Rohit Vijaykumar Kadam in 2020 and 2022. One more crime was registered against Vaibhav Raju Hundre, who was imprisoned at the time of passing the impugned order.

- (a) The first requirement to initiate action under Section 55 of the Act was the disclosure of either member or leader of the gang,
- (b) The criminal cases against the alleged gang members should not be individualistic in nature than collective.
- (c) There should be a live link and proximity between the registration of offences and the initiation of the externment proceeding.
- (d) There should be material to show wrongful conduct or mal-intention which still exists since the dates of issuance of the show-cause notice.
- (e) There should be commonality in the actions of several persons joined together.
- (f) There should be objective material before the authority to record subjective satisfaction.

14. The record reveals that the Police Inspector, Nanded submitted the proposal of the externment to the Superintendent of Police on 30.05.2023. On 09.09.2023, the Superintendent of Police directed the S.D.P.O. to make an inquiry. The SDPO

submitted his inquiry report on 30.12.2023. Thereafter, respondent No.3, the Superintendent of Police, passed impugned order on 06.03.2024.

15. In ***Santosh Ramprasad Sharma vs. Deputy Commissioner of Police, Crime Branch, (1992) Cr.L.J. 3983***, the Gujrat High Court held that the delay in passing the order after the conclusion of the proceeding before the Inquiring Officer would vitiate the externment order, in the absence of submissions about the delay caused in passing the order. It has been further observed that in externing a person, which is in the public interest, the authorities are expected to act promptly, and if delay the matter, the same is spelt out that there is no urgent need nor necessity to extern a person from a particular locality. The externment order curtails the freedom of movement of a person. Therefore, any laches on the part of the authority concerned cannot be countenanced, and the benefit will go to the party concerned, and on that score, the externee will be entitled to the benefit of quashing such order of the externment.

16. The record produced before the Court reveals that the proposal for the externment was submitted to respondent No.3, the Superintended of Police on 30.05.2023. Then, by his order after four months he, directed the S.D.P.O. to make an inquiry. The S.D.P.O. again spent around seven months submitting the report,

and after that, three months later, respondent No.3 / Superintendent of Police passed an order of the externment. It could be summed up that, after the proposal respondent No.3 passed the impugned order after around ten months. This indicates that the Officers did not act promptly and delayed the matter and it spelled out that there was no urgent need or necessity to extern the person from the localities mentioned in the impugned order.

17. The facts further reveal that from the last crime registered against the applicant in 2022 till passing the order except for the preventive action, no crime was registered. Therefore, it could be said that the authorities did not have the objective material to record the subjective satisfaction that the movements of the encampment of the gang were causing or calculating to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such a gang or its members. The foremost requirement to initiate action under Section 55 of the Act that there should be objective material to record subjective satisfaction is missing. There was no live link and proximity between registration of the said offences and the initiation of the externment proceeding. The applicant was not shown to be involved in any objectionable activities till passing the externment order. The details of the chapter case were also not discussed to record the subjective satisfaction. The SDPO mentioned recording

of the statements of camera witnesses. However, it was not whispered in the show cause notice. Hence, there was a substance in the arguments of the learned counsel for the applicant that the authority did not verify such statements. The trials against the applicant were stale.

18. The case laws relied on by the learned counsel for the petitioner were mostly on Section 56 of the Act; hence, those are not helpful to him.

19. The order of respondent No.2, the Divisional Commissioner, appears without recording any substantial reasons. Hence, both impugned orders deserve to be quashed and set aside.

ORDER

- i) The criminal writ petition is allowed.
- ii) The impugned order of respondent No.3 / the Superintendent of Police passed in O.No.850/StaGuSha/Kalam-55/Nanded Gra.Pra.Kra.02/23/ Antim Aadesh/1756/2024 dated 06.03.2024 and the order of respondent No.2 / the Divisional Commissioner, Aurangabad (Chhatrapati Sambhaji Nagar), in O.No.2024/SaPra-Kaksha-1/Pol-1/Haddapar/CR-44, dated 10.05.2024, are quashed and set aside.
- iii) The bonds executed by the petitioner also stand quashed and set aside.

- iv) The papers produced by the learned Assistant Public Prosecutor should be returned to him.

(S. G. MEHARE)
JUDGE

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