



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

CRIMINAL WRIT PETITION NO. 1095 OF 2024

1. Pralhad Laxman Munde, Age 52 yrs,
2. Madhav Pralhad Munde, Age: 30 yrs,
3. Ankush Pralhad Munde, Age 25 years,
Occ: Agriculture/ JCB Operator,
All R/o. Ramachiwadi, Tq. Loha, Dist. Nanded .. Petitioners

Versus

1. State of Maharashtra
Through the Divisional Commissioner,
Chhatrapati Sambhajinagar
2. The Externment Authority and
Superintendent of Police-Nanded
S. P. Office, Nanded
3. Sub-Divisional Police Officer, Kandhar
S.D.P.O. Office, Kandhar, Dist. Nanded.
4. Police Station Officer
Malakoli Police Station, Tq. Loha,
Dist. Nanded .. Respondents

...
Advocate for the Petitioners : Mr. Sachin S. Panale
APP for Respondents : Mr. D. J. Patil
...

CORAM : S. G. MEHARE, J.

DATE : 26-06-2024

PER COURT :-

1. Issue notice to the respondents.
2. Learned A.P.P. waives service of notice for the respondents.
3. Heard the matter finally at the stage of admission with consent.

4. The contention of the petitioners is that against the order of externment an appeal under Section 60 of the Maharashtra Police Act (for short, "the Act"), was preferred before the Divisional Commissioner, Aurangabad. The appeal was preferred on 06.05.2024. Since the application for interim stay was not decided, he moved an application to take the case on board to hear the stay application. The Divisional Commissioner passed the order on the very same day on the application, observing that he had heard counsel for the applicant, and the next date for the hearing had already been granted in the matter. There is no urgency and extraordinary case. Hence, the stay was declined, and he listed the matter for hearing as per the board.

5. Learned counsel for the petitioners submits that the Government Resolution, dated 17.12.2015, lays down the manner in which the notice should be issued and the outer limit within which a final order is pronounced from the date of the conclusion of the hearing and period in which the interim relief the application should be decided. However, as per the said resolution, the application for interim relief shall be disposed of within 30 days.

6. In the case of ***Shri. Sachin Yeshwant Pokre vs. Shai Jayprakash M. Jadhav and Ors., 2016 All MR (Cri) 3050 (F.B.)***, the law has been laid down that interim stay application should be decided by the appellate authority preferably within

seven working days from the filing of the appeal. He submits that this case law was placed before the authority, but it did not pay heed to the law laid down by this Court. He refused the stay without hearing the stay application on merit. So, there was no application of mind to arrive at a conclusion, whether the petitioners have a good case for an interim stay till the conclusion of the appeal. The ratio laid down in the case of **Shri. Sachin** (supra) is squarely applicable to the case at hand. Therefore, the impugned order dated 10.06.2024 should be quashed and set aside.

7. Learned A.P.P. submits that since the day of filing of the appeal, at no point in time, the request was made to hear the stay application. Suddenly, in the month of June, the appeal was taken on board, requesting that the stay application be decided within seven days. However, the stay application appears to have not been decided. Therefore, it seems that the application for stay is pending before the Divisional Commissioner. He conceded that the Government Resolution dated 17.12.2015 provides for the procedure.

8. It is not in dispute that the appeal against externment order is pending, and no interim stay application was decided. In fact, in view of the Government Resolution dated 17.12.2015, the appellate authority/Divisional Commissioner ought to have *suo*

moto follow the procedure and decide the interim application as soon as possible. Since the matter was not heard on interim relief, the petitioners have correctly applied to take the case on board to hear the stay application. Nothing was wrong with the application to seek or make a request to hear the stay application and decide within seven days. However, without hearing the petitioners on merit, the wrong observation was recorded that there is no urgency/extraordinary situation to grant the stay. This is a single-line order without assigning the reasons. The impugned order is *prima facie* against the Government Resolution, dated 17.12.2015 and the ratio laid down by the Full Bench of this Court in the case of **Shri. Sachin** (supra).

9. The externment order is not to be dealt with casually. All the appeals arising out of externment proceeding under Section 60 have an element of urgency, and considering the fact that the externment order affects the liberty of an individual, a prayer for stay has to be taken up for hearing immediately, or at least it should not be dealt with in a matter of course as if it does not affect the rights guaranteed under the Constitution. The authority should have objective and subjective satisfaction for passing the externment order. Such an order curtails the rights of the person against whom the order is passed. His right to move freely throughout the country is curtailed. It is really a very sensitive matter. Before curtailing the constitutional rights of the party, the

authority must apply the mind. The authority cannot decide the rights of a party act by rejecting the application by a single-line. The appellate authority/Divisional Commissioner, who is the highest officer within the region should have followed the law and the judicial pronouncements, but he seems to have not done so.

10. For the above reasons, the impugned order dated 10.06.2024 passed on the application filed for taking the case on board for hearing the stay application is quashed and set aside.

11. The appellate authority is directed to decide the stay application by granting a hearing to the petitioners, on merit, at the earliest, preferably within seven working days from today, by taking the case on board.

12. The applicant should appear before the first appellate authority tomorrow by 11.00 a.m.

13. Criminal Writ Petition stands disposed of in the above terms.

(S. G. MEHARE)
JUDGE

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