



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1633 OF 2024

Sarhan Bin Ali Alkaseri
Age 44 years, Occu: Business,
R/o: Arab Galli, Killa Road,
Itwara, Nanded Tq. & Dist. Nanded.

... PETITIONER

V/s.

1. The State of Maharashtra
Through The Police Inspector,
Vimantal Police Station,
Tq. & Dist. Nanded
2. The Divisional Commissioner
Aurangabad Division Aurangabad
3. The Police Superintendent,
Nanded, Tq. Nanded,
Dist. Nanded.
4. Sub-Divisional Police Officer,
Sub Division Nanded City.
Nanded, Tq & Dist. Nanded.

... RESPONDENTS

.....
Mr. I.D. Maniyar, Advocate for the Petitioner
Mr. N.D. Batule, APP for the Respondent-State
.....

CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 23.10.2024
PRONOUNCED ON : 13.11.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides.

2. The Petitioner herein takes exception to the order dated 17.05.2024 passed by the Respondent No.2- Superintendent of Police, Nanded under Section 55 of the Maharashtra Police Act and order dated 13.08.2024 passed by the Appellate Authority Respondent No.2- Divisional Commissioner, Chh. Sambhajanagar (Aurangabad) thereby confirming the order of externing the Petitioner from entire Nanded District for a period of six months.

3. Brief facts leading to this petition are that by notice dated 28.12.2023, the Respondent No.4- Sub-Divisional Police Officer, Nanded (City) had conveyed to the petitioner that the Incharge Police Officer of Vimantal Police Station had proposed to extern him (Sarhan Bil Ali Alkaseri) and others i.e. Kamalkishor Ganeshlal Yadav, Gurprit Singh Gulzar Singh Khaira, Karan Singh Ragbeer Singh Shahu, the members of a gang on the ground that they are operating a gang and their presence in the area is disturbing the peace and tranquility. It is also stated therein that number of offences are registered against the Petitioner and others. Therefore, the Petitioner was served with a show cause notice dated 28.12.2023 as to why he should not be externed. Accordingly, the Petitioner submitted his reply on 29.01.2024 and contended that he is active in politics and participated in an agitation in a democratic manner for the rights of the people of Muslim community. He is neither a member of any gang nor he is operating any gang. The Petitioner further contended that one Crime bearing No. 119/2022 was registered against him

but initially his name was not disclosed in the said FIR and subsequently his name was added and he was falsely implicated in the said crime. Furthermore, he was enlarged on bail in the said crime. Due to his behavior and act there is no any hazard to any property or to any person. Therefore, he prayed for revocation of above said show cause notice.

4. On 17.05.2024, the Respondent No.3- Superintendent of Police, Nanded passed an order and externed the Petitioner from the limits of Nanded district for a period of six months. Being aggrieved by the said order, the Petitioner challenged the same before the Respondent No.2- Appellate Authority under Section 60 of the Maharashtra Police Act. However, on 13.08.2024, the Respondent No.2 passed the impugned order and confirmed the externment order passed by the Respondent No.3 on 17.05.2024.

5. The learned counsel appearing for the Petitioner submits that on 28.12.2023, the Respondent No.4-Sub-Divisional Police Officer issued a notice, wherein it was alleged about registration of Chapter Case No. 37/2023, however, the said chapter case was already closed and only one crime was shown against the Petitioner i.e. Crime No.119/2022 u/s 302,307,102(B), 384,109 read with Sec. 34 of IPC and 3/25, 27(2) of the Arms Act, but subsequently offence u/s 201 of IPC and Sec. 3 (1) (i), 3 (2), 3(4) of MCOCA Act, 1999 came to be added. On 20.07.2023, this Court passed an order in Bail

Application No. 1110 of 2023 and thereby enlarged the Petitioner on bail in Crime No.119/2022 on a condition that the Petitioner shall not leave Nanded City without the permission of the Investigating Officer till the conclusion of the trial. Though, the Petitioner submitted his reply and explanation dated 29.01.2024, however, the Respondent No.4 failed to consider the same and illegally forwarded the proposal for externment.

6. The learned counsel appearing for the Petitioner further canvassed that though another offence punishable under Section 307 is shown to be registered against the Petitioner but no such offence is registered as against the Petitioner and as such no such trial is pending before any Court. Therefore, there is no subjective satisfaction to level the provisions of Section 55 of the Maharashtra Police Act, however, the Respondent No.2- Appellate Authority dismissed the appeal without considering the material on record. The Petitioner is neither a member of any gang nor he is operating any such gang which is prejudicial to the society. Therefore, there is no material to comply with the provisions of Section 55 of the Maharashtra Police Act. Therefore, the impugned order is illegal and bad in law.

7. In support of these submissions the learned counsel for the Petitioner placed reliance on the case of **Ashraf Shamsher Ali Jagirdar V/s. State of Maharashtra and others; 2016 (1) Bom.C.R.(Cri.) 504** and **Ravindra @**

Ravi Harisingh Jadhav V/s. State of Maharashtra & Anr.; 2015 (2) Bom.C.R.

(Cri.) 813. However, both the cases are not applicable to the facts and circumstances of the case in hand because, in both the cases the Petitioner was externed from more than one district though the Petitioner's alleged prejudicial activities were shown in a particular district.

8. The learned APP strongly opposed the petition contending that the due procedure laid down in law has been complied with by the Authorities, so also, principles of natural justice are duly followed. According to the learned APP, on 28.12.2023, the Respondent No.4-Sub-Divisional Officer issued a notice to the Petitioner and others calling upon them to submit their reply as to why they should not be externed for a period of two years. Accordingly, on 29.01.2024, the Petitioner submitted his reply. On 02.04.2024, the Respondent No.3- Superintendent of Police, Nanded again issued a show cause notice to the Petitioner for submitting an explanation and thereafter on 17.05.2024, the Respondent No.3 passed the externment order. The Competent Authority has considered the material available against the Petitioner and passed the order, so also, the Petitioner had approached before the Appellate Authority – Respondent No.2. On 13.08.2024, the Respondent No.2 passed the impugned order after considering the confidential statement and other material available on record as well as series of crimes of registered against the

Petitioner. Therefore, this is not a fit case to interfere with the order of externment which was confirmed by the Respondent No.2- Appellate Authority.

9. The learned APP further canvassed that the Respondent-Authorities have passed the impugned orders on the administrative grounds to maintain the peace in the society. Therefore, no interference is called at the hands of this Court as the order of externment is an administrative order. In support of these submissions the learned APP placed reliance on **Deepak Laxman Dongre V/s. State of Maharashtra and Ors.; AIR 2022 SC 1241**, wherein the Hon'ble Apex Court has laid down the guidelines for deciding the Petitions challenging the order of externment passed by the Competent Authority. It is held that for invoking the said provisions there must be objective material on record on the basis of which Competent Authority must record its subjective satisfaction. It is further observed that in a given case, even if multiple offences have been registered against an individual that itself is not sufficient to pass an order of externment. Moreover, there must be satisfying material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give the statement against the externee.

10. In case of **N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080**, the Hon'ble Apex Court held that the Courts will be slow in

interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, impugned orders are considered in the facts and circumstances of the case.

11. Needless to say that the concerned authority has sought to invoke provisions of Section 55 of the Maharashtra Police Act, hence, it would be appropriate to reproduce the same as under:

“55. Dispersal of gangs and body of persons.

Whenever it shall appear in Greater Bombay and in areas in which a Commissioner is appointed under Sec. 7 to the Commissioner and in a district to the District Magistrate the Sub-Divisional Magistrate or the Superintendent empowered by the State Government that in behalf, 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 reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed persons appearing chief men of to to be the leaders such gang or the or body and published by 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 thereto which in such time as such officer shall prescribe, and not to enter the area for the area and such contiguous districts, or part thereof, as the case may be, or return to the place from which each of them was directed to remove himself.”

12. Needless to say that, the Authority while passing the order of externment has considered the Crime No. 119/2022 registered with Vimantal Police Station for the offence punishable under Section 302, 307, 120(B), 384, 109, r/w 34 of the I.P.C. and 3/25, 27(2) of the Indian Arms Act and subsequently offence u/s 201 of IPC and Sec. 3 (1) (i), 3 (2), 3(4) of MCOCA Act, 1999 added, which came to be registered as Regular Criminal Case RCC No. 98/2022 and trial of said offence is pending before the competent Court. Indeed, the Petitioner has produced the order dated 20.07.2023 passed by this Court in B.A. No.1110/2023 whereby the Petitioner has been enlarged on bail with following observations which are as under:

“Admittedly, this is a first ever crime registered against the applicant. Subsequent to this crime another crime has been registered. Whether the applicant was the member of organized crime syndicate for his non involvement in any of the case mentioned in Section 2(d) of the said Act would attract MCOCA Act or not would be a question before the trial Court” and the Petitioner shall not leave Nanded City without permission of the Investigating Officer till the conclusion of the trial”.

13. On face of record it appears that on 28.12.2023, the Respondent No.4- Sub-Divisional Police Officer, Nanded (City) issued a show cause notice on the ground that Crime No. 119/2022 was registered against the present Petitioner for the offence punishable under Section 302, 307, 120(B), 384, 109, r/w 34 of the I.P.C. and 3/25, 27(2) of the Indian Arms Act in which later on

offence u/s 201 of IPC and Sec. 3 (1) (i), 3 (2), 3(4) of MCOCA Act, 1999 added and name of the petitioner impleaded, so also, one chapter case was registered against him. However, said chapter case was already closed against the Petitioner prior to service of notice dated 28.12.2023. Therefore, it appears that the externment notice dated 28.12.2023 was served upon the Petitioner considering the solitary offence registered against the Petitioner i.e. Crime No. 119/2022 for the offence punishable under Section 302, 307, 120(B), 384, 109,201, r/w 34 of the I.P.C. and 3/25, 27(2) of the Indian Arms Act and Sec. 3 (1) (i), 3 (2), 3(4) of MCOCA Act, 1999 which came to registered as Regular Criminal Case RCC No.98/2022, which is pending. Except this one offence, there is nothing on record to indicate that there is a gang and the Petitioner is a member thereof or the Petitioner is operating an unlawful gang in order to extern him invoking provisions of Section 55 of the Act.

14. As far as the order passed taking aid of Section 56 of the Act is concerned, though it is sought to be contended by learned APP that Appellate Authority has taken into consideration the confidential statements, however, the order passed by Superintendent of Police, Nanded does not show that such statements are taken into account. In any case, perusal of these statements, on the face of it, indicates that these statements are general in nature. None of the witnesses has claimed any personal knowledge or fear from the Petitioner. Thus, there is no material on record which is sufficient to justify the order of

externment of the Petitioner, which takes away his liberty as an individual guaranteed under Article 21 of the Constitution of India.

15. In the case of **Rahmat Khan @ Rammu Bismillah V/s. Dy. Commissioner of Police; (2021) 8 SCC 362**, the Hon'ble Supreme Court has held that Sections 56 to 59 of the Act are intended to prevent lawlessness and deal with class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should be only taken in exceptional cases to maintain law and order in a locality and or prevent breach of public tranquility and peace. In the case of **Gazi Saduddin V. State of Maharashtra; (2003) 7 SCC 330**, it has been observed that the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expedient necessity of passing such an order of externment.

16. In the light of above discussion, orders impugned cannot sustain. The Petition, therefore, deserves to be allowed. Resultantly, order Outward No. 17.05.2024 passed by the Respondent No. 3-Superintendent of Police, Nanded vide O. No.850/LCB/Section-55/Vimantal 02/2023 / Final Order / 2607/2023,

Nanded and order dated 13.08.2024 passed by Divisional Commissioner, Chhatrapati Sambhajanagar in Case No. 76/2024/GA/Room-1/Pol-1/Externment/CR-76 are hereby quashed and set aside. Accordingly, Rule is made absolute in terms of prayer clause 'B'.

[Y.G. KHOBRADE, J.]