



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1481 OF 2023

Janardhan s/o Kamlakar Nawale

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The Sub Divisional Police Officer,
Sangamner, Sub Division,
Dist. Ahmednagar.
3. The Sub Divisional Magistrate,
Sangamner Division, Sangamner,
Dist. Ahmednagar
4. The Police Inspector,
Akole Police Station, Akole,
Tq. Akole, Dist. Ahmednagar

... RESPONDENTS

Advocate for Applicant : Mr. K.N. Shermale
Addl.PP. for respondent/State : Mr. M.M. Nerlikar

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

Reserved on : 18.01.2024
Pronounced on : 16.02.2024

ORDER (MANGESH S. PATIL, J.) :

This is a writ petition under Article 226 of the Constitution of India, wherein, the petitioner is challenging the order passed by the respondent No.3, who is the Sub-Divisional Magistrate (SDM), on a proposal submitted by the respondent No.2 – Sub-Divisional Police Officer (SDPO), dated 12.09.2023, purportedly under Section 144 (3) of

the Code of Criminal Procedure, 1973 (Cr.P.C.), thereby, directing him not to enter into the limits of Akole Police Station and the revenue village from 12:00 noon of 18.09.2023 to 29.09.2023, with a view to maintaining law and order during that period since it was the duration of the Ganesh Festival and the Eid-e-Milad on 28.09.2023. In addition, the petitioner is seeking a direction against the respondent No.1 – the State of Maharashtra to initiate an action against the SDPO.

2. It is necessary to note at this stage that the petition was filed on 20.09.2023. The matter was circulated before the Court on 21.09.2023. It was adjourned to 05.10.2023, however, granting ad-interim relief in terms of prayer clause “D” whereby, the petitioner had sought stay to the operation of the order under challenge. Consequently, in effect, by passage of time, the period for which he was prevented from entering into the territorial limits has been already over and the matter has become infructuous, still, the petitioner was required to suffer the part of the impugned order. Therefore, the matter does not remain academic and we propose to deal with the legality of the order under challenge.

3. The learned advocate for the petitioner would vehemently submit that the order is arbitrary and capricious *albeit* he was issued with a notice, to which he had replied and the order was passed thereafter. He would submit that mere registration of crimes over a period between

2011 to 2020 was taken into consideration to entertain the apprehension that unless he was prevented from entering into the geographical limits there could be a possibility of issue about law and order being cropped up. He would submit that no offence was registered against him in the recent past and the stale cases were pitted against him.

4. The learned advocate would then submit that the impugned order has been passed vindictively. In fact, on petitioner's complaint with the Anti-corruption Bureau an action was initiated against one Santosh Wagh who was attached to the Akole Police Station. He was caught red handed and at his instance the action was proposed against him which has resulted in passing of the impugned order. He would submit that there was no material to justify the inference and the action was taken hurriedly, unmindful of various facts and circumstances and without there being any recent material showing any tendency of the petitioner in affecting law and order.

5. The learned advocate for the petitioner would then submit that the opinion formed by the respondent No.3 is clearly based on mere pendency of the criminal cases without actually ascertaining in how many of these cases the petitioner has been acquitted.

6. Further the learned advocate would point out that the police machinery has been acting vindictively against the petitioner and attempt was made to extort him by passing an order under Section 56 of the

Maharashtra Police Act, 1951. The respondent No.3 had passed the order under that provision on 01.09.2022. The petitioner had challenged it before the Divisional Commissioner. By the order dated 14.12.2022 his appeal was allowed and the order of the respondent No.3 was set aside. Even that order was passed for externment relying upon the very same crimes and having failed in that attempt the present action has been taken out. The order be quashed and set aside.

7. The learned APP opposes the petition by referring to the affidavit-in-reply of the respondent No.4 who is PI. of the Akole Police Station. He would submit that there is no arbitrariness in passing the impugned order. Principles of natural justice have been followed. The petitioner was extended an opportunity of being heard by issuing a notice. He had replied to the notice. After applying mind to all the facts and circumstances and particularly the consistent criminal record of the petitioner, the decision was taken in the wake of Ganesh Festival and Eid-e-Milad. The respondent No.3 - SDM has reached subjective satisfaction based on objective material available to him. This Court cannot substitute its views in place of his subjective satisfaction. He would, lastly, submit that the period for which the petitioner was externed is already over. The petitioner could avail interim relief, thereby, the period of externment was barely less than 3 days out of the total period of 10 days and the Court may not entertain the petition now.

8. Having heard both the sides extensively and having perused the record, as has been observed earlier, though the petitioner was externed by the impugned order for a period of 10 days, he having obtained the interim relief on 21.09.2023 he had suffered the order barely for 3 days or may be less than that. Needless to state that by passage of time even that order has lived its life. However, since in our considered view the impugned order in substance affects the fundamental rights guaranteed under Article 19 (1)(d) of the Constitution of India, even if by virtue of Article 19(5), there could be a law imposing reasonable restriction, the matter cannot be brushed aside as is being requested by the learned APP, on the spacious plea that the period for which the impugned order directed the petitioner not to enter into the geographical limits has ended. We are not inclined to accept the submission of the learned APP to close the matter without examining legality of the order under challenge.

9. A bare perusal of the order reveals that the respondent No.3 has reached the subjective satisfaction based on the number of crimes registered against the petitioner for various offences. First paragraph of the order enlists the crimes and sections of the Indian Penal Code and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 collectively against all the crimes. In second paragraph, it has been mentioned as to how the proposal has reached him. In third paragraph it

has been mentioned about the petitioner having been served with a notice and he having submitted the reply and brushed aside the reply in one line by observing that the reply was brief and not reliable as a ground for refuting it. The effective order has been passed in the last paragraph. We have no manner of doubt that the impugned order has been passed without application of mind. Registration of number of crimes *per se* seems to be the only ground considered by the respondent No.3 while passing the impugned order.

10. If the respondent No.3 was to pass the impugned order which was to have drastic effect on the fundamental right of the petitioner guaranteed under Article 19 (1)(d) of the Constitution, he should have mentioned the circumstances indicating the substantive reasons for him to reach the subjective satisfaction. Since the impugned order is bereft of the objective material except registration of crimes, it would certainly be an arbitrary exercise of the powers.

11. One can simply refer to the principles which require reasons to be recorded in such matters as laid down in the matter of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan ; (2010) 9 SCC 496**. We are aware that sufficiency or otherwise of the reason may not be a matter which can be gone into in exercise of the powers under Article 226 of the Constitution of India. However, when the impugned order merely refers to the pendency of the criminal cases and merely refers to the festivities

to happen between 19.02.2021 to 28.09.2023, according to us the order is sans any reason to justify the order. We have, therefore, no hesitation in concluding that the respondent No.3 has exercised the power arbitrarily and capriciously.

12. There is total non-application of mind in passing the order, inasmuch as it does not deal with the stand being taken by the petitioner in his reply to the show cause notice, wherein, he had expressly given the details as to how in each of the crimes referred to in the order either he was not concerned or has been acquitted and two of which were merely non-cognizable matters. He had also taken a specific stand that the order passed against him regarding externment was set aside by the Divisional Commissioner and since thereafter he was not involved in any crime. More importantly the show cause notice was containing the omnibus statement that by taking advantage of the police machinery likely to be engaged in maintaining law and order there was likelihood of his indulging in bootlegging/commission of other crimes. A specific stand was taken in the reply that he was never involved in bootlegging. The impugned order does not deal with it at all.

13. Interestingly, the grounds which were notified to the petitioner in the show cause notice that there was likelihood of his indulging in bootlegging or commission of other crimes, is also conspicuously absent in the impugned order. This further buttresses our

conclusion that the impugned order has been passed without application of mind.

14. To sum up, the impugned order is grossly illegal and is liable to be quashed and set aside.

15. As regards the prayer for direction to initiate action against the Sub Divisional Police Officer, we are not inclined to do so for more than one reason. He had simply forwarded a proposal, which could or could not have been acted upon by the Sub Divisional Magistrate, who passed the impugned order. Against there is dearth of material to draw any inference that the proposal was activated by *mala fides* or with some ulterior motive.

16. The Writ Petition is allowed partly. The impugned order is quashed and set aside. The writ petition to the extent of seeking direction to initiate some action against respondent No.2 – Sub Divisional Police Officer, is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE