



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO. 1669 OF 2023

Ajay S/o. Ghansham Barandwal
Age: 35 years, Occu.: Labour
R/o: Mochi Galli, Infront of Sant Tukaram
Hostel, Sant Rohidas Chowk
Padampura Chhatrapati Sambhaji Nagar
(Aurangabad)

..PETITIONER

VERSUS

- 1] The State of Maharashtra
Through: The Commissioner of Police
Chhatrapati Sambhaji Nagar (Aurangabad)
- 2] Assistant Police Commissioner,
Chhatrapati Sambhaji Nagar (Aurangabad)
- 3] Deputy Commissioner of Police
Circle-1, Chhatrapati Sambhaji Nagar (Aurangabad).
- 4] The Police Tnspector,
Vedant Nagar Police Station
Chhatrapati Sambhaji Nagar
(Aurangabad)

..RESPONDENTS

Advocate for the Petitioner : Mr. Kanade Angad Lala
APP for Respondent/State : Mr.Mukesh K. Goyanka

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 16th JANUARY, 2024.

ORAL JUDGMENT :-

This petition is filed under Article 227 of the Constitution of India and under section 56 of the Maharashtra Police Act, challenging the order of externment passed by respondent no.3, which is

confirmed by Divisional Commissioner, Aurangabad i.e. Chhatrapati Sambhajinagar.

2. The notice was issued by respondent no.2 to this petitioner on 16.05.2023 and he was called upon to explain as to why he should not be externed from Aurangabad district, upon which the petitioner submitted his explanation. It was alleged in the notice that he has committed offences shown in the following chart :-

अ.क्र.	पो. ठाणे	गुर.नं / कलम	दोषारोप नं.	सद्वस्थिती
०१	वेदांतनगर	गुरनं ६९/२०२० कलम ६५ (ख) म.दा.का.	दोनं. १०/२०२० दि. २७/०८/२०२०	न्यायप्रविष्ट
०२	वेदांतनगर	गुरनं ७४/२०२० कलम ६५ (ख) म.दा.का.	दोनं. ११/२०२० दि: ०९/१०/२०२०	न्यायप्रविष्ट
०३	वेदांतनगर	गुरनं २०१/२०२१ कलम ६५ (ख) म.दा.का.	दोनं. २५/२०२१ दि ०७/११/२०२१	न्यायप्रविष्ट
०४	वेदांतनगर	गुरनं ६९/२०२३ कलम ६५ (ख) म.दा.का.	दि. १४/०४/२०२३	तपासावर
०५	वेदांतनगर	गुरनं ३१८/२०२१ कलम ३०७, ३२४, ३५४(ड), ५०६, ३४ भादवि	दोनं. ४८/२०२२ दि. ३०/६/२०२२	न्यायप्रविष्ट
०६	छावणी	गुरनं ४०५/२०२१ कलम ३५४, ३५४(ड), ५०६ भादवि	दोनं २१६/२०२१ दि. २०/१२/२०२२	न्यायप्रविष्ट

प्रतिबंधक कारवाई

०१	वेदांतनगर	चॅ.के.क्र.०३/२०२० कलम ९३ मदाका
०२	वेदांतनगर	चॅ.के.क्र.०३/२०२२ कलम ११० सिआरपीसी

3. It is alleged that four crimes were registered against the petitioner under section 65 of the Maharashtra Prohibition Act, 1949 and one crime was registered against the petitioner under section 307 of the Indian Penal Code, 1860 (for short, "IPC") at Police Station

Vedantnagar. Last offence under section 354 of the IPC was registered at Chhavani Police Station, Chatrapati Sambhajinagar. Two chapter cases were registered against the petitioner under section 107 of Cr.P.C., 1973 at Vedantnagar Police Station. It is also alleged that statements of two secrete witnesses were also recorded alleging that there is reasonable fear in their mind, and therefore, they did not proceed against the petitioner.

4. The petitioner filed say and strongly opposed the said notice and also taken stand that two offences which are registered against him at Vedantnagar and Chhavani Police Station are about his family dispute and there is no danger to the public order. Turning down his explanation, the authority, respondent no.3 held that the petitioner shall be externed and passed impugned order dated 5th July, 2023.

5. An Appeal no.76 of 2023 was preferred before the Divisional Commissioner, Chhatrapati Sambhajinagar. It was dismissed after hearing the petitioner and the respondents by its order dated 06.10.2023.

6. The grounds raised in this writ petition are that the petitioner is not involved in serious crimes as contemplated under

section 56 of the Maharashtra Police Act i.e. under Chapter XII, XVI and XVII of the IPC. Two offences registered against him under sections 354 and 307 of the IPC are out of family dispute. The applicant is externed from entire Aurangabad district, which is not legal and correct as his activities were only in the area of Vedantnagar Police Station and Chhavani Police Station of Aurangabad city.

7. The learned advocate for the petitioner submitted that the impugned order is not legal and correct as the authority has exceeded its power by externing the petitioner from entire Aurangabad district. For that he is relying upon the judgments of this Court in the case of ***Shoeb @ Sharif @ Shafya Khan Aasif Khan and another Vs. The State of Maharashtra in Criminal Writ Petition No.638 of 2021 dated 06.09.2021*** and in the case of ***Dipak Sudhakar Patil Vs. The State of Maharashtra and others in Criminal Writ Petition No.159 of 2021 decided on 9th March, 2021.*** He lastly submitted to set aside the impugned order, which is ab-initio void.

8. The learned APP for the State strongly opposed the petition and submitted that the petitioner is involved in anti-social crimes involving public order as defined in the Maharashtra Prohibition Act

1949 and other two offences under the Indian Penal Code under sections 354 and 307 of the Indian Penal Code, which are coming under the purview of Section 56 of the Maharashtra Police Act i.e. offences against the human body and women. He pointed out that there are statements of two secrete witnesses, who did not come forward against the petitioner. The petitioner did not obey the order of externment, therefore, four notices were issued to the petitioner. He, therefore, lastly submitted to dismiss the writ petition.

9. The learned advocate for the petitioner submitted that though the notices under section 152 of the Maharashtra Police Act were issued to the petitioner, no criminal action is taken against him. But, this is not the issue before this Court.

10. As far as four crimes registered under section 65(b) are concerned, those were registered in the years 2021, 2022 and 2023. Those are offences registered under section 65(b) of the Maharashtra Prohibition Act, which are not coming within the purview of section 56 of the Maharashtra Police Act. As far as, other two crimes are concerned, those are registered out of family dispute. The object of section 56 of the Maharashtra Police Act is to maintain the public order as specified in sub-clause (bb) that there must be reasonable grounds for believing that such person is acting or is

about to act in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980 or in any manner prejudicial to the maintenance of supplies of commodities essential to the community etc.

11. The learned APP pointed out the observations of the authority noted in the impugned order that the activities of the petitioner are prejudicial to the maintenance of public order. However, considering the mandate of section 56 of the Maharashtra Police Act that such offences must be registered against him as per Chapter XII, XVI and XVII. These two offences registered under sections 354 and 307 of the IPC are arising out of family dispute. Therefore, there cannot be a issue of maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980. Needless to mention that four offences registered under section 65(b) of the Maharashtra Prohibition Act are not coming within the purview of section 56 of the Maharashtra Police Act.

12. As far as the area of externment is concerned, though the learned advocate for the petitioner pointed out that maximum offences are committed in Vedantnagar Police Station and only one

is committed in Chhavani Police Station, in that regard considering these factual aspects, the externment order must be for Aurangabad City only and not for Aurangabad district. Considering these two grounds, the impugned order deserves to be set aside. The Writ petition deserves to be allowed. Writ Petition is accordingly allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.)

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