



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

2 CRIMINAL WRIT PETITION NO. 1708 OF 2023

MOHAMAD MOHASIN ABDUL SALIM SAUDAGAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Mr. Shailendra S. Gangakhedkar.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 22nd January, 2024.

P.C.:

1 This petition is directed against the order passed by respondent no.4 / Sub-Divisional Magistrate, Nanded dated 7th July, 2023 under Section 56(1)(a)(b) by which the petitioner is externed for one year, against which he has preferred Appeal No.75 of 2023, before the learned Divisional Commissioner, Aurangabad (Chatrapati Sambhajinagar), which was dismissed on 3rd November, 2023.

2 The learned counsel for petitioner submitted that the order passed by respondent No.2 is illegal, erroneous and not sustainable in the eyes of law. There is no subjective satisfaction for passing the impugned order. He pointed out the grounds of objection to the impugned order that it is against liberty as enshrined under Article 19(1)(d) and Article 21 of the Constitution of India. He pointed out that there is no legal ground to pass such order against the petitioner. The

order is vague and arbitrary. He pointed out the authority of *Hussain Alias Bantu Mohd. Bashir Vs. Deputy Police Commissioner Nagpur and others*, in which para 15 it is held as under:-

“15. Thus despite the case relating to the epidemic disease and disaster management having been closed, the authorities below have blamed the petitioner of indulging into the activities causing epidemic disease and to spread such disease. This clearly shows that the authorities below have not applied their mind while passing the impugned orders.”

3 The learned counsel for petitioner pointed out page Nos.2 and 3 of the impugned order, in which it is observed that the secret witnesses have stated that prohibited Gutkha was carried by the petitioner and if anybody opposes, the petitioner had quarreled and threatened him. The learned counsel for petitioner submitted that there is no such subjective satisfaction for passing the impugned order. He lastly prayed to set aside the impugned order by allowing this writ petition.

4 The learned APP strongly objected the petition. He submitted that the petitioner is involved in various serious crimes. It is lastly prayed to reject the petition.

5 The learned counsel for petitioner pointed out that the

statements of secret witnesses are not supplied to this petitioner. This itself is sufficient to show that the action taken by respondent No.2 is unfair and illegal. No doubt, there are similar criminal cases registered against the petitioner, however, at the same time, it is established from the record that copies of secret witnesses were not supplied to this petitioner as held in para 20 of the judgment of ***Hussain Alias Banto Mohd. Bashir*** (supra), which reads as under:-

“20. If one goes through the particulars of the incident as disclosed to the petitioner through the notice dated 11.10.2022, the very purport of recording in camera statement has been defeated, as both the witnesses could be easily identified by the petitioner. Further, the original record show that, in the reply filed by R-1 in appeal filed by the petitioner against his order dated 31.01.2023, the respondent No.1 has stated that these two witnesses viz. witnesses (A) and (B) were summoned by him. However, the Senior Police Inspector has replied that the witnesses have refused to appear to verify their statements because during inquiry by Senior Police Inspector, they have narrated the incident on the condition that they will not appear before any Government office or the Court. It is further mentioned in the reply that the Assistant Police Commissioner has visited the spot and inquired with the neighboring persons who have stated that the incident has occurred and the occurrence of the incident has been verified through the secret informant as well.”

6 Considering all these aspects, the order passed by respondent No.2 is not sustainable as there is absence of subjective satisfaction. The impugned order, therefore, deserves to be quashed and set aside. The petition deserves to be allowed. The writ petition is, therefore, allowed in terms of prayer clause (B). No costs.

7 Parties to act upon the authenticated copy of this order.

[SANJAY A. DESHMUKH, J.]

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