



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL WRIT PETITION NO. 1766 OF 2023

AMAR SURAJPRASAD DUBE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr. Kale Yogesh D.

APP for Respondent/State: Mrs.Pratibha J. Bharad

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 8th FEBRUARY, 2024.

PER COURT :-

This Writ Petition is directed against the order passed by Respondent No.3- Superintendent of Police vide Ja.Kra. 2023/Sapra/Kaksha-1/Pol-1/Externment/CR-97 dated 09.11.2023, by which the petitioners were externed for a period of one year from entire Aurangabad district. It is alleged in the notice issued under section 59 of the Maharashtra Police Act, 1951 that these petitioners have committed the following crimes :-

अ.क्रं	पो. ठाणे	गुरन व कलम	दोषारोप नं व दिनांक	गुन्ह्याची सद्यस्थिती
१	वडोदबाजार	२५४/२०२२ कलम ३७९,३४ भादवि	६३/२३ दि.२९/०५/२३	न्यायप्रविष्ट
२	वडोदबाजार	२८४/२०२२ कलम ३७९,३४ भादवि	३२/२३ दि.३१/०३/२३	न्यायप्रविष्ट
३	सिल्लोड शहर	०८/२०२३ कलम ३७९,३४ भादवि	--	तपासावर प्रलंबीत
४	फुलंब्री	०६/२०२३ कलम ३७९,३४ भादवि	८८/२३ दि.०६/१५/२३	न्यायप्रविष्ट
५	खुलताबाद	२१८/२०२२ कलम ३७९,३४ भादवि	--	तपासावर प्रलंबीत

६	खुलताबाद	४२९/२०२२ कलम ३७९,३४ भादवि	--	तपासावर प्रलंबीत
७	खुलताबाद	४७९/२०२२ कलम ३७९,३४ भादवि	६९/२३ दि.३१/०५/२३	न्यायप्रविष्ट

2. The explanation was submitted by all the petitioners to the said notice on 10.07.2023, in which they have averred that they have falsely implicated in the crimes. Their names are not mentioned in the report. They have roots in the society. If they are externed, they will not be able to attend the trials. They have no criminal antecedents. It is lastly prayed not to take action.

3. Again similar notice under section 59 of the Maharashtra Police Act, 1951 was issued to all the petitioners in which it is alleged that the petitioners are members of the gang. They have formed the gang and the peoples in that area are not daring to lodge the report or give evidence against them.

4. The notice was replied on 14.08.2023. However, thereafter the impugned order was passed by holding that petitioner nos.1 to 3 and one another person, who is not before this Court, are members of the gang.

5. The learned advocate for the petitioners submitted that the copies of the secrete witnesses were not handed over to the

petitioners. Further except one crime in all the cases registered against these petitioners, their names were not mentioned in the report but subsequently they are charged in those cases in which they are released on bail. The learned advocate for the petitioners submitted that opportunity was not given to the petitioners to put forth their say in respect of in-camera statements of the witnesses as laid down in the case of ***Kamalkishor Pusaram Bang Vs Superintendent of Police, Jalna*** reported in **AIR Online 2018 Bom 699**, therefore, he prayed to quash and set aside the impugned order.

6. The learned APP for the State strongly opposed the petition and submitted that the petitioners are members of the gang. There was subjective satisfaction by the Competent Authority. The Competent Authority considered seven crimes registered against these petitioners and also relied upon two in-camera statements of the witnesses. In-camera statements of the witnesses cannot be handed over to the petitioners as the secrecy of those witnesses is likely to be revealed. The impugned order is therefore legal and valid. She lastly prayed to dismiss the Petition.

7. Perused the impugned order. It is observed in the notice as well as the impugned order. The in-camera statements of secrete witnesses were recorded on the condition that those statements can

be kept confidential and on that basis as well as on the basis of those seven crimes registered against those petitioners, the authority respondent no.2 come to the conclusion that petitioner no.1 is the leader of the gang and other petitioners are the members of that gang.

8. Regarding the secrete witnesses and their in-camera statements recorded by the authority, it is undisputed fact that those statements are not handed over to the petitioners for giving them an opportunity of hearing. Therefore, considering the ratio laid down in the authority of ***Kamalkishor Bang (cited supra)***, the authority concerned had not handed over the in-camera statements of the secrete witnesses to the petitioners to put forth their say. The act of the authority is thus against the principles of natural justice. Therefore, the impugned order deserves to be set aside. The Writ Petition deserves to be allowed. Hence the following order :-

ORDER

The Writ Petition is allowed in terms of prayer clause "C".

(SANJAY A. DESHMUKH, J.)