



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

901 CRIMINAL WRIT PETITION NO. 1905 OF 2023

1. Saiyyed Ameen s/o Saiyyed Farukh Patwe @ Bulett.
2. Saiyyed Arafat s/o Saiyyed Farukh Patwe. ... **Petitioners**

Versus

The State of Maharashtra and others. ... **Respondents**

...
Mr. Nasimoddin Rafiyoddin Shaikh, Advocate for Petitioners.
Mrs. Pratibha J. Bharad, APP for Respondent/State.
...

AND

902 CRIMINAL WRIT PETITION NO. 1906 OF 2023

Bhavna d/o Jawaharlal Lodha. ... **Petitioner**

Versus

The State of Maharashtra and others. ... **Respondents**

...
Mr. Nasimoddin Rafiyoddin Shaikh, Advocate for Petitioner.
Mrs. Pratibha J. Bharad, APP for Respondent/State.
...

CORAM : SANJAY A. DESHMUKH, J.

DATE : 15th February, 2024.

P.C.:

1 These petitions are directed against the order dated 23rd August, 2023 passed by the externing authority / respondent No.6, against which Appeal Nos.75, 76 and 86 of 2023 were filed and they

were rejected by order dated 7th December, 2023.

2 The brief facts of these criminal writ petitions are that respondent No.6 received proposal for externment of three persons, who are involved in five criminal cases registered at Bazarpeth Police Station, Jamner Police Station, Pahur Police Station and MIDC Police Station. The alleged notice was issued on 17th July, 2023 and the externment order was passed by holding that the petitioners are members of a gang or body causing danger or alarm to the society.

3 The learned counsel for petitioners pointed out that the statements of in-camera witnesses are not recorded. There is no live link and subjective satisfaction to pass the impugned order. There are no allegations of physical violence in collective nature. The petitioners were released on bail in all the cases. In Writ Petition No.1905 of 2023, the action is taken after 18 months and in Criminal Writ Petition No.1906 of 2023, the action is taken after 11 months after the occurrence of last crime. The learned counsel for petitioners urged that action under Section 151 of the Code of Criminal Procedure was never initiated against these petitioners. Most of the crimes are registered against the unknown persons and these petitioners are falsely implicated in those crimes. He lastly prayed that essential ingredients of Section 55 of the Maharashtra Police Act are not

establishing. He, therefore, prayed to quash and set aside the impugned order by allowing these criminal writ petitions.

4 The learned counsel for petitioners placed reliance on the following judgments:

- i) *Shri Altaf Rajekhan Pathan and others Vs. The Divisional Commission, Pune Division and others, 2018 (4) Mh.LJ (Cri.) 257;*
- ii) *Farukh Khan @ Papu and ors. Vs. The State of Maharashtra and ors, 2022 ALL MR (Cri) 2730;* and
- iii) *Abasaheb Balasaheb Warkhede Vs. The State of Maharashtra and Ors., 2022 ALL MR (Cri) 1541.*

5 In *Shri Altaf Rajekhan Pathan and others* (supra), this Court in paragraph Nos.21 and 23 held as under:

“21. Therefore the sinequanon for Section 55 to apply is the movement or encampment of any gang or body of persons. Hence the Section contemplates that there has to be a collective action or concerted action on the part of the gang members. Only when there is a collective or concerted action that the action of dispersal or removal of each of the gang members can be taken. The word “gang” has not been defined in the police act. It would therefore be useful to refer to the dictionary meaning of the said word “gang”.

Black's Law Dictionary "Gang" means:

"A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes."

23. In our view, therefore, the said cases also fall short of the requirements of there being a collective participation by all the gang members in the unlawful activity."

6 In *Farukh Khan @ Papu and ors.* (supra), this Court in paragraph No.8 held as under:

"8. On perusal of Section 55 of the Act, it appears that the main requirement for attracting Section 55 is that the criminal cases against gang or group of persons must be collective in nature and the same should not be individualistic in nature. Further, it has to be shown that the petitioners involved in criminal activities must be the members of gang. Further, there should be specific material on record showing that the persons are acting as gang or body of persons. Section 55 of the Act can only be invoked if all these aforesaid ingredients are present."

7 In *Abasaheb Balasaheb Warkhede* (supra), this Court in paragraph No.20 held as under:

"20. In "Rajwardhan Babaso Patil" (supra) a co-ordinate bench of this court observed thus -

”Disjunct or disparate actions, however criminal, do not justify action under Section 55. The gang’s acts that form the basis of any such order must also be continuous and incessant, not ones going well back in time.””

8 The learned APP for the State strongly opposed these writ petitions and pointed out the essential ingredients of Section 55 of the Maharashtra Police Act. It is submitted that an opportunity of hearing was given to these petitioners, who are more than one and they have formed a gang. All the requirements under Section 55 of the Maharashtra Police Act are complied with. There is no such delay for initiating action against these petitioners. She pointed out the nature of crimes registered against these petitioners. It is submitted that considering the grounds and reasons, the impugned order is passed by the externing authority. It is lastly prayed to reject these criminal writ petitions.

9 Perused the impugned order and the notice issued under Section 55 of the Maharashtra Police Act. The order dated 23rd August, 2023 does not disclose the recording of statements of the in-camera witnesses. As far as live link is concerned, in Criminal Writ Petition No.1906 of 2023, the last crime against petitioner / Bhavna bearing Crime No.121 of 2022 was registered on 8th August, 2022 and

in Criminal Writ Petition No.1905 of 2023, the last crime against the petitioners bearing Crime No.59 of 2022 was registered on 30th January, 2022. The notice was issued on 17th July, 2023. Thus, there is delay of 18 months for taking action against the petitioners in Criminal Writ Petition No.1905 of 2023 and delay of 11 months for taking action against the petitioner in Criminal Writ Petition No.1906 of 2023. This shows that there is no live link and the delay was caused for taking action and therefore, the alleged criminal activities do not comply the requirements of Section 55 of the Maharashtra Police Act i.e. subjective satisfaction on the part of authority. Thus, essential ingredients of Section 55 of the Maharashtra Police Act are not established. Therefore, the allegations made against these petitioners are not established on the basis of the subjective satisfaction by the authority. The appellate authority also did not consider this aspect in its proper perspective.

10 Considering all these reasons and the law laid down in the cases *Shri Altaf Rajekhan Pathan and others* (supra), *Farukh Khan @ Papu and ors.* (supra) and *Abasaheb Balasaheb Warkhede* (supra), both the criminal writ petitions deserve to be allowed. Both the writ petitions are, therefore, allowed in terms of prayer clause (a).

[SANJAY A. DESHMUKH, J.]