

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 2574 OF 2024**

1) Deepak Harilal Jaiswal  
Age 39 years, Occ: Job  
R/o. Room No.202, D-4 Owners Colony  
Chatranjan Colour, Vidyavihar (E),  
Mumbai.

2) Mrs. Soni Sachin Singh  
Age: 29 years, Occ. Hotel Business  
R/o. Room No.102, B-Wing,  
Building No.76, Tilak Nagar Colony  
Tilak Nagar Chembur Mumbai.

.. Petitioners

Vs.

1) State of Maharashtra, Through  
Through its Secretary, Home Department  
Mantralaya Mumbai

2) The Divisional Commissioner  
Konkan Division Mumbai

3) The Deputy Commissioner Police  
Zone-VI, Chembur, Mumbai

4) The Assistant Commissioner of Police  
Deonar Division, Mumbai.

5) Senior Inspector of Police,  
Tilak Nagar Police Station, Mumbai.

.. Respondents

Mr. Sanjeev Kadam a/w. Mr. Atharv Nalawade and Mr.Sohel Mujawar  
i/b. Mr.Ramdas Hake Patil for the Petitioners.

Ms. P. P. Bhosale, APP for the Respondents-State.

PSI R.B.Landge of Tilaknagar Police Station present.

**CORAM : SHYAM C. CHANDAK, J.**  
**RESERVED ON : 12<sup>th</sup> AUGUST, 2024**  
**PRONOUNCED ON : 12<sup>th</sup> SEPTEMBER, 2024**

**JUDGMENT:-**

. The challenge in the present Petition is to the Order dated 20<sup>th</sup> March 2024, passed by Respondent No.3, whereby the Petitioners have been externed for a period of 18 months and, the Order dated 12<sup>th</sup> April 2024, passed by the Respondent No.2, whereby said Order dated 20<sup>th</sup> March 2024, has been upheld.

2) Heard Mr. Sanjeev Kadam, learned counsel for the Petitioners and Ms.Bhosale, A.P.P. for the Respondents-State.

3) Rule. Rule is made returnable forthwith. With consent of learned counsel for respective parties heard finally. Perused the record.

4) Facts giving rise to the Petition are that, on 3<sup>rd</sup> January 2024, Respondent No.3 served the Petitioners with a notice dated 28<sup>th</sup> December 2003, under Section 55 read with Section 59 of the Maharashtra Police Act, 1951 (*'the Act'*, for short) and called upon them to show cause as to why they should not be externed from the limits of Mumbai City, its Suburbs and District Thane for a period of two years.

5) Occasion of said notice was an externment proposal submitted by Tilaknagar Police Station. Said notice conveyed that, the Petitioners

with their associates having ‘*goonda*’ mindset have formed an independent gang and active in certain areas. That, they all have been booked for the offences of attempt to commit murder, causing grievous hurt, hurt by using dangerous weapons or means; causing damage; abusing; beating by hand; threatening and cheating etc. That, the Petitioners are doing those acts with the help of their associates; that, these activities of the Petitioners terrorised the area and created feeling of in-safeness in the mind of people of the said area which has posed a threat to their lives and properties; that, the Petitioners have no respect for the law and they have tendency to commit violent crimes in stark violation of law. History of the crimes allegedly committed by the Petitioner No.1 as gang leader along with Petitioner No.2 and other gang members and the preventive actions which were relied upon for the purpose of the ‘Order of Externment’, are as under:-

(i) History of crimes :-

| Sr. No. | Police Station | CR No. & Sections                                                                  | Name of Accused                                                                                         | Status                            |
|---------|----------------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-----------------------------------|
| 1       | Tilaknagar     | C.R.No.135/18,<br>Sections 324, 323,<br>504,506,427, 34 IPC                        | 1) Deepak Harinath Jaiswal<br>2) Ramal Meghu Yadav<br>3) Deepak Pinku Singh<br>4) Lallan Sanjay Mandal  | Pending in<br>the Court<br>of law |
| 2       | Tilaknagar     | C.R.No.160/21,<br>Sections 452, 427,<br>506(2), 504,141, 142,<br>143, 144, 148 IPC | 1) Deepak Harinath Jaiswal<br>2) Soni Sachin Singh<br>3) Suman Deepak Jaiswal<br>4) Ved Pradeep Rajbhar | Pending in<br>the Court<br>of law |

|   |            |                                                                              |                                                                                                                                                                                           |                                   |
|---|------------|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| 3 | Tilaknagar | C.R.No.233/23,<br>Sections 420, 465,<br>467, 471, 34 IPC                     | 1) Deepak Harinath Jaiswal<br>2) Soni Sachin Singh<br>3) Rajendra Premchand Gupta<br>4) Avinash Sharayu Pasi                                                                              | Pending in<br>the Court<br>of law |
| 4 | Tilaknagar | C.R.No.360/23,<br>Sections 324, 323,<br>427, 504, 34 IPC                     | 1) Deepak Harinath Jaiswal<br>2) Soni Sachin Singh                                                                                                                                        | Pending in<br>the Court<br>of law |
| 5 | Tilaknagar | C.R.No. 716/23,<br>Sections 307, 143,<br>144, 147, 149, 323,<br>504, 506 IPC | 1) Deepak Harinath Jaiswal<br>2) Soni Sachin Singh<br>3) Satish Shankar Verma<br>4) Malkitsingh Satnam Singh<br>5) Gaurav Laxman Singh<br>6) Yedu Tuleram Rawal<br>7) Anand Sundar Sasane | Pending in<br>the Court<br>of law |

(ii) Preventive actions taken against Petitioner No.1, the gang leader :-

| Sr. No. | Police Station | E.A.No. & Chapter Case No. | Section | Particulars                                                                       |
|---------|----------------|----------------------------|---------|-----------------------------------------------------------------------------------|
| 1       | Tilaknagar     | 75/18                      | 107     | Personal Bond of Rs. 5000/- taken for one Year dtd. 25/5/2018                     |
| 2       | Tilaknagar     | 01/22                      | 110     | Under Section Personal Bond taken of Rs.30,000/- for three years dated 08/02/2022 |
| 3       | Tilaknagar     | 06/23                      | 122 (B) | Cash of Rs.5000/- was paid on 10/08/2023                                          |

(iii) Preventive action taken against Petitioner No.2, the gang member :-

| Sr. No. | Police Station | E.A.No. & Chapter Case No. | Section |                                                                                  |
|---------|----------------|----------------------------|---------|----------------------------------------------------------------------------------|
| 1       | Tilaknagar     | 21/23                      | 107     | Personal Bond of Rs.1,00,000/- taken for a period from 10/08/2023 to 09/08/2023. |

6) Besides the aforesaid crime history, in-camera statements of two confidential witnesses 'A' and 'B' were also considered. Witness 'A'

informed that, one day, at about 21.30 hours, in 1<sup>st</sup> week of November, 2023 the Petitioners and their associates abused, assaulted and threatened him just because he demanded the charges of serving betel nut leaves, and further they also threatened the members of crowd gathered there. Witness 'B' revealed that, one day, at about 19.30 hours, in the 1<sup>st</sup> week of November, 2023 the Petitioners and their associates abused, assaulted and threatened the said witnesses as he failed to give an extortion amount of Rs.10,000/-. Further, they threatened the members of the crowd gathered there.

7) The Petitioners replied the said show cause notice and opposed the proposal of their externment on various grounds. They have also examined two witnesses.

8) After considering externment proposal, contentions of the Petitioners and the evidence, the Respondent No.3 passed the impugned Order dated 20<sup>th</sup> March 2024, and directed the Petitioners to leave the limits of Mumbai, its suburban and District Thane for a period of 18 months, within two days from the date of receipt of the said order.

9) The Petitioners challenged the 'Order of Externment' in Appeal No.52 of 2024 but were unsuccessful. Hence, the petition.

10) Learned counsel Mr. Kadam for the Petitioners submits that,

even though the Petitioners have challenged the legality of the impugned Orders on several grounds, the Petitioners rely only upon few of them. In this regard, the learned counsel submits that, no finding is recorded in the impugned orders that, the Petitioners had formed a gang or group or body of persons engaged in continuous criminal activity so as to cause alarm or danger to the members of public. That, Section 55 of the Act applied to a gang or body of persons i.e. the leader and all the members of the gang and not to an individual member thereof. Yet, the impugned 'Order of Externment' is contrary to said Section 55. Secondly, that the five crimes considered against the Petitioners were registered in Tilaknagar Police Station only. However, the Petitioners have been externed from the entire limits of Mumbai City, its Suburbs and District Thane for a period of 18 months. The impugned 'Order of Externment', however, does not show any such reason to cover said area. Thirdly, there is no live link between the first two crimes in the table and the 'Order of Externment'; that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> crimes are against an individual. Therefore, said crimes cannot be considered to base the impugned orders. As such, both the impugned orders lack objective as well as subjective satisfaction to record the same, which is unconstitutional. He submits that, in short, no material whatsoever existed which could be said to be sufficient for answering the

criteria of Section 55 of the Act. Thus, according to the learned counsel on all the three grounds the impugned orders are illegal and therefore the same may be quashed and set aside. To support the submissions, the learned counsel relied upon following reported decisions.

**1) *Ahammad M.Shaikh vs. State of Maharashtra*<sup>1</sup>**

**2) *Vijay Lalso Jadhav Vs. State of Maharashtra with Shailesh Ramesh Yadav Vs. State of Maharashtra*<sup>2</sup>**

**3) *Shaikh Mukhtyar Mustafa Shaikh Vs. State of Maharashtra & Ors.*<sup>3</sup>**

**4) *Deepak s/o. Laxman Dongre Vs. The State of Maharashtra & Ors.*<sup>4</sup>**

11) In contrast, learned A.P.P. submits that, looking at the crimes committed in the past by the Petitioners and their associates, it is evident that the Petitioner No.1 is the gang leader and Petitioner No.2 is a member thereof. Petitioner No.1 is figured in all the said crimes and Petitioner No.2 is involved in 4 of them. However, the rest of the accused persons are different. These facts show that, both Petitioners and the rest of the accused persons have formed a gang to commit different offences in the area concerned. Undoubtedly, the crimes they have committed are serious.

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<sup>1</sup> 2013(4) Bom.C.R.(Cri)559

<sup>2</sup> (2013) SCC online Bom 1432

<sup>3</sup> 2017(4) Bom.C.R.(Cri) 407

<sup>4</sup> 2022 SCC Online SC 99

This indicates that, the Petitioners have no fear of law. Said acts of the Petitioners and their gang members are dangerous and likely to cause alarm to the members of public. It has created terror in the area concerned. People are not coming forward to give their statement against the Petitioners. Besides this, all other material angles have been well considered by both the authorities, responsible for passing the impugned orders. As such, the Petitioner have no case to question the legality of said orders. Hence, the Petition be dismissed.

12) Considering the rival submissions and the ‘Order of Externment’, it is necessary to refer Section 55 of the Act, which reads as under :

**“55. Dispersal of gangs and body of persons.-** Whenever it shall appear in Greater Bombay and in areas in which a Commissioner is appointed under Section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the <sup>2</sup>[Superintendent] <sup>3</sup>[\*\*\*] empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum

or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm, or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction <sup>4</sup>[or such area and any district, or districts or any part thereof, contiguous thereto] which in such time as such officer shall prescribe, and not to enter the area <sup>5</sup>[for the areas and such contiguous districts, or part thereof, as the case may be,] or return to the place from which each of them was directed to remove himself.”

13) While dealing with a similar question, on referring Section 55 and the decision in **Ahammad Mainuddin Shaikh** (Supra), the Division Bench of this Court in **Vijay Jadhav** (Supra) in paragraph 10 and 11 held as under :-

*“10. A perusal of the aforesaid Section shows that the object of Section 55 of the Bombay Police Act is “dispersal of gangs and body of persons” and therefore, the Competent Authority as well as the Appellate Authority had no power to direct any individual person to be externed outside any district or districts or any part thereof, inasmuch as it could only be directed against all the members of a gang or a body of persons, as contemplated under Section 55 of the Bombay Police Act. The language of Section 55 shows that the power given to the Competent Authority can be exercised only in relation to any gang or a body of persons, whenever it*

*appears to the Competent Authority, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or a reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof. It is, therefore, evident that Section 55 of the Bombay Police Act does not contemplate movement or encampment of 'a person' causing or calculated to cause danger or alarm, but, refers to movement or encampment of any gang or body of persons causing or calculated to cause alarm, danger, etc. It is thus, evident from the language of Section 55 of the Bombay Police Act, that its application is directed not against 'any individual' but against any gang or body of persons or members of the gang.*

**11.** *Section 55 of the Bombay Police Act contemplates collective action against the gang or body of persons and therefore, the final direction which is required to be issued in terms of the said Section, will have to be necessarily against each of the members of the gang and not against one or a few of them on selective basis. It is therefore, apparent that an illegality has been committed by both the Authorities, i.e. the Competent Authority and the Appellate Authority by passing the externment order and confirming the same only qua the petitioners and not against the other members of the alleged gang."*

14) In the case in hand, the show cause notice, 'Order of

Externment' and the Order in Appeal consistently maintained that the Petitioners and the other accused persons shown in the table above have formed a gang or body of persons. That, the Petitioner No.1 is a leader of said gang and that, the Petitioner No.2 and the other accused are its members. However, there is no material from which it can be discerned that, the other accused persons are or were the members of the alleged gang or body of persons formed by the Petitioners, when the aforesaid crimes were considered. Secondly, it is significant that even though said other accused persons have been labeled as the members of the gang, they have not been proceeded against to extern them by virtue of Section 55 of the Act. Thus, it is apparent that, the externment procedure was selectively initiated only against the Petitioners without any intention to proceed in the same manner against the other members of the gang. This is strictly against what is contemplated in and the object of Section 55 of the Act.

15) Another aspect of the matter which requires an attention is, the five crimes considered against the Petitioners were registered in Tilaknagar Police Station. The impugned orders, however, do not indicate any satisfactory or compelling reason to extern the Petitioners out of the limits of Mumbai, its suburban and District Thane for a period of 18 months, in the backdrop of the show cause notice referring only to said five

crimes. To that extent, the 'Order of Externment' is excessive, as held in the case of ***Shaikh Mukhtyar*** (Supra).

16) As held in the case of ***Deepak Dongre*** (Supra), "there cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. ...". "As the Order of Externment' takes away fundamental right under Article 19 (1) (d) of the Constitution of India, it must stand the test of reasonableness contemplated by clause (5) of Article 19."

17) Conspectus of the discussion above is that, from the facts of the case in hand it is obvious that the objective and subjective satisfaction arrived at to pass the 'Order of Externment', do not meet the requirements of Section 55 of the Act. Yet, the said Order has been upheld turning down the Appeal of the Petitioners. Thus, both the impugned orders show non-application of mind and arbitrariness. Therefore, said orders cannot be sustainable in law. As a result, both the impugned orders are liable to be set aside. The Petition succeeds thus. Hence, following Order is passed :-

**- ORDER -**

- i) Petition is allowed.
- ii) The impugned Externment Order bearing No.16/C/43, dated 20<sup>th</sup> March 2024 passed by the Respondent No.3 and the impugned Order dated 12<sup>th</sup> April 2024 passed by the Respondent No.2 in Externment Appeal No.52 /2024, are quashed and set aside.
- iii) Rule is made absolute in aforesaid terms.

JYOTI  
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**(SHYAM C. CHANDAK, J.)**