

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

CRIMINAL WRIT PETITION NO.6032 OF 2024

Nilesh Bhalchandra Bahire
Aged : 41 years, Occ. Business,
R/at : Takka gaon, Tal. Panvel,
Dist. Raigad

..... Petitioner

Vs.

1. The State of Maharashtra
Through Government Pleader,
Hon'ble High Court at Bombay.
2. Deputy Commissioner of Police,
Zone – 2, Panvel, Navi Mumbai
3. Divisional Commissioner,
Kokan Division, Mumbai

..... Respondents

Mr. Ganesh Gupta (VC) a/w. Mr. Sahil Ghorpade, Mr. Surya Gupta,
Ms. Priyanka Rathod i/b. GG Legal Associates for the Petitioner.
Mr. N.B. Patil, APP for the State.
Mr. Rajendra Ghevadekar, API, Panvel City Police Station, Navi Mumbai,
present.

CORAM : SHYAM C. CHANDAK, J.

DATED : 20th DECEMBER, 2024

ORAL JUDGMENT :-

. Present Petition seeking an exception to the Order dated
16th July, 2024 passed by the Respondent No.2 thereby the Petitioner
has been externed from the limits of District Raigad along with Navi
Mumbai for a period of one year and the Order dated 11th November,

2024 passed by the Respondent No.3 thereby the Externment Appeal No.147/2024 filed by the Petitioner questioning the externment, came to be rejected.

2) Heard Mr. Ganesh Gupta, learned Advocate for the Petitioner and Mr. N.B. Patil, learned APP for the State. Perused the record.

3) **Rule.** Rule is made returnable forthwith. Heard finally with consent of the parties.

4) Background facts are that, a Chapter Case No.09/2023 was registered against the Petitioner with Panvel City Police Station, wherein, on 23rd January 2023, the Petitioner was required to execute a bond in the sum of Rs.15,000/-, to be of good behaviour for a period of one year. Said Chapter Case has been closed on 13.12.2023. Meanwhile, following cognizable offences were registered against the Petitioner :-

Cognizable Offences :-

Sr. No.	Police Station	Crime Nos. and Sections	Court Case No.	Current Situation
1	Panvel City	C.R.No.130/2023 Sections 143, 147, 149, 341, 323, 324, 504 of IPC.	137/2023	Subjudice
2	Panvel City	C.R.No.519/2023 Sections 326, 324, 143, 147, 148, 149, 504, 506 of IPC.	318/2024	Subjudice

5) In the backdrop, in-camera statement of two confidential witnesses 'A' and 'B' were recorded 22/02/2024. The witness-A revealed that, he has been residing in Panvel Area. He has been regularly visiting village *Takkagaon*. Therefore, he knew the Petitioner and his family, residing at *Takkagaon*. That, he is aware of the disputes between the Petitioner and the builders as well as other contractors, on account of the construction over the land situated in the vicinity of *Takkagaon* and Railway Station. The witness-A further divulged that, in the last week of October 2023, he had been to *Takkagaon*. At that time, the Petitioner had abused and assaulted him by hand only because the said witness had looked at him. The village people gave an understanding to Petitioner. However, the Petitioner threatened the witness-A not to involve with him, else he would see him. The witness 'B' stated that, he has been doing a business of supplying spare parts to transporters and private vehicle owners, in Panvel and nearby areas. Intermittently, he visits *Takkagaon* for his business and therefore, he knew the Petitioner since last two years. The witness-B had hearsay knowledge that the Petitioner constantly threaten the builders, construction businessmen and common people etc., in the vicinity of *Takkagaon*. Witness-B further disclosed that, sometimes in December 2023, when the witness had visited *Takkagaon* for business work, without any reason, the Petitioner

threatened the witness as not to do the business in the said area. However, the witness did not complain to police, he being frightened, having to contact with police and to avoid the trouble in future. Both the witnesses 'A' and 'B' stated that, the Petitioner has caused great terror in *Takkagaon*, common people fear from him and no one come forward to file a complaint against him.

6) This compelled Panvel City Police Station to submit a proposal with the Respondent No.2, seeking for externment of the Petitioner. The said proposal was sent for inquiry to the Assistant Commissioner of Police, Panvel Division, *Navi Mumbai* ('the ACP' for short). The ACP issued a notice dated 28th February 2024 and, thereby called upon the Petitioner to show cause as to why he should not be externed. The Petitioner appeared before the ACP and gave his statement. After considering the material, the ACP reached to the conclusion that, a case is made out to extern the Petitioner. Accordingly, the ACP returned the proposal with his advise to extern.

7) In turn, the Respondent No.2 issued a notice dated 29th April, 2024 and required the Petitioner to submit his explanation as regards the advice to extern him. The Petitioner submitted his reply to the notice and contended that, the stories behind the crimes and the in-camera statements given by the witnesses 'A' and 'B' are false as the same are products of political pressure. However, after hearing

the Petitioner and considering the material before him, the Respondent No.2 held that the said offences registered against the Petitioner were covered under Chapter XVI of the IPC. Said acts have created his terror in Panvel City and danger to the lives of the people residing in the said area. Therefore, it is expedient to extern the Petitioner to curb his said acts. Further, the Respondent No.2 observed that the Petitioner's area of criminal activity is Panvel City. There are various means of transportation from Panvel, to travel outside the limits of *Navi* Mumbai and Raigad. Therefore, a possibility cannot be ruled out that the Petitioner would again commit crimes by residing in Raigad District. As a result, the Respondent No.2 passed the impugned Order of Externment and thereby directed the Petitioner to remove himself out of the limits of the District Raigad along with *Navi* Mumbai Commissionerate for a period of one year. The Petitioner assailed his externment in Externment Appeal No.147/2024 but the Respondent No.3 dismissed the same. Being further aggrieved, the Petitioner has preferred this Petition.

8) Mr. Gupta, learned Advocate for the Petitioner produced photocopies of the NC reports dated 19th and 22nd August, 2022 filed by Sachin Kawade against Ganesh Waghilkar and the NC report dated 10/12/2023 filed by Smt. Seema Bahira, the wife of the Petitioner

against same person Ganesh Waghilkar. Mr. Gupta also produced photocopies of the FIRs bearing C.R.No.130/2023 filed by Ganesh Waghilkar and C.R.No.519/2023 filed by Deepika Pagde, against the Petitioner and others. The learned APP tendered photocopy of the in-camera statements of confidential witnesses 'A' and 'B'. The aforesaid documents are taken on record.

9) Mr. Gupta, the learned Advocate for the Petitioner submits that, the cross NC reports and the text of the aforesaid FIRs clearly made out that the incident stated therein were nothing but personal disputes between the two sides and it had no relation to the general public residing in the local area. This fact itself indicates that the incidents in the in-camera statements are highly improbable and should be discarded. The Petitioner is not a habitual offender. The Petitioner is on bail in both the aforesaid crimes and he has not misused the bail liberty. In the facts, according to Mr. Gupta, there was no sufficient material to arrive at the subjective satisfaction to pass the Order of Externment. Further Mr. Gupta urged that, looking at the alleged story behind registration of the said crimes and as no crime was ever registered against the Petitioner beyond the limits of Panvel City Police Station, the Order of Externment is excessive as it is unnecessarily covering the limits of larger areas than the jurisdictional area of Panvel City Police Station. The period of the

Externment has been fixed without any reason and even not giving any thought as to what ill-effect the said period would cause on the lives of the Petitioner and members of his family. As such, the externment for one year was unreasonable. Thus, the impugned Order was not in conformity with the law. Yet, the said Order has been upheld by the Respondent No.3, sans giving a look to the aforesaid circumstances. As a result, both the impugned Orders are not sustainable in law and liable to be quashed and set-aside.

10) In contrast, Mr. Patil, learned APP vehemently submitted that, in view of the past NC reports registered at Panvel City Police Station, the aforesaid Chapter Case was initiated and the Petitioner was required to execute the bond to be of good behaviour, for a period of one year. However, the Petitioner had committed breach of the bond by giving cause to register the said two crimes one after another. Besides, the Petitioner was also involved in other criminal acts like threatening, abusing, assaulting innocent people without any reason and disputing with the builders and other contractors, as stated above. Said activities of the Petitioner had created immense threat and terror in the mind of the locals which restrained them from coming forward to file a report against Petitioner. This is confirmed from the narrations by the confidential witnesses. In this background, the satisfaction on the part of the Respondents to extern the

Petitioner, was justifiable. Thus, according to Mr. Patil, the learned APP there is no infirmity in the impugned Orders and the Petition is liable to be dismissed.

11) In view of the rival submissions, I have carefully gone through the record. Looking at the dates of filing and registration of the NC report, it is evident that initially, minor disputes had occurred between the two sides which led them to file the said NC reports. It was followed by the preventive action which culminated in directing the Petitioner to execute the bond to be of good behaviour. Thereafter, the two crimes were registered against the Petitioner.

12) However, it is pertinent to note that, the externment proceeding was initiated almost one year after registration of C.R.No. 130/2023, dated 27th February 2023. Finally, the impugned externment order was passed on 16th July, 2024. Thus, there was more than 15 months gap in registration of the C.R.No.130/2023 and the Order of Externment. The subsequent crime i.e., C.R.No.519/2023 was registered on 12th September 2023. However, the Petitioner was on bail in both the said crimes. In fact, the Petitioner has been granted Anticipatory Bail on 14/12/2023 in the said C.R.No.519/2023 which is more serious than the earlier C.R.No.130/2023. This fact is not controverted by the Respondents. Seriousness of the crime and the role played by the accused in the

said crime are important aspects for grant of bail. However, this aspect is not given any consideration in the Order of Externment. In this regard, it is apt to consider the decision of the learned Single Judge of this Court in *Shubham, through his mother Jyoti Vs. State of Maharashtra, Through Divisional Commissioner and Others*¹, wherein the Externment Authority did not consider the bail Orders and particularly the reasons which weighed the jurisdictional Court to grant bail to the externee. Therefore, it is held that, failure to take into consideration the bail orders would certainly cause dent to the subjective satisfaction arrived at by the Respondent No.2. The Appellate Authority has also not taken this fact into consideration.

13) Except the said two crimes, no other crime was ever registered against the Petitioner nor the Petitioner was convicted in any of the said two crimes. However, in the impugned externment order it is held that, from the facts of the case the Respondent No.2 was convinced that the Petitioner is a habitual offender. Yet, no reason for recording such a finding is discernible from the record. This indicates a clear bias against the Petitioner in the mind of Respondent No.2. Insofar as the said Chapter Case is concerned, the impugned Orders do not clearly state that the Chapter Case was closed, due to the Petitioner committed breach of the bond.

1. AIR 2022 SC 1241

14) Insofar as the in-camera statements of witnesses 'A' and 'B' are concerned, the alleged incidents narrated in their said statements had occurred in October and December 2023. Their statements were recorded on 20th February 2024. As such it is safe to presume that, the said incidents were fresh in their mind at the time of recording their statement. Nevertheless, both the witnesses did not state the exact date, time and place of the incident occurred with them. The alleged acts attributed to the Petitioner by the witnesses 'A' and 'B' were never committed by the Petitioner against any other person, prior to the registration of the aforesaid crime. The Petitioner had no relation with the employment and the business in which the witnesses were engaged. It is not the case that the witnesses 'A' and 'B' were even remotely connected with the builders or the contractors, with whom the Petitioner was disputing. Admittedly, both these witnesses knew about the said disputes of the Petitioner. However, the police concerned did not try to identify and contact any of such builders or contractors to inquire with them and confirm the statements by the witnesses 'A' and 'B'. In the backdrop, it is difficult to depend upon the in-camera statements.

15) Now coming to the question of period of externment. In ***Deepak s/o Laxman Dongre v/s. State of Maharashtra and Ors.***², the

2. 2022 ALL.M.R.(Cri.) 761 (S.C.).

Hon'ble Supreme Court held that, an application of mind on the part of the competent authority is required for deciding the period of the restraint order under Section 56 of the Act. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. As observed by the learned Single Judge of this Court in *Pratik s/o. Prakashrao Kamble v/s. Divisional Commissioner, Amravati and Ors.*³, it is not out of place to mention that the Externment Order apart from making inroads on the fundamental right of the movement, makes the said person leave separate from his family members. Similarly, the Externment Order can deprive the said person of his livelihood. Depending upon the financial position, it can make the dependent family members to starve.

16) In the case in hand, the Petitioner has been externed for a period of twelve months without giving any reason. How this period of twelve months would adversely affect the Petitioner and his family members, is not given a serious thought before fixing it against the Petitioner. Thus, it is apparent that, the said period is fixed without considering the facts of the case. As such, I have no hesitation to hold that the period of externment is excessive and unreasonable.

17) In view of the above discussion, the impugned Order of

3. 2023 (3) Mh.L.J. (Cri.) 284.

Externment is not sustainable in law. However, the said Order is upheld in the Externment Appeal No.147/2024, without giving any consideration to the aforesaid aspects discussed in this Order. As a result, the impugned Order passed by the Respondent No.3 thereby dismissing the Appeal, is also not sustainable in law. Thus, both the impugned Orders are liable to be quashed and set-aside. The Petition succeeds, thus. Hence, following Order :-

- ORDER -

- (a) Writ Petition No.6032 of 2024 is allowed.
 - (b) The impugned Order of Externment dated 16th July, 2024 passed by the Respondent No.2 and the Order dated 11th November, 2024 passed by the Respondent No.3 thereby the Externment Appeal No.147/2024 filed by the Petitioner questioning his externment, came to be rejected.
- 18) Petition stands disposed of in above terms. Rule is made absolute.

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.12.21
18:32:41 +0530

(SHYAM C. CHANDAK, J.)