



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 507 OF 2024

1. Shoeb @ Shobi Noor Qureshi, Aged about 36 years, Occ. Labour R/o Near Gaddigodam Masjid, Police Station Sadar, Nagpur
2. Sheikh Amin Sheikh Ahmed, Aged about 36 years, Occ. Labour R/o Plot No. 1128, Near Danish Lawn Hasanbag, nagpur

...Petitioners

// VERSUS //

1. State of Maharashtra, through Deputy Commissioner of Police, Zone-2, Nagpur
2. Police Station Sadar, Police Station Sadar, Nagpur

... Respondents

Shri M.N.Ali, Advocate for the petitioners.
Shri N.H.Joshi, APP for the respondents/State.

CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 1st AUGUST, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocate for the parties.

3. The present petition has been filed under Article 226 of the Constitution of India to challenge the order of externment against the petitioners passed by respondent No.1-Deputy Commissioner of Police, Zone-2, Nagpur on 6th June, 2024.

4. In order to cut-shot, it can be stated that both the learned Advocates have argued in support of their respective contentions. Further, the learned APP has relied on the reply affidavit of Shri Rahul Madne, Deputy Commissioner of Police, Zone-2, Nagpur City. Learned Advocate for the petitioner points out that this Court in Criminal Writ Petitioner No. 474 of 2024 (Nazim Ahmed Nisar Ahmed Qureshi Vs. State of Maharashtra and another) decided on 5th July, 2024 has quashed the order in which it was stated that the said petitioner is a gang leader. The present applicants are at Serial Number Nos. 2 and 3 and only one offence is stated to have been committed by them, out of the list that has been given.

5. Perusal of the impugned order would show that it is passed under Section 55 of the Maharashtra Police Act and for passing the said order, a notice under section 59 of the Maharashtra Police Act was issued and after giving him opportunity of answering the said notice, the order has been passed against the petitioners. However, it can be considered that for passing the impugned order under section 55 of the Maharashtra Police Act, three offences were considered i.e. Crime No. 260 of 2023, registered with Sadar Police Station, Nagpur, (Summary Criminal Case No. 2445 of 2023). The second is Crime No. 368 of 2023, registered

with Sadar Police Station, Nagpur, (Summary Criminal Case No. 20146 of 2023). Both these offences were under Section 11(d) of the Prevention of Cruelty to Animals Act. Third offence was Crime No. 275 of 2020, registered with Wadi Police Station, Nagpur under Sections 379, 109, 201 and 411 read with section 34 of the Indian Penal Code, (Regular Criminal Case No. 2581 of 2020). Out of these, the present applicants are accused only first offence i.e. Crime No. 260 of 2021 which was filed for the offence under the Prevention of Cruelty to Animals Act.

6. As aforesaid, this Court by order dated 5th July, 2024 has already quashed and set aside the impugned order as against the gang leader. In corollary of the same, it should be set aside in respect of the present applicants also. Further when the offence is under the Prevention of Cruelty to Animals Act is concerned, we are unable to consider that such activities is covered under Section 53 of the Maharashtra Police Act.

7. What section 55 of the Maharashtra Police Act contemplate is “ 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.....” Both the said cases are pending before the Court. It is stated that the applicant and other alleged members of the gang are selling beef. Even if it is admitted for a moment that at the time of those cases were registered, they were found with some such substance, which may amount to beef, yet it can be said that in future also they would continue to do such activities. Further, the impugned order says

that the petitioner should also remove himself from not only the Commissionerate Area of Nagpur City, but also Nagpur (Rural) and Bhandara as well as Gondia Districts. Merely, because Bhandara and Gondia are contentious districts, it does not empower the concerned Authority, i.e. the Deputy Commissioner of Police, Zone-2, Nagpur to direct removal of the applicant from Bhandara and Gondia Districts. When no offence is alleged to be committed within the said area, no such directions can be issued. Merely, because he has powers, it cannot be said that he should use it. No reason has been assigned as to why the removal has been directed from Bhandara as well as Gondia Districts.

8. In view of above, not only the impugned order is illegal but it is impropportionate also. Therefore, it deserves to be set aside. Accordingly the impugned order is quashed and set aside.

9. Rule is made absolute in the aforesaid term.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]