



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

CRIMINAL WRIT PETITION NO. 275 OF 2024

1. **Aakash S/o Arunrao Waghade,**
Aged about 28 yrs, Occ: Business,
2. **Amol S/o Dhanrajji Bokey,**
Aged about 28 yrs, Oc: Agriculturist
3. **Piyush S/o Omprakash Dhoke,**
Aged about 23 yrs, Occ: Labourer,
4. **Keshav S/o Prabhakarrao Wanjari,**
Aged about 25 yrs, Occ: Labourer,

All R/o- Malkapur, Tq. Warud,
District- Amravati

... PETITIONERS

// VERSUS //

1. **The Divisional Commissioner,**
Amravati Division, Amravati
2. **The Superintendent of Police,**
Amravati, Dist. Amravati.
3. **The sub-Divisional Police Officer,**
Sub-Division Morshi,
District- Amravati.
4. **Police Station Officer,**
Police Station Shendurjana Ghat,
Tq. Warud, Dist. Amravati.

... RESPONDENTS

Mr S. B. Gandhe, Advocates for the petitioners
Ms R. V. Sharma, APP for the respondent No.1 to 4/State

CORAM : G. A. SANAP, J.

DATE : 21/08/2024

ORAL JUDGMENT :

1 Heard.

2 **Rule.** Rule made returnable forthwith. Taken up
for final disposal with the consent of learned Advocates for the
parties.

3 In this writ petition, the petitioners have
questioned the correctness of the order dated 25.01.2024
passed by respondent No.1– the Divisional Commissioner,
Nagpur. Respondent No.1, as per the said order, confirmed the
order passed by respondent No.2 dated 06.11.2023, whereby
the petitioners came to be externed out of Amravati and
Nagpur Districts. Similarly, they have been externed from
Pandhurna and Multai, District Baitul of Madhya Pradesh as
per the provisions of Section 55 of the Maharashtra Police Act,
1951 (hereinafter referred to as “**the Act of 1951**”).

4 Respondent No.2 issued the necessary directions to the Sub-Divisional Police Officer, Morshi, District Amravati, to conduct the inquiry in terms of Section 59 of the Act of 1951. The SDPO, Morshi conducted the inquiry and submitted his report on 25.08.2023 to respondent No.2. Respondent No.2 issued notices to the petitioners on 29.08.2023 and called upon them to show cause as to why they shall not be externed, being the members of the gang, out of Amravati & Nagpur Districts and further from Pandhurna and Multai, District Baitul of Madhya Pradesh. They replied to the said notices vide their common reply dated 11.09.2023.

5 Respondent No.2 relied upon the following crimes registered at Shendurjana Ghat Police station for invoking the provisions of Section 55 of the Act of 1951 against the accused. The details of the crimes are as follows :

i] The crimes which are registered against the gang of petitioners.

Sr. No.	Police Station	Crime No.	Sections	Case status
1.	Shendurjana Ghat	60 of 2015	143, 147, 188, 427, 294, 506 of the IPC r/w Sec.135 of Mah.Police Act	Pending in Court
2.	Shendurjana Ghat	61 of 2015	143, 147, 188 of the IPC r/w Sec.135 of Mah.Police Act	Pending in Court
3.	Shendurjana Ghat	167 of 2019	324, 504, 34 of IPC	Pending in Court
4.	Shendurjana Ghat	181 of 2020	143, 147, 148, 149, 341, 323, 188, 504 of the IPC r/w sec.4/25 of Arms Act R/w. Sec.135 of Mah.Police Act	Pending in Court

ii] The crimes which are registered against the gang leader/petitioner No.1 Akash Arunrao Waghade.

Sr. No.	Police Station	Crime No.	Sections	Case status
1.	Shendurjana Ghat	186 of 2019	325, 504, 506, 34 of IPC	Pending in Court
2.	Shendurjana Ghat	434 of 2022	376(2)(n), 376(3), 370(4), 363, 34 of IPC r/w. Sec.4, 6 of POCSO Act	Pending in Court

iii] The crimes which are registered against petitioner No.2 Amol Dhanrajji Bokey.

Sr. No.	Police Station	Crime No.	Sections	Case status
1.	Shendurjana Ghat	191 of 2019	324, 504, 506, 34 of IPC	Pending in Court
2.	Shendurjana Ghat	445 of 2022	376(d), 506, 342, 34 of IPC r/w. Sec.4, 5(g), 6, 8, 9(g), 12, 16(2) of POCSO Act	Pending in Court

iv] The crimes which are registered against petitioner No.3
Piyush Omprakash Dhoke.

Sr. No.	Police Station	Crime No.	Sections	Case status
1.	Shendurjana Ghat	181 of 2020	143, 147, 148, 149, 341, 323, 188, 504 of the IPC r/w sec.4/25 of Arms Act R/w. Sec.135 of Mah.Police Act	Pending in Court
2.	Shendurjana Ghat	445 of 2022	376(d), 506, 342, 34 of IPC r/w. Sec.4, 5(g), 6, 8, 9(g), 12, 16(2) of POCSO Act	Pending in Court

v] The crimes which are registered against petitioner No.4
Keshav Prabhakar Rao Wanjari.

Sr. No.	Police Station	Crime No.	Sections	Case status
1.	Shendurjana Ghat	181 of 2020	143, 147, 148, 149, 341, 323, 188, 504 of the IPC r/w sec.4/25 of Arms Act R/w. Sec.135 of Mah.Police Act	Pending in Court
2.	Shendurjana Ghat	445 of 2022	376(d), 506, 342, 34 of IPC r/w. Sec.4, 5(g), 6, 8, 9(g), 12, 16(2) of POCSO Act	Pending in Court

6 Respondent No. 2 conducted the necessary inquiry and passed the order dated 06.11.2023. The petitioners, being aggrieved by the said order, challenged the said before respondent No.1. Respondent No.1, on reconsideration of the material, recorded its agreement with respondent No.2 and confirmed the said order.

7 I have heard the learned Advocates for the parties.
Perused the record and proceedings.

8 Learned Advocate for the petitioners submitted that neither in the notice nor in the order the basic requirements of Section 55 of the Act of 1951 have been made out. Learned Advocate pointed out that the crimes relied upon for passing the order were not committed by the petitioners together, as members of the gang. It is pointed out that only in two crimes they all are accused. It is pointed out that as far as the remaining crimes are concerned, the same are individualistic in nature against each of the petitioner. It is also pointed out that, apart from the petitioners in those crimes, there are other co-accused. The proceeding was not initiated against the co-accused in those crimes by respondent No.2. Learned Advocate submitted that, the order of the externment was passed after one year of commission of last crime. It is submitted that stale crimes have been relied upon for passing

the order of externment. Learned Advocate submitted that, on the basis of the crimes, which are individualistic in nature against the petitioners, the provisions of Section 55 could not have been invoked at all against them. Learned Advocate submitted that there is a manifest error in the order passed by respondent No.2 as well as the order passed by respondent No.1 in the appeal. Learned Advocate submitted that the subjective satisfaction arrived at by respondent No. 2 is on the basis of the crimes, which are individualistic in nature and therefore, the very foundation of the subjective satisfaction has been dented. Learned Advocate submitted that the fundamental right of movement of the accused has been infringed by such an order, which has wide ramifications as far as the lives of the petitioners and their family members are concerned.

9 Learned APP submitted that crime No. 181 of 2020 was committed by all the petitioners. Learned APP fairly

conceded that most of the crimes against the petitioners are individualistic in nature. Learned APP submitted that considering the serious nature of the crime committed by the petitioners their dispersal, as ordered by respondent No.2, was necessary. Learned APP submitted that in this case the basic requirements of Section 55 of the Act of 1951 have been satisfied and properly addressed by the respondents.

10 I have gone through the record and proceedings. Learned Advocate for the petitioners to buttress his submission has relied upon the decision of the Division Bench of this Court at the Principal Seat in the case of *Ahammad Mainuddin Shaikh .v/s. The State of Maharashtra and others*¹. It is further pointed out that the decision in the case of *Ahammad Shaikh (supra)* was considered by the Division Bench of the Bombay High Court in the case of *Vijay Lalso Jadhav .v/s. State of Maharashtra and Ors.*² Learned Advocate submitted that the

1 2013 ALL MR (Cri.) 3804

2 2013 SCC OnLine Bom 1432

facts of this case and the facts of the cases relied upon by him are more or less similar.

11 I have minutely perused the decisions relied upon by the learned Advocate for the petitioners. In my view, for the purpose of addressing the issue involved in this petition, it would be profitable to reproduce para No. 8 of the decision in the case of *Ahammad Shaikh (supra)*. It is read thus:

“8. Section 55 of the Act deals with dispersal of gangs and bodies of persons. It reads as under:-

55. Dispersal of gangs and bodies of persons.- Whenever it shall appear in Greater Bombay and in other 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 Superintendent 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 or such area and any district or districts, or any part thereof, contiguous thereto within such time as such officer shall prescribe, and not to enter area (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.

Upon a careful reading of this section, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under 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 of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. In suitable cases, the order of removal can also be from district or its parts or together with contiguous districts or parts thereof. This second direction, in order to be reasonable, has to be passed for a definite period of time. In the entire section, there is common thread of

participation by all and collective action against all that holds together all its parts. The section starts with gang or body of persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively.”

This decision was considered by the Division Bench in the case of *Vijay Lalso Jadhav (supra)*.

12 It is held that Section 55 of the Act of 1951 contemplates collective action against the gang or body of persons and therefore, the final directions which are 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 a selective basis. It is held that the offences which are individualistic in nature against the members of the gang cannot be taken into consideration under Section 55.

Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then the action under Section 55 of the Act of 1951 can be taken and which is to be taken against all members and not only a few of them selectively.

13 In order to consider the applicability of the law to the facts of the case, it is necessary to highlight some of the facts. In the crime chart, the crimes have been divided in two parts. The first part pertains to the crimes committed by the petitioners as members of the gang. The second part deals with the crimes committed by the individual petitioner with other co-accused. On perusal of the chart it is seen that in Crime No. 181 of 2020, there are seven accused. The petitioners are accused Nos. 1, 2, 3 and 4. It is seen that the proceeding under Section 55 was not initiated against other three co-accused. In crime No. 60 of 2015, there are twelve accused. Petitioner No.1 is the accused in the said crime. Petitioner Nos. 2, 3 and

4 are not accused in this crime. In crime No. 61 of 2015, there are 35 accused. Only petitioner No.1 is the accused in this crime. Petitioner Nos. 2, 3 and 4 are not accused in this crime. In crime No. 167 of 2019, petitioner Nos. 1 and 2 are the only accused. It is the case of the respondents that these are the offences committed by the petitioners, being the members of the gang together. In my view, the factual position is the other way round. There are other co-accused with the petitioners in those crimes. Similarly, all the petitioners are not accused in all these crimes.

14 In second chart, there is a mention of the individual offences registered against the petitioners. It is seen that the individual offences registered against the petitioners have also been taken into consideration for the purpose of passing the order under Section 55 of the Act of 1951. It is evident that in Crime No. 445 of 2022, all the petitioners are accused. It is pertinent to mention that in the notice, this crime was

mentioned as an individual crime committed by all the petitioners. It is seen that in the individual crimes relied upon against the petitioners, there are other co-accused. It is to be noted that the order of externment has serious consequences qua the person externed as well as his family members. Such an order not only curtails his fundamental rights but, at the same time, compels said person to live separately from his family members. Such an order can deprive a person of his livelihood. Similarly, the family members are also made to suffer on that count. The order of externment under Section 55, having cascading consequences, is required to be passed on the basis of concrete material available on record. The order must be justified on the basis of the said material. In such a case, the crimes registered indicating their involvement as members of a gang are most vital. In this case, respondent No.2, relying upon the individual crimes registered against the petitioners, passed the order. The authority, on the basis of individualistic offences,

cannot pass an order of externment against the person who is not accused in the said crime. Similarly, there is no material on record to establish that petitioner No.1 is the leader or a member of the gang or body of persons. In my view, on this count, the subjective satisfaction arrived at by the respondents cannot be sustained. The subjective satisfaction has been recorded without having sufficient material on record.

15 It is further seen that the order suffers from the virus of excessiveness. They have been directed to remove themselves out of Amravati and Nagpur Districts. Similarly, they have been directed to remove themselves from Pandhurna and Multai, District Baitul of Madhya Pradesh. I am conscious of the fact that such orders can be passed by the authority however, the authority must justify such an order by recording the reasons. The reasons recorded must be sound reasons. There must be material on record to arrive at a conclusion for passing such an order. Perusal of the order passed by

respondent No.2 and respondent No.1, in appeal would show that no reasons have been recorded. The crimes registered against the petitioners were at Shendurjana Ghat police station. They have been externed from Amravati and Nagpur Districts. Similarly, they have been externed out of Pandhurna and Multai Talukas of Pandhurna and Baitul District. The order of externment suffers from a virus of excessiveness. The reasons have not been recorded. Therefore, on this count also, the order cannot be sustained. In view of this, I conclude that there is substance in the petition. Accordingly, the petition is **allowed.**

16 The order dated 06.11.2023 passed by respondent No.2- Superintendent of Police, Amravati, externing the petitioners out of Amravati and Nagpur Districts and further externing them from Pandhurna and Multai, District Baitul of Madhya Pradesh and the order dated 25.01.2024 passed by respondent No.1- Divisional Commissioner, Nagpur,

confirming the said order of externment are quashed and set aside.

17 Rule is made absolute in the above terms. The writ petition stands disposed of.

(G. A. SANAP, J.)

Namrata