



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

CRIMINAL WRIT PETITION NO. 429 OF 2024

PETITIONER : 1] Sheikh Kasam Sheikh Shaikhji,
Aged 32 years, Occu. Labour,

2] Sheikh Ayaz Sheikh Shaikhji,
Aged 31 years, Occu. Labour,

Both R/o Chandkhaw Plot, Washim Road,
Old City, Akola.

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Additional Chief Secretary,
Home Department, Mantralayan
Mumbai – 32.

2] The Divisional Commissioner,
Amravati Division, Amravati,

3] Superintendent of Police, Akola.

4] The Police Station Officer,
Old City Police Station, Akola.

Mr. Abdul Subhan, Advocate for the petitioner.
Mrs. S. V. Kolhe, A.P.P. for respondent nos.1 to 4.

CORAM : G. A. SANAP, J.
DATED : SEPTEMBER 25, 2024.

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. Heard finally by
the consent of the learned advocates for the parties.

2. In this writ petition, challenge is to the order 26.03.2024, passed by respondent no.2 – Divisional Commissioner, Amravati Division, Amravati, dismissing the appeal filed by the petitioners against the order dated 02.11.2023, passed by respondent no.3 – Superintendent of Police, Akola, whereby the petitioners have been externed out of entire Akola district for two years as per the provisions of Section 55 of the Maharashtra Police Act, 1951 (hereafter referred to as “the Act of 1951” for short).

3. The respondent no.2 had issued directions to the Sub Divisional Police Officer (SDPO), Balapur, Dist. Akola, for conducting an inquiry against the petitioners in terms of Section 59 of the Act of 1951. Accordingly, the SDPO, Balapur, on completion of the inquiry, submitted his report to respondent no.3. Respondent no.3 by his notice dated 25.10.2023, called upon the petitioners to show cause as to why they shall not be externed, being the members of of a gang, out of the Akola district. The petitioners replied those notices and placed on record their side of the story.

4. Respondent no.3 relied upon the following crimes registered with Old City police station, Akola for invoking the

provisions of Section 55 of the Act of 1951 against the petitioners. The details of the crimes are as follows :

(A) Shaikh Kasam Sheikh Shaikhji (petitioner no.1)

Sr	Police Stn.	Crime No.	Offences	Challan No.	Case No.	Status
1.	Old City, Akola	74/2016	U/ss 143, 144, 147, 148, 149, 302 of IPC ; and U/s 7 Cri.Law Act, U/s 135 of Mah. Police Act & U/ss 3 & 4 of MCOC Act	117/2016 dated 17.12.2016	317/2016 dated 17.12.2016	Pending before Court
2.	Old City, Akola	575/2018	324, 504 IPC	56/2019 dtd.15.09.22	1244/2022 dtd.07.10.22	---"---
3.	Old City, Akola	356/2020	324, 323, 427 IPC	72/2021 dtd.20.04.21	514/2021 dtd.28.04.21	---"---
4.	Old City, Akola	820/2021	3, 25 Arms Act	256/2022 dtd.23.06.22	754/2022 dtd.27.06.22	---"---
5.	Old City, Akola	930/2021	294, 341, 506 IPC	51/2022 dtd.29.03.22	335/2022 dtd.30.03.22	---"---
6.	Old City, Akola	950/2021	341, 452, 323, 504, 506, 34 IPC, Sec.4, 25 Arms Act, 135 Mah. Police Act	73/2022 dtd.02.06.22	609/2022 dtd.06.06.22	---"---
7.	Old City, Akola	144/2023	324, 323, 504, 34 IPC	81/2023 dtd.25.07.23	833/2023 dtd.26.07.23	---"---

Preventive Action against petitioner no.1

S.No.	Police Station	Sumar No.	Under Sections	Order
1.	Old City, Akola	10/2021	3(1) M.P.D.A. Act	Collector's order No. Kaksha/Desk-2/ Home/HA/WS-580/2021, dtd.30.11.2021 -Externd for one year

(B) Shaikh Ayaz @ Bholu Sheikh Shaikhji (petitioner no.2)

Sr	Police Station	Crime No.	Offences	Challan No.	Case No.	Status
1.	Old City, Akola	74/2016	U/ss 143, 144, 147, 148, 149 302 of IPC ; and U/s 7 Cri.Law Act, U/s 135 of Mah. Police Act & U/s 3 & 4 of MCOC Act	117/2016 dated 17.12.2016	317/2016 dated 17.12.2016	Pending before Court
2.	Old City, Akola	950/2021	341, 452, 323, 504, 506, 34 IPC, Sec.4, 25 Arms Act, 135 Mah. Police Act	73/2022 dtd.02.06.22	609/2022 dtd.06.06.22	---"---
3.	Old City, Akola	144/2023	324, 323, 504, 34 IPC	81/2023 dtd.25.07.23	833/2023 dtd.26.07.23	---"---

5. Respondent no.3 conducted inquiry on receipt of the replies and passed the order dated 02.11.2023, externing the petitioners from entire Akola district for two years. Being aggrieved by this order, the petitioners challenged it before respondent no.2. Respondent no.2, on consideration of the material against the petitioners, agreed with the subjective satisfaction recorded by the respondent no.3 and confirmed the said order dated 02.11.2023.

6. I have heard Mr. Abdul Subhan, learned advocate for the petitioners and Mrs. S. V. Kolhe, learned Additional Public Prosecutor for the respondent/State. Perused the record and proceedings.

7. Mr. Subhan, learned advocate for the petitioners submitted that neither in the notice nor in the order, the fundamental requirements of Section 55 of the Act of 1951 have been made out. The crimes relied upon for passing the impugned order, had not been committed by the petitioners together as the members of the gang. The offences, in which the petitioners have been acquitted, have also been taken into consideration for passing the impugned orders. It is pointed out that on the date of the impugned order, only one criminal case was

pending against the petitioners. It is also pointed out that in the said case, which is at serial no.1, there are in all seven accused, but the action has been initiated against the petitioners only and not against the remaining five co-accused. It is submitted that the crimes, which are individualistic in nature against the petitioners, have been taken into consideration. The order passed by respondent no.3, and confirmed by respondent no.2, is contrary to the mandatory requirements of Section 55 of the Act of 1951. It is submitted that since the crimes, in which the petitioners are acquitted, have been considered, the subjective satisfaction recorded by respondent no.3, has been denied. Learned advocate submitted that no case has been made out at all to invoke the provisions of Section 55 of the Act of 1951 against the petitioners. Learned advocate submitted that the Appellate Authority - respondent no.2 has committed a manifest error. It is further submitted that the order directing the petitioners to move out of the entire Akola district, suffers from the vices of excessiveness.

8. Learned Additional Public Prosecutor submitted that the entire material collected during the course of inquiry has been considered by respondent no.3 while passing the order. The subjective

satisfaction has been recorded on the basis of the objective material available on record. Learned APP submitted that respondent no.2 – Appellate Authority, has re-appreciated the entire material and has recorded its agreement with the subjective satisfaction recorded by respondent no.3.

9. I have gone through the record and proceedings. It is to be noted that while deciding the *Criminal Writ Petition No. 275 of 2024 (Aakash S/o Arunrao Waghade and others .vs. The Divisional Commissioner, Amravati Division, Amravati and others)*, on 21.08.2024, this Court has dealt with this issue in great detail. This Court has considered the earlier two decisions rendered by the Division Benches of this Court on this point. In my view, the facts of this petition and the facts in Cri.W.P. No. 275/2024, are similar. In my view, therefore, the view taken by this Court in Cri.W.P. No. 275/2024 would be squarely applicable to this case. It is appropriate at this stage to reproduce paragraphs 10, 11 and 12 of the decision in Cri.W.P. No. 275/2024. The same are extracted below :

“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 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

1 2013 ALL MR (Cri.) 3804

2 2013 SCC OnLine Bom 1432

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 it's 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 it's 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.”

10. In my view, this writ petition has to be decided on the backdrop of the above stated legal position. The petitioners are accused in the crime at serial no.1 i.e. Crime No. 74/2016. It is further pertinent to mention that apart from the petitioners, there are other five co-accused in the said crime. The petitioners have been acquitted in the crimes at serial nos.6 and 7. Respondent no.3 has taken those crimes in to consideration. It is also seen that in those crimes also, the petitioners are not common. With the petitioners, there are other accused as well. In the crime at Sr.No.1 from the chart, the petitioners are the accused with other five co-accused. As far as remaining crimes at serial nos. 2, 3,

4 and 5 are concerned, both the petitioners are not accused together. It is, therefore, apparent that the crimes, which are individualistic in nature against the petitioners, have been taken into consideration. In my view, this is against the spirit of Section 55 of the Act of 1951.

11. The provisions of Sections 55, 56 and 57 of the Act of 1951 have to be applied in different factual situations. There is a difference in these provisions. The competent authority is required to bear this fact in mind while invoking the particular section. Section 55 contemplates collective action against the gang or body of persons and therefore, the final directions, which are required to be issued in terms of this 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. In the backdrop of the factual position, I conclude that the subjective satisfaction recorded by respondent no.3 while passing final order and by respondent no.2 while deciding the appeal, is vitiated. On this count alone, the orders are required to be set aside.

12. It is further seen that the offences registered against the petitioners are at Old City police station, Akola. They have been directed to remove themselves out of entire Akola district. The reasons

are required to be recorded for passing such an order. The order of externment, passed under section 55 of the Act of 1951, directly infringes the fundamental right of movement of an individual. The externment is for a period of two years. No reasons have been recorded to warrant their externment out of entire Akola district for two years. It is, therefore, apparent that the orders suffer from vires of excessiveness.

13. Accordingly, the Criminal Writ Petition is allowed.

i] The order dated 02.11.2023, passed by respondent no.3 – Superintendent of Police, Akola, externing the petitioners out of entire Akola district for two years, is quashed and set aside.

ii] Similarly, the order 26.03.2024, passed by respondent no.2 – Divisional Commissioner, Amravati Division, Amravati, dismissing the appeal filed by the petitioners is also quashed and set aside.

14. Rule is made absolute. The petition stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale