

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2405 of 2025

Arising Out of PS. Case No.- Year-0 Thana- District- Aurangabad

Shankar Yadav @ Shankar Dayal Yadav, Son of Puran Singh Resident of Village- Amar Bigha, P.S- Aurangabad Muffasil, District- Aurangabad (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through the District Magistrate, Aurangabad. Bihar
2. The District Magistrate-Cum-the Collector, Aurangabad. Bihar
3. The Superintendent of Police, Aurangabad. Bihar
4. The Sub-Divisional Police Officer, Sadar, Aurangabad. Bihar
5. The Police Inspector-Cum-Station House Officer, Aurangabad Muffasil Police Station, Aurangabad. Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Aman Vishal, Advocate
For the Respondent/s : Mr. Ajay Behari Sinha, G.A.8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 15-10-2025 Heard learned counsel for the petitioner and learned Government Advocate-8 for the State of Bihar.

2. This writ application has been filed for issuance of a writ in the nature of Certiorari to quash the order dated 27.06.2025 passed in BCC Act Case No. 72 of 2025 whereby and whereunder the Respondent No. 2 has passed an order of externment against the petitioner under Section 3 of the Bihar Control of Crimes Act, 1981 (since repealed by Act No. 2 of 2024) (hereinafter referred to as the 'BCC Act'). By the



impugned order, the petitioner has been directed to make his daily attendance at Deo Police Station from 04.07.2025 till 03.12.2025.

3. It is the case of the petitioner that the Police Inspector-Cum-Station House Officer, Aurangabad (Respondent No. 5) prepared a proposal for externment of the petitioner alleging *interalia* that the petitioner is an anti-social element who creates fear in people's mind through his manner and behaviour. He mentioned four criminal cases pending against the petitioner. The proposal was sent to the Sub-Divisional Police Officer, Aurangabad (Respondent No. 4) who forwarded the same to the superior officer i.e. the Superintendent of Police, Aurangabad (Respondent No. 3) vide Letter No. 3378/25 dated 03.06.2025. The Respondent No. 3 acted on the said letter and sent a proposal to the Respondent No. 2 for externment of the petitioner. The Respondent No. 2 finally passed the impugned order.

4. Learned counsel submits that the petitioner had represented before the Respondent No. 2 by filing a show cause (Annexure 'P/2') that in some of the criminal cases which are mentioned in the proposal, the petitioner is either not an accused or the case has been settled. He brought it to the notice of the



Respondent No. 2 that only one criminal case was pending against him at the time of issuance of the notice. In paragraph '9' of the writ application, the petitioner has given details of all the four cases. It is his submission that on a bare reading of those cases, it will appear that the cases arose out of land dispute and over partition of the ancestral properties. It is stated that while in Aurangabad Muffasil P.S. Case No. 398 of 2004, the petitioner is not named as an accused, in Aurangabad Muffasil P.S. Case No. 431 of 2022, the dispute has been settled on compromise between the parties and the parties are living harmoniously after the settlement in the National Lok Adalat, Aurangabad. Regarding the third case being Aurangabad Muffasil P.S. Case No. 382 of 2023, it is stated that the said case was lodged by son of the petitioner against ten persons for causing assault on the petitioner's son and grandson due to dispute of sewage of accused persons flowing on the land of the son of the petitioner. The petitioner is not an accused in the said case, however, the other side had lodged a counter case being Aurangabad Muffasil P.S. Case No. 383 of 2023 for the offences punishable under Sections 147, 149, 323, 325, 506 of the Indian Penal Code. In this counter case, the petitioner and his family members have been made accused over the dispute of opening



of sewage unto land of the petitioner. The petitioner has been granted bail in the said case. In this manner, it is only one case i.e. Aurangabad Muffasil P.S. Case No. 383 of 2023 which was pending against the petitioner.

5. It is submitted that unfortunately, the District Magistrate, Aurangabad (Respondent No. 2) did not consider his show cause and he went on to pass the impugned order on 27.06.2025 under the BCC Act. The State Government confirmed the order on 14.03.2024 itself. It is his specific submission that the petitioner would not come within the meaning of the words 'anti-social elements' as defined under Section 2(d) of the BCC Act. It is his submission that the Respondent No. 2 has acted in a routine and mechanical manner on the basis of a proposal of the Inspector who only misled the Respondent Nos. 2, 3 and 4. It appears that the authorities such as Respondent Nos. 3 and 4 have only acted like a post office and they did not apply their own mind before sending the proposal to the District Magistrate (Respondent No. 2). The Respondent No. 2 did no better and he also passed the impugned order without application of his judicious mind. In this way, the petitioner has faced the harassment due to wrongly invoking the provisions of the BCC Act.



6. The District Magistrate (Respondent No. 2) has appeared before this Court. It is submitted that the S.H.O., Muffasil Police Station, Aurangabad had submitted a report informing that in three cases, chargesheets have been submitted. He has, however, submitted in his report that considering the ensuing Bihar Legislative Assembly Election 2025, in order to conduct the election in a fearless environment, the proposal was sent for passing order against the petitioner under the BCC Act. It is pointed out from Letter No. 3518/Sadar of the Sub-Divisional Police Officer, Aurangabad dated 03.06.2025 that keeping in view the probabilities that the public peace may be disturbed in the ensuing Assembly Election and a serious law and order problem may arise, a Diary Entry No. 0849/25 dated 18.05.2025 has been registered against the petitioner.

7. The District Magistrate, Aurangabad who is present in person has indeed admitted that he had acted on the basis of the proposal placed before him, however, he could not examine the matter keeping in view that whether the petitioner would come in the category of 'anti-social element' as defined under the Act.

8. Having heard learned counsel for the petitioner and learned Government Advocate-8 as also the District Magistrate,



Aurangabad, this Court has no iota of doubt that the impugned order has been passed by the District Magistrate without application of his judicious mind. There is no denial of the facts pleaded in the writ application that the cases lodged against the petitioner arose out of land dispute and in the two cases, he was not even an accused. We find that the Sub-Divisional Police Officer, Aurangabad forwarded the proposal of the Inspector saying that in the ensuing Assembly election, there may be a law and order problem and in order to keep peace and conduct the election peacefully, the provision of the BCC Act be invoked against the petitioner. We are afraid that the Sub-Divisional Police Officer, Aurangabad and the Superintendent of Police, Aurangabad both have failed to examine the matter keeping in view the law on the subject.

9. In our considered opinion, they were not justified and by no stretch of imagination, their action may be held legal in forwarding the proposal to the District Magistrate on the basis of probabilities and by making a guess and conjecture that in future, during the Assembly election, there may be a law and order problem in the hand of the petitioner. The word 'habitual offender' as occurring under Section 2(d) of the BCC Act is a word of significance and the same has been considered by a



learned co-ordinate Bench of this Court in the case of **Rajvardhan Kumar @ Rajvardhan Singh Vs. The State of Bihar and Others** in **Cr.WJC No. 634 of 2024**, the same has been discussed by this Court in the case of **Abhay Kumar @ Abhay Yadav @ Baua Gope @ Baua Vs. The State of Bihar and Others** in **Cr.WJC No. 1932 of 2025**.

10. Keeping in view the entire facts and circumstances as also the pleadings on the record, we are of the opinion that the impugned orders suffer from illegalities and they are liable to be struck down on the ground of irrelevant considerations as also on the ground of misuse of the authority conferred upon the concerned respondents by law. The provision of the BCC Act seems to have been invoked without application of judicious mind and that has led to harassment to the petitioner. He had to approach this Court for vindicating his grievances and ultimately, this Court has found it in his favour.

11. In such view of the matter, this Court while setting aside the impugned orders passed in BCC Act Case No. 72 of 2025, directs the State to pay cost of litigation to the petitioner which is assessed at Rs.25,000/- (Rupees Twenty Five Thousand). The cost shall be paid to the petitioner within a period of six weeks from today. The District Magistrate-cum-



Collector, Aurangabad has assured this Court that he will fix the responsibility and the cost amount shall be realised from the erring officials within eight weeks from today.

12. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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