



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 138 OF 2025

Tausif Rafik Shaikh,
Age : 31 Years, Occu. : Driver at
Nagarparishad Shahada,
R/o Abdul Hamid Chowk,
Shahada, Dist. Nandurbar. .. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary Ministry of Home
Department, Mantralaya,
Mumbai – 32.
2. The Sub Divisional Officer &
Sub Divisional Magistrate,
Shahada, Dist. Nandurbar
O/a SDO/SDM Office, Shahada,
Dist. Nandurbar.
3. The Sub Divisional Officer
Shahada Sub Division,
Dist. Nandurbar
O/a Dondaicha Road, Shahada,
Dist. Nandurbar.
4. The Divisional Commissioner,
Nashik Division, Nashik. .. Respondents

Shri Quadri Tabrezuddin Rahimuddin, Advocate for the
Petitioner.

Mrs. Ashlesha S. Deshmukh, A.G.P. for the Respondent Nos. 1 to
4.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 27TH MARCH, 2025.**

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard both sides finally with their consent at the admission stage.

2. This petition is directed against order dated 23.10.2024 passed by the respondent No. 2/Sub Divisional Officer, Shahada and order dated 22.01.2025 passed by the respondent No. 4/Divisional Commissioner confirming order of externment. Petitioner stands externed for two years from Nandurbar district by the impugned orders. The respondents undertook the proceedings of externment U/Sec. 56 of the Maharashtra Police Act (for the sake of brevity and convenience hereafter referred as to the “said Act”) on the basis of following material :

Sr. No.	Crime number and police station	Offices punishable
A.	269/2017, Shahada Police Station	U/Sec. 307, 353, 332, 333, 395, 436 of the I. P. Code r/w Sec. 6 and 4 of the Prevention of Damage to Public Properties Act a/w Sec. 37(1)(3) and 135 of the Maharashtra Police Act.
B.	270/2017 Shahada Police Station	U/Sec. 307, 395, 436, 129(B) and 427 of the I. P. Code r/w Sec. 37(1)(3) and 135 of the Maharashtra Police Act.
C.	430/2023 Shahada Police Station	U/Sec. 354, 354(A), 354(D), 341 and 323 of the I. P. Code.
D.	In camera statements of two witnesses	

3. Considering the activities of the petitioner, concerned police station officer forwarded proposal on 14.03.2024, which was referred to the respondent No. 2/Sub Divisional Officer for

inquiry. A report was submitted on 27.04.2024. Thereafter, petitioner was issued with show cause notice on 22.04.2024, which he replied on 27.04.2024. Thereafter order of externment was passed removing him for two years from entire Nandurbar district. Being aggrieved, he preferred appeal U/Sec. 60 of the Act, which is dismissed on 22.01.2025.

3. Petitioner is found to have been indulging into the illegal activities like offences against woman, causing loss to the public property, obstructing the public servants. He is recorded to be undeterred by the preventive action.

4. Learned counsel for the petitioner submits that the subjective satisfaction is defective. There is no cogent material against him to resort to the proceedings of externment. There is no live link between the offences pitted against him and the impugned action. It is further submitted that in camera statements of two witnesses recorded by the authorities were neither supplied to him, nor mentioned in the show cause notice. It is further submitted that the last offence pitted against him was in counter blast to his complaint. It is submitted that there are number of accused persons involved in the offences pitted against him, which were registered in the year 2017. Learned counsel would submit that no reasons are assigned for externing him for maximum period and from entire Nandurbar district, when activities were confined to Shahada.

5. Learned counsel for the petitioner relies on following judgments of the Supreme Court, Division Bench and learned

Single Judge of this Court :

- I Deepak Laxman Dongre Vs. State of Maharashtra and others reported in (2023) 4 SCC 707.
- II Judgment dated 27.08.2012 in Criminal Writ Petition No. 1406 of 2011 in the matter of Subhash Jethu Patil Vs. State of Maharashtra and another.
- III Judgment dated 06.03.2018 in Criminal Writ Petition No. 922 of 2017 in the matter of Ajay @ Golu Shyam Solanki Vs. State of Maharashtra and another.
- IV Judgment dated 22.06.2018 in Criminal Writ Petition No. 448 of 2018 in the matter of Yasin Khan Masum Khan Multani Vs. State of Maharashtra and others.
- V Judgment dated 21.09.2021 in Criminal Writ Petition No. 2744 of 2021 in the matter of Satyawant Pandurang Thale Vs. State of Maharashtra and another.
- VI Judgment dated 17.12.2018 in Criminal Writ Petition No. 883 of 2018 in the matter of Jitesh Chanduji Khatri Vs. State of Maharashtra and another.
- VII Judgment dated 06.02.2018 in Criminal Writ Petition No. 32 of 2018 in the matter of Avinash Prakash Chavan Vs. State of Maharashtra and another.
- VIII Judgment dated 12.04.2018 in Criminal Writ Petition No. 239 of 2018 in the matter of Kamalkishor Pusaram Bang Vs. The Superintendent of Police, Jalna and others.
- IX Judgment dated 25.09.2017 in Criminal Writ Petition No. 703 of 2017 in the matter of Sayyed Jafar Sayyed Nasir Vs. The Divisional Commissioner, Amravati and another.

- X Judgment dated 19.01.2024 in Writ Petition No. 2805 of 2023 in the matter of Imtiyaz Hussain Sayyad Vs. The State of Maharashtra and others.
- XI Judgment dated 20.09.2006 in Criminal Writ Petition No. 389 of 2006 in the matter of Hamid Kha Rahim Kha Pathan Vs. State of Maharashtra and another.

6. Per contra, learned Assistant Public Prosecutor would support the impugned orders. She tenders on record original papers. She makes submissions on the basis of affidavit in reply. It is submitted that by extending due opportunity of hearing, supplying relevant papers and by following the procedure order externing the petitioner has been passed. It is submitted that there was no need to supply the statements as those are confidential. It is submitted that there is cogent material against the petitioner and both the authorities below arrived at subjective satisfaction in a lawful manner. Considering gravity of the activities, the authorities thought it fit to extern him for maximum period and from entire Nandurbar district. It is submitted that even the preventive action could not deter the petitioner.

7. I have considered rival submissions of the parties. I have gone through the pleadings as well as original papers tendered by the respondents. Impugned action is founded on three offences, out of which first two were registered in the year 2017 and last one was registered on 17.07.2023. The last offence is under investigation and charge sheet is yet to be filed.

8. The show cause notice dated 22.04.2024 does not refer to in camera statements of two witnesses, only a vague reference is made that against the illegal activities of the petitioner, people do not dare to come forward for giving evidence. The extracts of in camera statements are not reflected from both the orders, albeit, only there is reference that confidential statements of the witnesses were recorded and they were in sealed envelop. Pertinently, even the original police papers also do not contain those statements and the verification thereof by the competent authority. This Court is not in a position to ascertain as to what are the contents of the statements or as to whether there was proper verification of those statements. Though confidential, they must form part of record by concealing the identity of the witnesses. A reasonable doubt is created for the subjective satisfaction.

9. The petitioner had no opportunity to know the contents of in camera statements. The externee is bound to know as to whether the statements contain material particulars of the acts alleged against him, the nature of the allegations and the probability of the contents. In both the impugned orders the contents are not reproduced. I am of the considered view that serious prejudice is caused to the petitioner. A useful reference can be made to the ratio laid down by the Division Bench of this Court in the matters of *kamalkishor Bang Vs. The Superintendent of Police in Criminal Writ Petition No. 239 of 2018* and *Sayyed Jafar Sayyed Nasir Vs. The Divisional Commissioner in Cri. W. P. No. 703 of 2017*, which mandates that confidential statements are bound to be supplied.

10. The last offence pitted against the petitioner was registered on 27.07.2023. Earlier offences were registered in the year 2017. After the last offence, the proposal was submitted on 14.03.2024, after considerable gap of seven months. The original papers show that offence bearing Cr. No. 269/2017 was registered against forty persons and offence bearing Cr. No. 270/2017 was registered against number of persons including the petitioner. It is difficult to make out a particular role attributable to the petitioner. The Trial in respect of both the offences is under way. In between 2017 to 2023, no offence was registered against the petitioner. In this backdrop the finding that the petitioner is in habit of committing the offences of riot, murder, unlawful assembly and causing loss to the public property is unsustainable. There is no adequate material to take extreme action against the petitioner.

11. The last offence of Cr. No. 430/2023 is U/Sec. 354, 354(A), 354(D), 341 and 323 of the I. P. Code. It is individual centric offence and it is under investigation. Unless charge sheet is filed, it cannot be held that the petitioner is involved in offences against woman. The finding that he indulges in the offence against woman is misconceived. Learned counsel for the petitioner has rightly referred to the judgment of the Coordinate Bench **dated 19.01.2024 in Criminal Writ Petition No. 2805 of 2023 in the matter of Imtiyaz Hussain Sayyad Vs. State of Maharashtra** that an offence which is under investigation cannot be pitted in such a proceeding.

12. It transpires from record that on grossly inadequate material, authorities have drawn conclusion that the petitioner is habitual, his activities are detrimental to the public servants, public properties and he has established terror in the minds. It is rightly submitted by the petitioner that there is no live link between the offences pitted against him. The subjective satisfaction is defective, rather it is perverse. A reliance is rightly placed on the judgment of the Division Bench of this Court **dated 21.09.2021 in Criminal Writ Petition No. 2744 of 2021 in the matter of Satyawar Pandurang Thale Vs. State of Maharashtra and another.**

13. Both the authorities below failed to assign reasons for following two material aspects.

- (i) Imposing maximum period of externment of two years;
- (ii) Externing him from entire Nandurbar district.

It is submitted by the learned A. P. P. that considering seriousness of the activities and the material available against the petitioner, the authorities have come to the conclusion to extern him for two years from entire Nandurbar district. I have already recorded that the material pitted against the petitioner is inadequate and subjective satisfaction is faulty. Therefore, maximum period of externment is uncalled for. The activities pitted against the petitioner are confined to Shahada. Even the offences are registered in the Police Station of Shahada. There is

nothing on record to show that his activities were cascading effect in the entire Nandurbar district. Therefore, on that count also order of externment is liable to be quashed. I am fortified in my view by the ratio laid down by the Supreme Court in the matter of **Deepak Laxman Dongre Vs. State of Maharashtra and others** reported in ***(2023) 4 SCC 707*** and the judgment of the coordinate Bench in the matter of **Imtiyaz Hussain Sayyad Vs. State of Maharashtra** (supra).

14. For the reasons stated above, I find it difficult to maintain both the impugned orders. I, therefore, pass following order.

O R D E R

- a) The order dated 23.10.2024 passed by Respondent No.-2/SubDivisional Officer Shahada in Case No.Foujdari/Kavi/406/2-24 and order dated 22.01.2025 passed by Divisional Commissioner,Nashik in Externment Appeal No.148 of 2024 are quashed and set-aside.
- b) The petitioner shall be at liberty to enjoy his statutory and constitutional rights without there being any area restrictions.
- c) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

bsb/March 25