



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

CRIMINAL WRIT PETITION NO. 442 OF 2025

**VIJAY ANNASAHEB THOMBARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Chavan Sudhir K. alongwith
Mr. Someshwar S. Birajdar

APP for Respondent Nos. 1 to 5 : Mr. S.M. Ganachari

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CORAM : SHAILESH P. BRAHME, J.

DATE : 17th APRIL 2025

PER COURT :

. Heard both sides finally at the admission stage.

2. Petitioner is challenging undated order passed by Respondent No.2/Sub Divisional Magistrate, Selu Dist. Parbhani, externing him for two years from District Parbhani and Jalna under Section 56(1)(b) of the Maharashtra Police Act. It is recorded in my earlier order dated 28.03.2025 that the order under challenge is undated creating serious doubt about the adherence of principles of natural justice.

3. Learned APP on instructions, tenders on record relevant papers. He admits that order in question is undated. Inadvertently date could not be mentioned in the order. Respondent No.2 has taken action against the concerned officers by issuing show cause notices

on 24.03.2025. From the record, it reveals that after 22.04.2024, next date was scheduled on 17.01.2025.

4. Learned APP has raised preliminary objection of available of alternate statutory remedy under Section 60(1) of the Maharashtra Police Act. Bypassing the remedy of the Appellate Forum, Petitioner has directly approached this Court.

5. Alternate statutory remedy is self imposed restriction on the powers of High Court. That would not be an impediment if it is pointed out that impugned action is against principles of natural justice or without jurisdiction or in abuse of process of law. Considering the submissions pressed into service by the Petitioner that impugned order is undated and without hearing him it was passed, I am of the view that present petition can be entertained. I overrule the preliminary objection and propose to look into merits of the matter.

6. Petitioner stands externed for two years from two districts on the basis of nine offences and five preventive actions which are enlisted on page no.51 of the paper-book which is part of the impugned order. There is no dispute that offences which are at serial nos. 1, 2, 3, 5 and 7 were culminated in acquittal of the Petitioner. In case of offences at serial nos. 4 and 6, the prosecutions are pending. In case of offences at serial nos. 8 and 9, matters are at the stage of investigation and charge-sheet is yet to be filed.

7. The order under challenge is undated one. Respondent No.2 comes with an explanation that inadvertently date could not be mentioned in the order. Petitioner secured copy of the order by making application on 19.03.2025. The papers tendered by the Respondent shows that Respondent No.2 issued show cause notices to Mr. Chinchole and Mr. Dhake on 24.03.2025, for not mentioning the date. Fact remains that undated order was issued and received by the Petitioner.

8. The proceeding of the externment under the Maharashtra Police Act is an extra ordinary remedy to be resorted to under exceptional circumstances. It leads to imposition of the penalty of excluding the person for specific duration from specific area without conducting trial. Due to peculiar nature of proceeding, adherence of principles of natural justice carries significance. The personal liberty of proposed externnee would be stake. It is boundant duty of the authorities to extend opportunity of hearing at all stages to the person concerned. A slight violation of the procedure is fatal.

9. Petitioner learnt about the order in question for the first time on 20.03.2025. The date carries significance for the reasons that the period of limitation for preferring appeal commences from the date of order passed by the trial authority. In the present case Petitioner is deprived of period of limitation.

10. Although some explanation is tried to be tendered by

learned APP for not putting a date on the impugned order, I am not convinced by it. Respondent No.2-authority is also bound to mention date. It cannot be said that mentioning of date on the order is the job of the subordinate officers or administrative in nature. It is informed that some action is proposed against subordinate officers. It is not necessary to determine in the present case as to who is at fault. It is suffice to record that impugned order is undated, causing prejudice to the Petitioner. I am of the considered view that the impugned order is liable to be quashed.

11. The order of externment is passed upon the material which is mentioned on page no.51 of the paper-book. All the offences which are stated except C.R. Nos.114/2023 and 121/2023 are of distant past. The live link between those offences to the action proposed is difficult to be established. The offences which are at serial nos. 1, 2, 3, 5 and 7 are culminated into acquittal. The offences which are at serial nos. 4 and 6 are culminated into the prosecution which are pending. But offences are of the year 2017 and 2019. I have my reservation for the subjective satisfaction on the basis of the offences. It is settled legal position that the offences which are under investigation cannot be pressed into service for taking action against externment. For that purpose, reliance is placed on judgment of **Imtiyaz Hussain Sayyad Vs. State of Maharashtra and Others**, 2024 DGLS (Bom.) 216.

12. For the reasons stated above, I am of the considered view

that impugned order is unsustainable. I, therefore, pass following order :

ORDER

(i) The Criminal Writ Petition is allowed by quashing and setting aside the order of externment passed by Respondent No.2 – Sub Divisional Magistrate, Selu District Parbhani which is at Exhibit – E.

(ii) Petitioner shall be at liberty to enjoy statutory and constitutional right.

**SHAILESH P BRAHME
JUDGE**

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