



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

CRIMINAL WRIT PETITION NO. 779 OF 2025

Sayed Sohail Sayed Farukh

.. Petitioner

Versus

The State Of Maharashtra And Others

.. Respondents

Mr. Prashant P. Giri, Advocate a/w Mr. Yogesh G. Kasod,
Ms. Nupur P. Paliwal & Mr. Abhijit Gaiwad, Advocate for the
Petitioner.

Mr. S. B. Jadhav, APP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATE : 11th JULY, 2025.

PER COURT :-

. Heard learned advocate for the petitioner and learned A.P.P.
for the State. Taken up for final disposal at the stage of admission
by consent of the parties.

2. Present petition arises out of an order passed by respondent
No. 2 i.e. Superintendent of Police, Nanded dated 30.04.2025
thereby externing the petitioner and other seven persons from
Nanded District for a period of six months from the date of
passing of an order. Out of eight persons only petitioner has

approached this Court directly by passing remedy of appeal under Section 60 of the Maharashtra Police Act (for the sake of brevity hereinafter referred to as “the said Act”).

3. At the outset, ground of objection is raised by the learned A.P.P. on the last date about maintainability of the petition in view of availability of alternative remedy under the said Act, this Court, however, issued notice by keeping point of maintainability open.

4. So far as maintainability is concerned, the learned advocate for the petitioner made preliminary submission that, in the present case, there is violation of principles of natural justice. The order is also suffers from non application of mind. He submits that, though hearing was given, it was given on the basis of notice issued to the petitioner. While issuing notice by the S.D.P.O., there was reference of only three offences i.e. Crime Nos. 292/2024, 302/2024 and 346/2024 whereas, when the order is passed there is reference of eight offences i.e. Crime Nos. 137/2020, 292/2024, 302/2024, 346/2024, 440/2024, 887/2024, 252/2024 and 277/2024 and thus he was deprived of giving explanation in respect of five offences which were not mentioned in the notice. In support of his submissions he relies upon the following

judgments :

- (i) Deepak s/o Laxman Dongre Vs. State of Maharashtra and others reported in (2023) 14 SCC 707.
- (ii) Sachin Sanjay Raut Vs. The Divisoinal Commissioner and others in Criminal Writ Petition No. 253/2023.
- (iii) Imtiyaz Hussain Sayyad Vs. State of Maharashtra and others reported in 2024 SCC OnLine Bom 442.
- (iv) Harikesh @ Guddu Madan Kattilwar Vs. Deputy Police Commissioner and others in Criminal Writ Petition No. 908/2022.

5. On merits, the learned advocate for the petitioner submits that, the respondent has passed an order without application of mind. He failed to appreciate that there is no conviction recorded in any of the offences. There is nothing to show that during the course of enquiry the confidential statements were recorded of the persons to show that people are not coming forward to give evidence against the petitioner due to fear. He further submits that, there is no subjective satisfaction recorded by the authority while passing the order. Lastly, he submits that, all the offences are registered in Police Station, Biloli whereas the action is taken externing the petitioner from entire Nanded District. He relies

upon the following judgments :

- (i) M/s Radha Krishan Industries Vs. State of Himachal Pradesh & Ors. in Civil Appeal No. 1155/2021.
- (ii) Umar Mohammed Malbari Vs. K. P. Gaikwad and another reported in 1988 (2) BomCR 724.
- (iii) Dhananjay Manohar Sapkal Vs. State of Maharashtra and another reported in 2005 (2) Mh.L.J. 384.
- (iv) Manjit Singh Moolsingh Sethi and another Vs. State of Maharashtra and another reported in 2007 SCC OnLine Bom 1682.
- (v) Vijay Annasaheb Thomare Vs. The State of Maharashtra and others in Criminal Writ Petition No. 442/2025.

6. The learned APP submits that, the Act provides for a remedy of appeal to be filed within 30 days before the Divisional Commissioner. In the order itself it is shown that, the petitioner can approach the Divisional Commissioner by filing an appeal. The impugned order is passed on 30.04.2025. The petitioner could have filed an appeal within 30 days. Since now 30 days period is over, he has approached this Court. There is no case that, no opportunity of hearing was given to the petitioner. He submits that, therefore, the judgments relied upon by the

petitioner would not help him. He relies upon the following judgments :

(i) Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and another reported in (2022) 18 SCC 782.

(ii) Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited reported in (2020) 19 SCC 681.

(iii) Vishnupanth Eknath Khandagale and others Vs. The State of Maharashtra Through its Principal Secretary and others in Writ Petition No. 15093/2019 with other connected matters.

7. On merits, the learned A.P.P. submits that, there are various cases pending against the petitioner as appearing in the order which justifies the action. He submits that, a report was prepared and a proposal was sent by the S.D.P.O. and it is upon that report the action is taken. No illegality is committed by the authorities. He thus prays for rejection of the writ petition.

8. Undisputed facts in the present case are that, first notice was issued by the S.D.P.O. to the petitioner wherein, three offences are shown pending against the petitioner. The said notice was replied. Second notice was thereafter issued by the respondents in which there is again reference of only three offences. The petitioner has

replied both the notices.

9. Hearing was given. There is nothing to show that, even at the time of hearing any notice was given mentioning other cases. It is matter of record that, while passing the order the respondent has referred to eight offences. Five offences are from Police Station Vajirabad, Nanded (Rural), two cases from Nanded (Rural) and one case from Biloli. All the cases from 5 to 8 are at the stage of investigation where even charge-sheet is not filed. Only in one case there is conviction of imprisonment for a day and fine of Rs. 100/-. It is for the offences punishable under Sections 188, 269, 270 of the Indian Penal Code (for short "I.P.C.") and Section 51 (B) of the Disaster Management Act. The offence for which he is convicted cannot be said to be an offence creating terror in the minds of the people. It is the case of the petitioner that, it was during the pandemic period there was violation of notification and therefore, he is convicted for the offence under Section 188 of the I.P.C. Other cases are mainly under Sections 303 (2), 3(5), 112, 52 of the Bhartiya Nyaya Sanhita and are under the Prevention of Cruelty to Animals Act. There are no bodily offences shown pending against the petitioner.

10. From the order it is clear that, there are no secret statements also considered. It is not clear as to whether those were recorded. About subjective satisfaction of the authority it is seen that, the authority got itself satisfied on going through the report submitted by the S.D.P.O. and the FIR. It further records that, the authority was not satisfied with the explanation given by the petitioner. It is on this, an order came to be passed.

11. In the case of **M/s Radha Krishan Industries** (*supra*), on the proposition of alternative remedy paragraph No. 27 reads as under :

“27. The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part

III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

12. The petitioner relies upon clause (i) whereas, the learned A.P.P. relies upon clause (v). By now it is trite law that exercise of the jurisdiction under Article 226 by the High Court is a self imposed restriction and not a rule of law. The Court in a fit case

can always entertain the petition even if alternative remedy is available.

13. The case of Umar Mohammed Malbari (*supra*), is on the externment order. The Division Bench of this Court has dealt with objection to maintainability on the ground of availability of alternative remedy. In that case, the petitioner did not exhaust all the remedies. It is held that, that itself will not bar the jurisdiction of the Court to entertain and dispose of the petition. It is held that, such objection need not be considered when petitioner comes to the Court with an allegation that his fundamental rights have been affected. When an order of externment is against the petitioner, he can undoubtedly come to the Court with a writ petition on the ground that his fundamental right of freedom of movement is affected.

14. In the case of Dhananjay Manohar Sapkal (*supra*), in paragraph No. 5 this Court quoted the paragraph from the judgment in the case of Umar Mohamed Malbari (*supra*) and held that the writ is maintainable even if no appeal is filed. There are specific judgments in the case of externment holding that the non

filing of appeal is not an absolute bar.

15. The judgments in the cases of Manjit Singh Moolsing Sethi (*supra*) and Vijay Annasaheb Thombare (*supra*) are on the same proposition.

16. Coming to the judgments relied upon by the learned A.P.P. this Court has considered the judgment in the case of Genpact India Private Limited (*supra*). The Hon'ble Apex Court in the said case considered the maintainability of the petitions under Article 226 in absence of availing alternative remedy. In that case, the writ petition was dismissed on the ground of availability of alternative remedy even after it was admitted. There the writ petition was filed challenging an order passed under the Income Tax Act, 1961.

17. Another judgment in the case of Assistant Commissioner (CT) LTU, Kakinada (*supra*), the proceeding under sales tax and value added tax. It is held that, when complete mechanism is provided under the Act to challenge the assessment order, then that mechanism alone has to be followed. It is held that, writ petition is not maintainable to defeat statutory scheme. The said

judgment was given considering the judgment in the case of Thansingh Nathmal Vs. Supt. of Taxes reported in AIR 1964 SC 1419. In paragraph No. 16, the Hon'ble Apex Court held that, indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on the Apex Court under Article 142 of the Constitution. In paragraph No. 21 it is held that, when statutory remedy is available, it was necessary for the petitioner to refer to remedy of statutory appeal.

18. In the case of Vishnupanth Eknath Khandagale (*supra*), this Court dismissed the petition by directing the Hon'ble Minister to expeditiously hear the matter directing parties to approach the Hon'ble Minister in view of availability of alternative remedy.

19. This Court has considered all these judgments and affidavit in reply filed by the learned A.P.P. This Court finds that, the petitioner has relied upon the judgments which are arising out of the proceedings of externment. The judgments relied upon by the learned A.P.P. are arising out of the proceedings under Sales Tax Act or Income Tax Act. Looking to the above judgments, this Court finds that, it is true that when statute provides the remedy,

the same need to be resorted to by the parties. Present case is the case arising out of the said Act where the right or liberty of a person is taken away. Normally, the remedy provided under the statute is to be provided where the statute itself gives the right and provides the remedy. While considering the externment proceedings, one needs to keep in mind that the said Act does not create or confer any right upon a citizen on the contrary it curtails right conferred upon the citizen by Article 19(1)(d) of the Constitution of India. In the externment order, the right to freely move is curtailed by passing the order. Thus, a fundamental of the party is taken away. This proceeding needs to be seen from this angle as well.

20. No doubt remedy of appeal is provided, however, it is now well settled that, it is a self imposed restriction and it is upon the discretion of the Court that the High Court can entertain the petition. This Court also finds that, cases arising out of externment proceedings, the Hon'ble Apex Court as well as this Court, even if no appeal is filed, can still entertain a petition. For the above discussion, this Court holds that the present writ petition is maintainable.

21. So far as merits of the case are concerned, it is already recorded by this Court while issuing notice that only offences from Biloli Police Station are mentioned in notice, however, while taking action the authority has considered five more offences which were never stated in the notice. Clearly, there is violation rule of natural justice as the petitioner could not offer his explanation in respect of those five cases. Even considering those five cases this Court finds that, those cannot be said to be cases creating terror in the mind of the public. There are no statements, as appeared from the order, those are recorded showing that the general members of public are not coming forward to depose against the petitioner. Thus, even on merits this Court finds that, the impugned order suffers from non application of mind. For this reason this Court is inclined to allow the petition.

22. In view of the above, criminal writ petition is allowed in terms of prayer clause (B). The action taken by respondent No. 2 is quashed and set aside.

23. Criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.