



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

39 CRIMINAL WRIT PETITION NO. 1030 OF 2025

SAYED SAIF SAYED KHAISAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Prashant P. Giri a/w. Yogesh G. Kasod – Advocate for Petitioner

Mr. D.J. Patil – APP for Respondents, State

...

AND

42 CRIMINAL WRIT PETITION NO. 1160 OF 2025

MOHAMMAD ZIA MOHAMMAD NAVAB KURESHI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Quadri Tabrezuddin Rahimuddin – Advocate for Petitioners

Mr. D.J. Patil – APP for Respondents, State

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 15.09.2025

PER COURT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Learned Counsel appearing for the petitioners places reliance on the order of this Court in Writ Petition No.779 of 2025 dated 11.07.2025, in paragraph Nos.19, 20 and 21 are reproduced as follows :

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 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 need 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.

3. When confronted with the same, the learned A.P.P fairly concedes that the petitioner's case is covered by the said order.
4. In view of the above, the petitions are allowed in aforesaid terms.
5. Rule made absolute. No order as to costs.

[SACHIN S. DESHMUKH]
JUDGE