



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

CRIMINAL WRIT PETITION NO. 1779 OF 2024

1. Raju s/o Madhavrao Kendre,
Age : 43 years, Occu. : Agri.
2. Satyam s/o Raju Kendre,
Age : 22 years, Occu. Agri.

Both R/o. Shellali, Tq. Kandhar,
Dist. Nanded

.. Petitioners

Versus

1. The State of Maharashtra,
Through Kandhar Police Station,
Tq. Kandhar, Dist. Nanded.
2. Divisonal Commissioner,
Chhatrapati Sambhajinagar,
Commissioner Office
Chhatrapati Sambhajinagar.
3. The Superintendent of Police,
Nanded, Tq. and Dist. Nanded.
4. The Sub Divisional Officer of Police,
Kandhar, Sub Division Kandhar,
Tq. Kandhar, Dist. Nanded.

.. Respondents

Mr. Govind G. Suryawanshi, Advocate for the Petitioners.
Mr. R. B. Dhaware, AGP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 31st July, 2025.

Date on which order pronounced : 05th August, 2025.

FINAL ORDER :-

. This petition arises out of the proceedings under Section 56(1)(b) of the Maharashtra Police Act wherein, the action of externment is taken against the present petitioners by the learned Superintendent of Police (S.P), Nanded by order dated 02.07.2024. The petitioners came to be externed from two districts i.e. Nanded and Latur for a period of one year from the date of order. In an appeal the said order came to be confirmed by the learned Divisional Commissioner and thus, the petitioners are before this Court.

2. The action was taken considering four offences against the petitioners. The Police prepared report and sent the proposal to the learned S.P considering the criminal record against the petitioners. The offences pending against the petitioners are as below :

Sr. No.	Crime No.	Sections
1.	03/2022	Sections 452, 323, 354, 354-B, 143, 147, 148, 149, 504, 506, 427 of the I.P.C.
2.	109/2023	Sections 395, 324, 336, 452, 143, 147, 148, 149, 504, 506 of the I.P.C.

3. Chapter cases filed against the petitioner No. 1 are as below :

Sr. No.	Chapter Case No.	Sections
1.	19/2022	Sections 107 of the Cr.PC.
2.	31/2023	Section 110 (e)(g) of the Cr. P.C.

4. Chapter cases filed against the petitioner No. 2 are as below :

Sr. No.	Chapter Case No.	Sections
1.	01/2022	Section 110 (e)(g) of the Cr. P.C.
2.	32/2023	Section 110 (e)(g) of the Cr. P.C.

5. The learned S.P on the basis of report and a proposal issued notice dated 22.04.2024 directing the petitioners to appear before him on 29.04.2024 at 11.00 a.m. The petitioners appeared and submitted say and it is on this the action came to be taken.

6. It is the case of the petitioners that, the petitioners were not given all the documents on the basis of which action was proposed to be taken. The offences are registered because of political rivalry. Only two cases are pending against the petitioners whereas, two proceedings are already closed. The petitioner No. 1

is father of petitioner No. 2. It is a conspiracy to implicate both the members of the family as another son of the petitioner No. 1 is elected as Sarpanch of the village. The petitioners prayed that no action be taken against them.

7. The learned S.P considered the say, proposal and the record. It is observed that, there are offences pending against the petitioners. He further recorded that, record is sufficient to show that the crimes are organized crimes. They are members of a gang and passed an order. The learned Commissioner considered the appeal and recorded that the material before the authority was sufficient to take action of externment and rejected the appeal.

8. The learned advocate for the petitioners vehemently argued that, present case is a case where from the record it is seen that, no sufficient material is available on record and still action is taken. Both the authorities have failed to appreciate that the Crime Nos. 3/2022 and 109/2023 are pending trial. No conviction is recorded. Against both the petitioners two chapter cases were initiated, however, both the chapter cases are closed. It is submitted that, there is no conviction recorded against any of

the petitioners in any of the crimes. No secret statements appear to have been recorded and still the action is taken restricting fundamental right of the petitioners. Though the period of externment is already over, still to remove the stigma it is necessary to hear the petitioners. The petitioners have prayed for quashing and setting aside the impugned order and the action of externment.

9. The State has filed affidavit in reply. The learned A.P.P. submits that, the action is rightly taken against the petitioners. Another son of petitioner No. 1 is elected Sarpanch of the village. Thus, there is every possibility of the petitioners taking disadvantage of the position of the Sarpanch from their family. He has placed on record the report submitted by the Police Inspector, Police Station, Kandhar. He submits that, in the report the learned Inspector has considered entire material and it is only thereafter the report was filed. The learned A.P.P. has placed on record secret statements along with reply. There are five secret statements. However, looking to the statements also it is seen that, except two crimes and two chapter cases against the petitioners, there is no another case. The statements appear to be stereotype. This

cannot be said to be sufficient to come to a conclusion that the activities are so dangerous that it is not desirable to allow the petitioners to stay in district.

10. The learned advocate for the petitioners during the course of argument relied upon the judgment in the case of Deepak s/o Laxman Dongre Vs. The State of Maharashtra & Ors. in Criminal Appeal No. 139/2022. The Hon'ble Apex Court observed that, an order of externment is an extra ordinary measure. It has the effect of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms such order prevents the person even from staying in his own house. For taking action under Section under Section 56 (1)(a) there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction. This Court finds that, the said judgment is squarely applicable in the facts of the present case.

11. After hearing the parties and going through the material on record it is seen that, in two offences both the petitioners are shown as accused. So far as chapter cases are concerned, there are

independent chapter cases filed against each of the petitioners. Crime Nos. 3/2022 and 109/2023 are pending before the Court. There is no conviction recorded as yet. Crime No. 3/2022 is for the offences punishable under Sections 452, 323, 354, 354-B, 143, 147, 148, 149, 504, 506 and 427 of the I.P.C. Crime No. 109/2023 is filed for the offences punishable under Sections 395, 324, 336, 452, 143, 147, 148, 149, 504 and 506 of the I.P.C. While considering the action of externment it needs to be considered as to whether this much record is sufficient for taking drastic action of externment from two districts. All the offences are from one Police Station i.e. Kandhar.

12. Looking to the order passed by the learned S.P. it is seen that he has mainly considered the enquiry report submitted by the Sub Divisional Police Officer, Sub Division, Kandhar. The notice was issued. Say is filed by the petitioners. It is considered that there are two offences lodged from the year 2012 till 2023 falling under Chapter 16 and 17 of the I.P.C. There is nothing to indicate as to what exact material lead him to conclusion that the activities of the petitioners are dangerous to the society. It is considered that the offences are registered on account of the elections to the

village panchayat. It is not clear as to on what basis the authority came to conclusion that there is danger to the life and property of the people and passed an order externing the petitioners for six months.

13. The learned Divisional Commissioner in his judgment mainly considered the order passed by the learned S.P on the basis of report submitted by learned Sub Divisional Police Officer. Though it is recorded that two secret statements are recorded, however, looking to the order passed by the learned S.P, no such reasoning is appearing in his order. The observation of the learned Divisional Commissioner thus appears to be without application of mind. From the order it is also not seen as to what made the learned Commissioner to come to the conclusion that the activities of the petitioners are so dangerous that they are required to be externed. Considering the above, this Court finds that, the action is taken without there being sufficient material on record.

14. In any case, this Court finds that, an order is also excessive as offences are registered only in one Police Station. The action is

taken externing them from two districts. In view of the above, the impugned order deserves to be quashed and set aside.

15. In view of the above, criminal writ petition stands allowed in terms of prayer clause (C).

16. Criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.