



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1785 OF 2024

Javed Khan Ayyub Khan
Age 37 years, Occu: Labour
R/o House No.5-163, Nutan Colony,
Near ABC Dry-cleaners, Aurangabad

... **Petitioner**

VERSUS

1. The State of Maharashtra
2. The Commissioner of Police, Aurangabad
3. The Deputy Commissioner of Police
Zone No.1, Aurangabad
4. Police Inspector,
Kranti Chowk Police Station, Aurangabad

... **Respondents**

Mr. Siddesh Subhashrao Ghodke, Advocate for the Petitioner,
Mrs. A. S. Deshmukh, APP for the Respondents

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 02.01.2025

PRONOUNCED ON: 10.01.2025

JUDGMENT:-

1. **Rule.** Rule made returnable forthwith. Heard finally with consent of both the sides.

2. By the present petition, the Petitioner takes exception to the order dated 23.07.2024 passed by the Divisional Commissioner,

Chhatrapati Sambhajinagar (Aurangabad) in Externment Appeal bearing No.2024/साप्र./कक्ष-1/पो ल-1/हद्दपार/सिआर-63 thereby confirmed order dated 09.05.2024 passed by Respondent No.3/Deputy Commissioner of Police in externment case bearing No. पोउपआ/परि-1/वि-2/हद्दपार-21/अंतिम आदेश/2024/1595, whereby extern the Petitioner from Chhatrapati Sambhajinagar City and entire district for the period of two years from the date of order.

3. On perusal of record, it indicates that the concerned police authorities have sought to invoke Section 56 (1)(b) of the Maharashtra Police Act,1951 for the purpose of externment of the Petitioner. On 29.11.2023, the Senior Police Inspector of Kranti Chowk Police Station, Chhatrapati Sambhajinagar (Aurangabad) submitted a proposal for externment of the Petitioner from Chhatrapati Sambhajinagar City and entire Chhatrapati Sambhajinagar District for the period of two years. On 26.04.2024 a show cause notice was issued against the Petitioner which has been duly served upon the petitioner on 28.04.2024. However, the Petitioner fail to submit reply the said notice inspite of sufficient opportunity was granted to him. Ultimately, on 09.05.2024, Respondent No.3- Deputy Commissioner of Police passed the externment order and externed the petitioner for the period of two years from the date of order, considering registration of seven crimes and one chapter case, out of

which, in one crime, the present Petitioner has been convicted and sentenced to suffer rigorous imprisonment for five years for the offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. The Respondent No.3 further held that the present petitioner is indulged in various criminal activities which are disturbing peace in the society and the petitioner is habitual offender.

4. Being aggrieved said order dated 09.05.2024, the petitioner filed Appeal No.2024/साप्र./कक्ष-1/पोल-1/हद्दपार/सिआर-63 before the Divisional Commissioner, Chh. Sambhajanagar. On 23.07.2024, the appellate authority passed the impugned order and dismissed the appeal of the petitioner.

5. The learned counsel appearing for the petitioner canvassed in vehemence that while passing the order dated 09.05.2024, Respondent No.3 has considered eight crimes registered against the Petitioner, however, out of those crimes, two crimes are registered as Non Cognizable offence (NC) and one is Chapter case. So also, in one crime, the petitioner is convicted under the NDPS Act, however, the Petitioner filed an Appeal against the conviction and sentence. On 03.03.2020, this Court passed an order in Criminal Application No 192 of 2020 in Criminal Appeal No. 30 of 2020 and suspended the sentence. So also, all above crimes are

registered with the Kranti Chowk Police Station, Chhatrapati Sambhajnagar. Further, the Petitioner is falsely implicated in Special Case No. 252 of 2023 i.e. Crime No. 79/2023 on disclosure statement of the co-accused.

6. It is further canvass that, there is no any gang in operation of which the Petitioner is a Member or the leader of said gang. The Petitioner not been served with the show cause notice personally, therefore, the petitioner could not submit the reply. Therefore, impugned order is illegal and bad in law, hence, prayed to quash and set aside the same. In support of this submission, the learned counsel for the petitioner relied on the case of ***Lalookhan Haideralikhan Vs. M.M. Kamble, Special Executive Magistrate, Byculla, 1996 Cri. L.J. 801.***

7. Per contra, Shri Sunil Bapurao Mane, Senior Police Inspector, Krantichowk Police Station, Aurangabad City/Chhatrapati Sambhajnagar filed affidavit in reply and strongly resisted the petition.

8. The learned APP submitted that, the Respondent Police authorities complied with due procedure of law and followed the principles of natural justice. According to the learned APP, on 26.04.2024, Respondent No.4 Police Inspector, Kranti Chowk Police Station issued a

show-cause notice to the Petitioner, specifying about registration of several crimes as described in the notice and called upon the petitioner as to why he should not be externed from Chhatrapati Sambhajnagar (Aurangabad) City as well as from entire District for the period of two years. The said notice was duly served upon the Petitioner, however, the Petitioner failed to submit his reply. The Petitioner was granted sufficient opportunity of hearing and after considering the material available on record as well as series of crimes registered against the Petitioner, the Respondent No.3 passed the order dated 09.05.2024 and externed the petitioner for the period of two years.

9. The learned APP further canvass that, the Petitioner had questioned legality and validity of said order before the appellate authority i.e. the Divisional Commissioner, Chhatrapati Sambajnagar. On 23.07.2024, the appellate authority passed the impugned order and affirmed the order of externment passed by Respondent No.3. On 23.07.2024, the Appellate Authority passed the impugned order and dismissed the appeal after hearing both the sides. Therefore, impugned order does not suffer from any illegality and no substantial grounds set out to interfere with the findings recorded by both the authorities, hence, prayed for dismissal of the petition.

10. The learned APP further canvassed that the Respondent-Authorities have passed the impugned orders on the administrative grounds to maintain the peace in the society. Therefore, no interference is called at the hands of this Court as the order of externment is an administrative order. To buttress these submissions, the learned APP placed reliance on ***Deepak Laxman Dongre V/s. State of Maharashtra and Ors.; AIR 2022 SC 1241***, wherein the Hon'ble Apex Court has laid down the guidelines for deciding the Petitions challenging the order of externment passed by the Competent Authority and held that for invoking the said provisions there must be objective material on record on the basis of which Competent Authority must record its subjective satisfaction. It is further observed in cited case that, even if multiple offences have been registered against an individual that by itself is not sufficient to pass an order of externment. Moreover, there must be satisfying material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give statement against the externee.

11. Reverting back to the facts of the present case, it is pertinent to note that the concerned Police authority has sought to invoke provisions of Section 56 of the Maharashtra Police Act.

Section 56(1)(a),(b),(bb) and (c) read as under:

56. Removal of persons about to commit offence. Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property;

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or other wise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or [notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of his jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as " the specified area or area") from which he was directed to remove himself.]

12. On plain reading of section 56 it prima facie appears that, if any person's movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property and there are reasonable grounds to believe that such person is engaged or is about to engage in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment of any such offence, and if the concerned officer believe that act of such person is likely to disturb the peace in the society, the District Magistrate or Sub Divisional Magistrate empowered to remove such person from any specified area or areas for the specific period.

13. In the case in hand, it prima facie appears that, the Assistant Commissioner of Police (City), Chhatrapati Sambhajnagar City submitted a report after enquiry. During the course of enquiry it has been revealed about registration of various crimes against the Petitioner, which read as under:

Sr. No.	Police Station	Crime No./Sections	Date of Registration	Present Status
1	Kranti Chowk	Crime No.199/2023 Sections 294,323, 504, 506 of IPC	29.06.2023	Pending in Court
2	Kranti Chowk	NC No.369/2024 Sections 323, 504, 506, 34 IPC	03.05.2023	--
3	Kranti Chowk	NC No. 379/2024 Sections 504 and 506 IPC	05.05.2024	---
4	Kranti Chowk	Crime No.469/2021 Sections 326, 143, 147, 148, 149, 204,	08.06.2021	Pending in Court

		506 IPC		
5	Kranti Chowk	Crime No.79/2023 Sections 20(b),(ii), (A), 8(c), 29 of NDPS Act r/w Section 34 IPC	10.03.2023	Pending in Court
6	Kranti Chowk	Crime No.670 of 2021 Sections 20(b), 29 of NDPS Act r/w Section 34 IPC	03.12.2021	Pending in Court
7	Kranti Chowk	Crime No.677/2017 Section 20(b), of NDPS Act	08.08.2017	Convicted by Special Court vide order dt. 11.10.2017 & sentenced to suffer RI for 5 years with fine of Rs.20,000/-
8	Kranti Chowk	Chapter Case No.22 of 2023, Section 110 of CRPC	22.06.2023	

14. Indeed, the Petitioner has produced a copy of the judgment and order dated 21.12.2019 passed by the Special Judge under the NDPS Act in Special Case No. 9 of 2017, whereby the present Petitioner came to be sentenced for the offence punishable under Section 20 (b) (ii) (B) of the NDPS Act for seizure of 2 kg. Ganja.

15. No doubt, the Petitioner has already challenged the order of conviction in Criminal Appeal No.30 of 2020 before this Court. On 03.03.2020, the Co-ordinate Bench of this Court passed an order in Criminal Application No. 192 of 2020 (In Criminal Appeal No. 30 of 2020) and sentence against the present Petitioner came to be suspended during the pendency of the appeal.

16. Needless to say that, the trials are pending in respect of Crime No 199 of 2023 for the offences punishable under Sections 294, 323, 504, 506 IPC registered on 29.06.2023, Crime No.469/2021 Sections 326, 143, 147, 148, 149, 204, 506 IPC Registered on 03.05.2023, Crime No.79/2023 Sections 20(b),(ii), (A), 8(c), 29 of NDPS Act r/w Section 34 IPC registered on 10.03.2023 and Crime No.670 of 2021 Sections 20(b), 29 of NDPS Act r/w Section 34 IPC registered on 03.12.2024 .

17. On perusal of the order dated 09.05.2024 passed by Respondent No.3 it reveals that, the Petitioner is habitual offender and due to threats at the hands of the petitioner, witnesses are not giving statements against the Petitioner. The order passed by Respondent No.3 itself speaks that, the Petitioner is indulged into various criminal activities including singing obscene songs at the public place, causing grievous hurt by using knife, issuance of life threats and criminal intimidation. Not only this but the Petitioner is also engaged in dealing with illegal business of narcotic substance for which he is already convicted and trial of another similar nature of crime is pending against him.

18. In the case of *N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080*, the Hon'ble Apex Court has held that, the Courts will be slow in interfering in the matters relating to administrative

functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, impugned orders are considered in the facts and circumstances of the case.

19. In case of *Balu @ Balasaheb Jagannath Jadhav Vs. Divisional Commissioner, Aurangabad, 2017(10) LJSoft 71 = 2017 ALL MR (Cri.) 3969*, more than 30 offences were registered against the Petitioner therein under the Maharashtra Prevention of Gambling Act and also under the Indian Penal Code and therefore, this Court refused to interfere with the findings recorded by the externing authority and appellate authority.

20. In the case of *Rahmat Khan @ Rammu Bismillah V/s. Dy. Commissioner of Police; (2021) 8 SCC 362*, it is held that, Sections 56 to 59 of the Act are intended to prevent lawlessness and deal with class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial. An externment order may sometimes be necessary for maintenance of law and order. However, the drastic action of externment should be only taken in exceptional cases to maintain the law and order in a locality and or prevent the breach of public tranquility and peace.

21. In *Gazi Saduddin V. State of Maharashtra; (2003) 7 SCC 330*, it has been observed that the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expedient necessity of passing an order of externment.

22. In *Lalookhan Haideralikhan*, cited supra, it is held that mere registration of cases for the alleged offences will not take the character of the proof of fact and show cause notice based on accusation of charges not yet proved would be wholly illegal and unsustainable. Therefore, notice issued by the Special Executive Magistrate has been quashed.

23. However, in the case in hand, Crime Nos. 199 of 2023, 469/2021, 79/2023 and 670 of 2021 are registered against the present petitioner for the offences punishable under the Indian Penal Code as well as under the NDPS Act. The trials of said crimes are pending before the Trial Court. It is a matter of record that, Two crimes are registered against the petitioner are Non cognizable offences and one is chapter case. Therefore, it appears that conduct and behaviour as well as activities of the present petitioner are certainly harmful to the society. The Petitioner is a habitual offender and his unlawful activities are certainly disturbing peace in the society.

24. Since, the activities of the petitioner as discussed above certainly appears to be disturbing peace in the society and are causing or calculated to cause alarm, danger or harm to person or property. In case in hand, the petitioner was duly served with the show cause notice as to why he should not be extenmenet from entire Chh. Sambhajinagar city and District, due to his illegal and unlawful activities but the petitioner failed to file the reply. The petitioner has has not denied about registration various crimes against him as discussed above. The petitioner was provided opportunity of hearing. Therefore, considering the material produced on record it does not appear that the findings recorded by the Respondent no. 2 as well the Respondent no. 3 are perverse, illegal.

25. On perusal of the order dated 09.05.2024 passed by the Respondent no. 3, it prima facie appears that various crimes are registered against the petitioner for the offences punishable under the Indian Penal Code as well under the NDPS Act. The petitioner already convicted in respect of Crime No.677/2017 for the offence punishable u/s 20(b), of NDPS Act vide Judgment and Order dated 11.10.2017 and he sentenced to suffer RI for 5 years with fine of Rs.20,000/-.

26. On face of record it appears that, the Respondent No.3 well considered about registration of various crimes against the petitioner as

well petitioner's behaviour in the society. Further, the Appellate Authority passed the impugned order dated 23.07.2024, and considered all material available on record and affirmed the externment order dated 09.05.2024, which does not appear perverse, illegal or bad in law. However, considering the nature of offences and unlawful activities of the petitioner, externing the petitioner for the period of two years would be unjustifiable. Therefore, considering the nature of offences, it would be just and proper to extern the petitioner for a period of one year, hence, order dated 09.05.2024 passed by the Respondent no. 3 liable to be modified to that extent. Accordingly, I proceed to pass the following order:

O R D E R

- (i) Criminal Writ Petition No. 1785 of 2024 is hereby partly allowed.
- (ii) The order dated 09.05.2024 passed by Respondent No.3/Deputy Commissioner of Police, Zone No.1, Chh. Sambhajinagar (Aurangabad), which has been affirmed by the Divisional Commissioner, Chh. Sambhajinagar vide order dated 23.07.2024, is hereby modified to the extent of externment period of one year from the date of initial order instead of two years.
- (iii) Rule is partly made absolute in above terms.

(Y. G. KHOBRAGADE, J.)

JPChavan