

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Cri.Writ Petition No.1638 of 2025

Fakrey Alam Badre Alam
Age: 38 yrs, Occ : Business
R/at B/205, 2nd floor,
Huma Complex, Tanwar
Nagar, Kausa, Mumbra,
Dist.Thane

..... Petitioner.

Vs.

1. The Dy.Commissioner of Police
Zone-I, Thane, Dist.Thane.

2. The Hon'ble Commissioner,
Konkan Bhavan, Mumbai.

3. The State of Maharashtra
At the instance of Mumbra
Police Station.

..... Respondents.

Mr Abdul Wahab Shaikh a/w Mr Aditya Parmar and Mr
Ibrahim Shaikh for the petitioner.

Ms MR Tidke, APP for respondent/State.

API Tejas Sawant, Mumbra Police Station.

Coram : R.N.Laddha, J.

Date : 21 April 2025.

P.C. :

By this writ petition, the petitioner has challenged the
legality and validity of the order dated 30 January 2025

passed by Respondent No.2-Appellate Authority confirming the order passed by Respondent No.1 on 6 July 2024 externing the petitioner under Section 55 of the Maharashtra Police Act, 1951 (for short, 'the Act'), for a period of eighteen months from Thane and New Mumbai districts.

2. This petition has been finally heard at the stage of admission with the consent of parties. Hence, Rule made returnable forthwith.

3. I have heard Mr Abdul Wahab Shaikh, learned Counsel for the petitioner and Ms MR Tidke, the learned Additional Public Prosecutor for the State.

4. The primary contentions raised on behalf of the petitioner are that the impugned orders are vitiated by grave illegality and arbitrariness. According to the learned Counsel for the petitioner, the order passed by the externing authority is based on material that is insufficient to justifiable satisfaction required under Section 55 of the Act. The learned Counsel submits that Section 55 of the Act contemplates action against a gang or body of individuals, and thus, it is necessary that each member of such a gang or

group is shown to have engaged in similar criminal conduct, with final action being taken against all such members accordingly. However, the learned Counsel contends that this is not the case here. A plain reading of the impugned order reveals that the material relied upon to extenuate the petitioner differs significantly from that used in relation to other alleged members of the gang. He submits that the impugned order is arbitrary and discriminatory, particularly because the only offence registered against the petitioner was of the year 2023 and was under investigation at the time of passing the order. The learned Counsel also points out that apart from addressing the notice to the petitioner by name, no specific allegations have been made against him in the show cause notice. A grievance is also raised regarding the petitioner not being furnished with relevant details that could have been used to challenge the authorities' satisfaction. According to the learned Counsel the petitioner has a right to be informed of all material relied upon, as such a right is fundamental to the principles of natural justice.

5. Ms MR Tidke, learned APP representing respondent/

State has opposed the petition, citing the reasons recorded in the impugned order of externment and by the Appellate Authority. She emphasises that the cumulative impact of the externee's behaviour overtime on the local residents, where the petitioner and the other members of the gang had instilled a reign of terror, should be taken into account.

6. With the assistance of the learned Counsel for the petitioner and learned APP, I have perused the petition along with the documents annexed thereto, including the impugned orders.

7. Section 55 of the Act deals with dispersal of gangs and bodies of persons. It reads as follows:

“55. Dispersal of gangs and bodies of persons-

Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed under Section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by a

notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in the order to prevent violence or alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto within such time as such officer shall prescribe, and not to enter area (for the areas and such contiguous districts, or part thereof as the case may be,) or return to the place from which each of them was directed to remove himself.”

8. A careful reading of Section 55 reveals a consistent underline theme of collective participation and unified action against all involved. The Section begins by referring to a gang or body of persons, highlights the threat posed by their movement or encampment, and culminates in a directive for the removal of each member of such a group. This element of collective responsibility is central to the provision and reflects the clear legislative intent. Section 55 of the Act is thus applicable only when individuals are shown to be acting as part of a gang or body of persons.

9. The impugned orders show that an offence vide CR

No.525 of 2023 was registered against the petitioner, which, at the time of passing the externment order, was still under investigation. Beyond this single case, there is no indication of any other criminal activity involving the petitioner. Neither the documents on record nor the submissions of the learned APP point to any additional cognisable offences linked to the petitioner, except for certain non-cognisable offences, and even those do not reflect any involvement as part of a gang. Given that the action was initiated under Section 55 of the Act, the externing authority also referred to criminal cases registered against other individuals alleged to be part of the same gang as the petitioner. However, this lone case (CR No.525 of 2023) appears to be the only common thread connecting the petitioner with the remaining four alleged gang members. The record shows that five cases have been registered against the second alleged member, Fakrey Alam Layak Ali Shaikh; four cases each against the third and fourth alleged members, Azam Layak Ali Shaikh and Mosin Mobin Khan. In contrast, only one criminal case has been attributed to the petitioner, and even that case is not uniquely associated with gang activity. This disparity in the

nature and number of offences suggests that the criminal acts attributed to the alleged gang members are more individualistic rather than collective in nature, thereby failing to demonstrate any coordinated or group-based criminal conduct.

10. Furthermore, the impugned order does not contain any material suggesting that the petitioner is either the leader or a functioning member of a gang or body of persons. In the absence of such essential findings, the foundational requirement of Section 55, that action be taken against individuals acting collectively as a gang is clearly not fulfilled in this case. Therefore, in light of the absence of collective criminal activity and the lack of material implicating the petitioner as a gang member, the impugned orders cannot be sustained. On this ground alone, they deserve to be quashed and set aside *qua* the petitioner.

11. The learned Counsel for the petitioner has also raised several additional contentions, however, in the present context, it is not necessary to examine each of these submissions in detail. This is because once it is established

that the impugned orders are vitiated by fundamental legal errors, these other arguments lose their significance. The foundational defects in the orders, going to the statutory requirement under Section 55 are sufficient, in and of themselves, to warrant the quashing of the impugned orders *qua* the petitioner. As such, the remaining contentions, though not without merit, do not require separate adjudication.

12. In the result, the petition stands allowed and the impugned orders are hereby quashed and set aside *qua* the petitioner.

[R. N. Laddha,J.]