

Mr. Abdul Wahab Shaikh, for Petitioner.
Mr. P.P.Malshe, APP for State.
Mr. Anil B. Sonawane, API, Mumbra Police Station present.

DATE : 23 DECEMBER 2025

P.C.

2. By this Petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, the Petitioner calls in question the legality, propriety and correctness of the order dated 30 January 2025 passed by the Divisional Commissioner, Konkan Division, in Appeal No.148 of 2024, whereby the appeal preferred by the Petitioner against an order of externment passed by the Deputy Commissioner of Police, Zone I, Thane, under Section 55 of the Maharashtra Police Act, 1951 (the Police Act, 1951), for a term of 18 months from Thane and Mumbai Suburban Districts, came to be dismissed by affirming the said order of externment.

3. A notice was served on the Petitioner and Fakrey Alam Laikali Shaikh, the alleged gang leader, Fakre Alam Badre Alam and Mosin Mobin Khan, the alleged other gang members, calling upon them to show cause as to why action under Section 55 of the Act, 1951 shall not be taken against the gang leader and the members of the alleged gang. It was, inter alia, alleged that multiple crimes were registered against the gang leader, the Petitioner and other members of the said gang and their movements were causing or calculated to cause danger or alarm or reasonable suspicion that unlawful designs were entertained by such gang or members thereof.

4. Eventually, the Competent Authority passed an order of externment externing the Petitioner and other members of the gang from Thane and Mumbai Suburban Districts for a term of 18 months.

5. The Petitioner preferred an appeal before the Divisional Commissioner. By the impugned judgment and order, the Division Commissioner dismissed. The Appeal.

6. Being further aggrieved, the Petitioner has invoked the writ jurisdiction.

7. I have heard Mr. Shaikh, learned Counsel for the Petitioner, and Mr. Malshe, learned APP for the State. With the assistance of the learned Counsel for the parties, I have perused the material on record, including the report submitted by the jurisdictional police and tendered for the perusal of the Court by the learned APP.

8. At the outset, Mr. Shaikh, learned Counsel for the Petitioner, submitted that by a judgment and order dated 21 April 2025 in Criminal WP No.1638 of 2025, a learned Single Judge of this Court has quashed and set aside the impugned order of externment qua Fakrey Alam Badre Alam, an alleged member of the gang, observing, *inter alia*, that the impugned order of externment is vitiated by fundamental legal errors. Therefore, on parity of reasons, the impugned orders are required to be quashed and set aside qua the Petitioner also.

9. Secondly, Mr. Shaikh would urge, the Competent Authority has selectively proceeded against the Petitioner and his family members, though there are other co-accused who have been arraigned alongwith the Petitioner in the crimes arrayed against the Petitioner. Such selective action is legally impermissible.

10. In opposition to this, Mr. Malshe, learned APP, submitted that the Petitioner cannot draw any mileage from the order passed by this Court in WP No.1638 of 2025 as only one crime was registered against the said Fakrey Alam Badre Alam. In contrast, four cognizable cases have been registered against the Petitioner and there is material to show that those crimes have been committed by the Petitioner and the gang leader as the members of the gang.

11. First and foremost, it is necessary to note the reasons which weighed

with this court in quashing and setting aside the externment order qua Fakrey Alam Badre Alam, the alleged member of the very same gang. The relevant observations in the order dated 21 April 2025 in WP No.1638 of 2025 read as under :

“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 cognizable 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. It is true, in the aforesaid order, the learned Single Judge took note of the fact that in only one crime i.e. C.R.No.525 of 2023, Fakrey Alam Badre Alam, the Petitioner therein, was arraigned along with the Petitioner herein and other accused. However, the learned Single Judge also observed that the criminal acts attributed to the alleged gang members were more individualistic rather than collective in nature and lacked element of coordinated or group based criminal conduct. The impugned orders were vitiated by the foundational legal errors. In view of the foundational defects, the impugned orders were quashed qua the Petitioner therein.

13. I find substance in the submission of Mr. Shaikh that the aforesaid observations apply with equal force to the challenge mounted by the Petitioner.

14. The second limb of the submission of Mr. Shaikh that, the selective action has been taken against the Petitioner and his family members, also appears to carry substance. In C.r.No.432 of 2018, apart from the Petitioner and Fakrey Alam, the alleged gang leader, two other persons have been arraigned as accused, namely, Usman Ahmed Shafique and Mohd. Raza

Sabanali Sayyed. Likewise, in C.R.No.537 of 2023, apart from the Petitioner and the alleged gang leader, Gulnar Shaikh is shown to have been implicated as co-accused.

15. In the case of **Ahammad Mainuddin Shaikh V/s. The State of Maharashtra and Anr.**¹, a Division Bench of this Court had an occasion to consider the import of the provisions contained in Section 55 of the Act, 1951, After analyzing the provisions of the Act, 1951, the Division Bench observed that Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively. The observations in paragraphs 8 and 14 read as under :

“8.....Upon a careful reading of this section, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under 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 of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and

1 2013 ALL MR (Cri) 3804

alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. In suitable cases, the order of removal can also be from district or its parts or together with contiguous districts or parts thereof. This second direction, in order to be reasonable, has to be passed for a definite period of time. In the entire section, there is common thread of participation by all and collective action against all that holds together all its parts. The section starts with gang or body of persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively.

.....

14. The illegality so committed by both authorities does not stop here. The externing authority, while passing the final order which has been confirmed by the appellate authority, has directed externment only against the petitioner and not the remaining 5 members of his alleged gang, for a period of one year from the district of Kolhapur. Such discrimination

between members of the gang is not permissible in law, particularly, when collective criminal activity is alleged on their part by arraigning at least some of them, as accused along with the petitioner. Section 55 of the Act contemplates a collective action against the gang or body of persons and, therefore, the final direction that is required to be issued in terms of this section, would also have to be necessarily against each of the members of the gang and not against one or a few of them on selective basis. So, on this ground also, we find that the impugned orders are absolutely illegal and cannot be sustained in law.” (emphasis supplied)

16. In the case of **Vijay Lalaso Jadhav V/s. State of Maharashtra and Ors.**², another Division Bench of this Court enunciated the law as under :

“8..... Section 55 of the Bombay Police Act contemplates collective action against the gang or body of persons and therefore, the final direction which is required to be issued in terms of the said Section, will have to be necessarily against each of the members of the gang and not against one or a few of them on selective basis. It is therefore, apparent that an illegality has been committed by both the Authorities, i.e. the Competent Authority and the Appellate Authority by passing the externment order and confirming the same only qua the Petitioners and not against the other members of the alleged gang.” (emphasis supplied)

17. Applying the aforesaid principles to the facts of the case at hand, on the one hand, the Competent Authority has not proceeded against the co-

² 2014 ALL MR (Cri) 1277

accused who are arraigned in the crimes against the Petitioner and the alleged gang leader. On the other hand, this Court found that the order of externment qua the alleged member of the gang was vitiated by legal defects as the alleged offences were not in pursuance of the concentrated group action but more individualistic rather than collective in nature.

18. In the aforesaid view of the matter, I am impelled to hold that the impugned orders cannot be sustained qua the Petitioner also. Resultantly, the Petition deserves to be allowed.

19. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The order of externment dated 6 July 2024 passed by the Competent Authority also stands quashed and set aside.
- (iv) Rule made absolute in the aforesaid terms.
- (v) No costs.

(N.J.JAMADAR, J.)