



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 320 OF 2025.

1. Sagar Vinod Katole,
Aged about 27 years, Occupation
Agriculture, resident of Ward no.1,
Bhagat Layout, Seloo, Wardha.
 2. Kiran Jagdish Raghtate,
Resident of Ward No.1, Bhagat
Layout, Seloo, Wardha.
- ... **PETITIONERS.**

VERSUS

1. State of Maharashtra,
through Superintendent of Police,
Wardha.
 2. PSO PS Seloo,
Wardha.
- ... **RESPONDENTS.**

Mr. M.N. Ali, Advocate for Petitioners.
Mr. S.S. Hulke, A.P.P. for Respondents.

CORAM : **ANIL S. KILOR AND**
 VRUSHALI V. JOSHI, JJ.

DATE : **JULY 01, 2025.**

ORAL JUDGMENT (PER ANIL S. KILOR, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. By impugned order dated 24.03.2025 passed by the respondent no.1 – Superintendent of Police, Wardha, under Section 55 of the Maharashtra Police Act, 1951 (hereinafter referred to as “the 1951 Act” for short), petitioners have been externed for a period of two years from Wardha District. The said order is under challenge in this Writ Petition.

3. Both petitioners are members of a gang. There is no other member, other than the petitioners. While passing the impugned order, the respondent no.1 has relied upon the offences which are common against the petitioners, and also the offences registered individually against them. As far as the common offences

are concerned, they are three in numbers namely – Crime Nos.31/2020, 503/2024 and 680/2023. All these crimes are pending before the competent Court. Crime No.31/2020 is for the offence punishable under Sections 397, 294, 427 of the Indian Penal Code, whereas Crime No.503/2024 and 680/2023 are for the offence punishable under Sections 65[e], 77[a] and 83 of the Maharashtra Prohibition Act. So far as the three offences against the gang are concerned, it shows collective participation of both members of the gang.

4. Shri Ali, learned Counsel appearing for the petitioners submits that there is no live link in between the first crime No.31/2020 and two other i.e. crime Nos.503/2024 and 680/2023. He therefore, submits that the first crime No.31/2020 cannot be taken into consideration for passing the impugned order. We find substance in the said submission advanced by the learned Counsel for the petitioners that the first offence is of the year 2020 and other offences are of the year 2023 and 2024, and there is no live link in between the first offence and other two offences.

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5. He further argues that the other offences are under the Maharashtra Prohibition Act and considering the basic requirement that to exercise powers under Section 55 of the 1951 Act, which contemplates *“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.”* It is therefore, argued that since the offences are under Maharashtra Prohibition Act, this requirement to cause danger or alarm or reasonable suspicion are unlawful designs to be entertained by such gang, are not fulfilled and therefore, the authority does not get jurisdiction under Section 55 of the 1951 Act to pass any order. We do not find favour with this argument of the learned Counsel for petitioners for the reason that there is mention of offences against petitioner no.1, which are 10 in numbers. No doubt, the petitioner no.1 was acquitted in 10th offence i.e. Crime No.815/2022, however still there are 9 offences are pending. All these offences are under the Maharashtra Prohibition Act.

6. In the case of **Altaf Rajekhan Pathan and others .vrs. Divisional Commissioner, Pune and others** reported in **2018 SCC Online Bom.1475**, the coordinate Bench of this Court has held as under :

“35. Now coming to the judgment of the Division Bench of this Court Ahammad Maniuddin Shaikh’s case [supra]. In the said case the facts were that the offences were registered against the gang leader and one member of the gang and no offence were registered collectively against all the gang members. It is in the said context that the Division Bench held that the Petitioner in the said Petition and the other members did not constitute a gang as there is no collective participation by the gang leader and the alleged members. The said judgment is holding the field since the year 2013. A similar note was sounded by the Division Bench in Vijay Lalso Jadhav’s case [supra].

36. The facts in the case of Ahammad Mainuddin Shaikh [supra] can be said to be identical to the facts in the instant cases, as in the instant case also the offence under the gambling act have been individually registered against the gang leader and one member as can be seen from the show cause notices which are issued to the petitioners in all the above Writ Petitions. There is no offence registered

against all the gang members collectively or even against a substantial number of the members collectively so as to constitute a gang. In our view, therefore, the Petitioners in all the above Writ Petitions can hardly be said to constitute a gang so as to entitle the authorities to invoke the provisions of Section 55 of the Police Act. Hence, it would have to be held that there is an absence of the essential jurisdictional fact of there being a gang, so as to entitle the authorities to exercise powers under Section 55 of the police act. In our view, since the externment order impinges upon the personal liberty of an individual the provisions have to be strictly construed and by a convoluted process the provisions cannot be made applicable.”

7. From the observations of the Coordinate Bench, it is evident that the requirement is of commission of an offence by collective participation of all the members or substantive number of members of the gang, to constitute a gang. In this case out of two, if one member has committed 9 offence other than the common offence, it can safely be said that the substantive number of members of the gang has collectively participated in the offence. Thus commission of offence by the petitioner no.1 constitute a gang, and therefore, Section 55 of the 1951 Act will apply to the present case.

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8. As far as the arguments that all the offences are under Maharashtra Prohibition Act, and therefore, it cannot be said that the requirement to cause danger or alarm or reasonable suspicion as contemplated under Section 55 of the 1951 Act would apply, cannot be accepted for the simple reason that all these offences are committed by the petitioner Sagar in Wardha District which is a dry district notified vide notification dated 30.04.1975. Thus, considering this fact, according to us the prerequisite of Section 55 of the 1951 Act is being satisfied. Thus the argument made by the learned Counsel for the petitioners as regards non fulfillment of prerequisites of Section 55, is hereby rejected.

9. The learned Counsel for the petitioners further argues that though the maximum punishment is imposed, no reasons are recorded for imposing such maximum punishment for this purpose. He has placed reliance upon the judgment of Hon'ble Supreme Court in case of **Deepak Laxman Dongre .vrs. State of Maharashtra and others** reported in **2022 All MR (Cri) 761**. It is submitted that no

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reasons are recorded which is mandatory to record while imposing maximum punishment.

10. Having gone through the reasons recorded in the impugned order, we find substance in the submissions of the learned Counsel for the petitioners that no reasons are recorded while imposing maximum punishment.

11. In case of Deepak Dongre [supra], the Hon'ble Supreme Court has observed as under :

*“13. Section 58 of the 1951 Act reads thus :
“58. Period of operation of orders under section 55, 56, 57 and 57A- A direction made under Section 55, 56, 57 and 57A not to enter any particular area or such area and any District or Districts, or any part thereof, contiguous thereto, or any specified area or areas as the case may be, shall be for such period as may be specified therein and shall in no case exceed a period of two years from the date on which the person removes himself or is removed from the area, District or Districts or part aforesaid or from the specified area or areas as the case may be.*

On a plain reading of Section 58, it is apparent

that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56.

On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for 16 a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record.

Careful perusal of the impugned order of externment dated 15th December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent no.2 on the basis of material on record that the order of externment

should be for the maximum period of two years.

If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India.”

12. From the above referred observations of the Hon’ble Supreme Court, it is evident that the authorities imposing maximum punishment, it is expected of them to record reasons for such maximum punishment, which is missing in the present case.

13. In that view of the matter to the extent that reasons are not recorded while imposing maximum punishment, we find substance in the arguments of the learned Counsel for the petitioners, however, we are of the considered view that no error has been committed by the authorities to extern the petitioners from Wardha District, considering the two offences in common and other offences committed by them individually. Thus, for limited purpose we remit

back the matter to the respondent No.1 to reconsider the period of externment and pass an order afresh to that extent only.

14. Accordingly Criminal Writ Petition is partly allowed. The order impugned dated 24.03.2025 passed by the respondent no.1 is hereby quashed and set aside to the extent of period of externment and the matter is remitted back to the respondent no.1 to decide and take fresh decision as regards the period of externment within a period of 15 days from today.

15. Rule is made absolute in aforesaid terms.

JUDGE

JUDGE