



Judgment

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

CRIMINAL WRIT PETITION No. 428 OF 2025.

Mayur Laxman Gajbhiye,
Age 50 years, Occupation Labour,
resident of Opposite Bombay
Scooter Garage, Anand Nagar,
Sitabuldi, Nagpur.

... **PETITIONER.**

VERSUS

1.The Divisional Commissioner,
Nagpur Division, Nagpur.

2.Dy.Commissioner of Police,
Circle No.2, Nagpur City,
Nagpur.

3.The Police Station Officer,
PS Sitabuldi, Nagpur.

... **RESPONDENTS.**

Mr. G.B. Mate, Advocate for the Petitioner.
Mr. S.S. Hulke, A.P.P. for Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : 11.09.2025.

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ORAL JUDGMENT.

Heard. Issue Rule, returnable forthwith. Learned A.P.P. waives notice for Respondents. By their consent, the matter is taken up for final disposal.

2. The petitioner is challenging the order dated 26.02.2025 passed by the respondent no.2 and order dated 06.05.2025 passed by the respondent no.1, whereby the petitioner was externed from entire Nagpur District for a period of one year. Perusal of the record shows that the order is based on 4 crimes and 2 in-camera statements. The chart showing crimes against the petitioner is produced hereinbelow :

Sr.No.	Details of Crime.	Court Case No. and date	Present position
1.	Crime No.266/2024 registered with Sitabuldi Police Station under Sections 143, 147, 307, 364, 342, 323, 294, 56 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act and Section 135 of Maharashtra Police Act, on 03.04.2024 at 12.15 p.m.	3574/2024 dated 04.10.2024.	Pending.

2.	Crime No.321/2024 registered with Sadar Police Station under Sections 135[A], 143, 294, 506[2] of the Indian Penal Code, on 18.05.2024 at 22.26 hours.		Under investigation.
3.	Crime No.141/2024 registered with Sitabuldi Police Station under Sections 85, 110, 112 and 117 of Maharashtra Police Act, on 28.03.2019 at 23.51 hours.	12844/2019 dated 04.05.2019	Case disposed 258 Cr.PC
4.	Crime No.319/2018 registered with Sitabuldi Police Station under Sections 294, 324, 323, 504 of the Indian Penal Code, on 07.10.2018 at 05.36 hours	3574/2024 dated 04.10.2024.	Pending.

3. The learned Counsel for the petitioner has raised several grounds, however, he has restricted his arguments to the stale crime which has been considered while passing the order impugned and there is no live link in between the last committed crime and passing of the order. He further submits that respondents have not applied their mind before passing the order, as can be seen that the aforesaid crimes which does not fall under Chapter XII, XVI and XVII of the Code, have been taken into consideration.

He further submits that the crime which is under investigation, even that has been taken into consideration. He

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submits that the last crime i.e. Crime No.321/2024 which is registered on 18.05.2024, however, the order was passed on 26.02.2025. He further submits that the first crime which is the first crime in point of time, was committed in the year 2018 i.e. Crime No.319/2018, even that crime has been taken into consideration to extern the petitioner. He further submits that all these grounds were raised before the Appellate Authority, but, the same are not considered and the order is passed mechanically. To buttress his submissions, he has relied on the judgment in case of **Pratik .vrs. Divisional Commissioner and others - 2023 SCC Online Bom.87** and **Imtiyaz Hussain Sayyad .vrs. State of Maharashtra and others – 2024 SCC Online Bom 442.**

4. On the other hand, the learned A.P.P. submits that the last crime committed by the petitioner was on 18.05.2024 and the order is passed on 226.02.2025 and therefore, it cannot be said that there is no live link, because the proposal was filed on 17.10.2024. He further submits that the activities of petitioner or his movement is causing harm and danger to persons and property. He further submits that the petitioner was involved in Crime No.266/2024,

which was registered for the offence punishable under Sections 143, 147, 307, 364, 342, 323, 294, 56 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act and Section 135 of Maharashtra Police Act. He further submits that there are various grounds on the basis of which the externment order is passed. The learned A.P.P. submits that the in-camera statements are also sufficient to invoke the provisions under Section 56 of the Maharashtra Police Act. Accordingly he supports both the orders and prays for dismissal of the petition.

5. Upon careful perusal of the record and after hearing the parties at length, it appears to me that the impugned order is based on 3 crimes and 2 in-camera statements. The first crime i.e. Crime No.319/2018, which was committed by the petitioner, as can be revealed from the above chart, is of the year 2018, which is pending before the Court. The second crime i.e. Crime No.141/2019 is committed in the year 2019, the third crime i.e. Crime No.266/2024 is committed on 03.04.2024 and the last crime i.e. Crime No.321/2024 is committed on 18.05.2024. It also appears to me that 2 in-camera statements are recorded on

16.10.2024.

Upon perusal of the record, it transpires that the crime No.321/2024 which is registered on 18.05.2024 is shown to be “pending investigation” in the chart. However, it would be necessary to mention that the said crime was registered under Sections 135[A], 143, 294, 506[2] of the Indian Penal Code. Admittedly these offences do not fall in Chapter XII, XVI and XVII of the Indian Penal Code. Further it seems that the said crime was shown as pending investigation. It would be useful to refer to the judgment of this Court in case of Imtiyaz Hussain Sayyad (supra). Paragraph nos. 18 and 19 are reproduced hereinbelow.

“18. Likewise, when the notice was issued on 9 July 2022, two of the crimes i.e. Sr. Nos.6 and 7 were under investigation and the chargesheet had not been lodged. On the date of the externment order also, the crime at Sr. No.6 i.e. C.R.No.284 of 2020 for the offences punishable under Sections 354, 354BD, 509, 323, 504 of IPC was under investigation.

19. The situation which thus obtains is that the externing authority had noted pendency of two cases which did not satisfy the requirement of class of cases stipulated by clause (b) and also considered the crimes which were under investigation and chargesheet had not been filed. It is trite, the crimes which are still under investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial. It is true, in one of the

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crimes, subsequently chargesheet came to be filed. However, a submission could be advanced that the chargesheet was filed with a view to justify and support the order of externment. Reliance placed by Mr. Gupta on the judgment of the learned Single Judge of this Court in the case of Ganesh Laxman Dhabale V/s. State of Maharashtra and Ors. (AIR Online 2023 Bom 231)."

Upon going through the above judgment, it is crystal clear that the crimes which are pending for investigation, those cannot be considered for the purpose of externment.

6. So far as Crime No.319/2018 is concerned, it was registered under Sections 294, 324, 323, 504 of the Indian Penal Code on 07.10.2018. However, this crime cannot be considered, as there is huge gap between the date of passing of order and registration of the crime, therefore, the live link is missing. So far as other crime is concerned i.e. Crime No.266/2024 under Sections 143, 147, 307, 364, 342, 323, 294, 56 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act and Section 135 of Maharashtra Police Act, it seems that it was registered on 03.04.2024. Even if this crime is taken into consideration for externing the petitioner, then there is

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huge gap of 10 months. Therefore, this could be considered as a stale crime, and therefore, live link is snapped. The learned Counsel for the petitioner for this purpose has relied on the judgment in case of Pratik (supra), wherein in paragraph no.18 this Hon'ble Court has held as under :

“18. Considering the years of the crime registered against the petitioner as above, it would indicate that initial three crimes mentioned in the order has to be termed as stale crimes for the purpose of this proceeding. The respondent No.2 relied upon the stale crimes to form his subjective satisfaction. In my view, on the basis of these stale crimes, the live link between these crimes and the order of externment would get completely snapped. The forth crime was registered in June, 2021. First notice issued by the respondent No.3 on the basis of the authority given to him by respondent No.2 is dated 12.02.2022. It is, therefore, apparent on the face of record that the time gap between the registration of the last crime in the year 2021 and the notice dated 12.02.2022 would be of 9 months. The respondent No.2 issued the show cause notice to the petitioner on receipt of the papers from the respondent No.3 on 26.02.2022. The order was passed on 16.03.2022. Even by making rough calculation, it would show that there was time gap of about 9 months between the registration of last crime and order of externment. The perusal of the

externment order dated 16.03.2022 would show that this aspect has not been dealt with and considered while passing this order after 9 months of registration of the last crime against the petitioner. It is further pertinent to note that in three crimes, in which the cases are pending against the petitioner, he has been released on bail. It is not out of place to mention that seriousness of crime is one of the factors while deciding the bail application. The role attributed to the accused is by and large taken into consideration while deciding the bail application. It is undisputed that in all three cases, the petitioner has been released on bail. The perusal of the order would show that this aspect has also not been taken into consideration. It is not the case of the respondents that the petitioner had either breached the conditions of the bail order or misused the liberty after the bail order. The respondent No.2 was required to take this aspect into consideration and after doing so, ought to have formed his subjective satisfaction. Perusal of the order of the respondent No.1- Appellate Authority would show that the Appellate Authority has also not considered this aspect. In my opinion, this would be contrary to the law. The respondent No.1- Appellate Authority in its order dated 25.08.2022 has observed that considering the gap between the crimes registered in 2015 and 2018, the live link has not been established. The Appellate Authority, however, observed that even though there is no live link between these two

crimes, the crime chart indicates that the appellant is continuously engaged in very serious crimes. The Appellate Authority was required to take this aspect into consideration. On the basis of the material on record, it has to be held that the crimes relied upon were stale crimes. On the basis of stale crimes, relied upon to form the subjective satisfaction, the live link between the crimes and the order was completely snapped. In order to justify the externment order on the ground provided under Section 56(1) clauses (a) and (b), the urgency and promptness required on the part of an Officer in initiating the proceeding and taking the proceeding to the logical end at the earliest, is completely lacking in this case. No acceptable justification has been placed on record for this purpose.”

Therefore, considering the ratio laid down by this Court, it is crystal clear that there should be proximity between the activities of the externnee and passing of the order, and as this vital aspect is absent in present case, it cannot be said the order of externment is based on sound reason. As live link itself is missing, the very purpose and object to extern the petitioner is frustrated and therefore, the order would not sustain. Even the Divisional Commissioner in appeal filed under Section 60 of the Maharashtra Police Act, has conveniently ignored the above fact.

7. So far as the in-camera statements are concerned, I have minutely gone through the same. Both the in-camera statements are somewhat identical, however, it can be gathered that the acts of petitioner seems to be of individual character and do not have any effect on the society, therefore, considering the above facts, both the orders impugned does not sustain and are accordingly quashed and set aside. Hence, the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The order dated 26.02.2025 passed by the respondent no.2 Dy. Commissioner of Police, Circle No.02, Nagpur City and subsequent order dated 06.05.2025 passed by the respondent no.1 – Divisional Commissioner, Nagpur, thereby externing the petitioner from entire Nagpur district is hereby quashed and set aside.

8. Rule is made absolute in aforesaid terms.

JUDGE