



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

CRIMINAL WRIT PETITION NO.450/2025
with
CRIMINAL WRIT PETITION NO.451/2025

CRIMINAL WRIT PETITION NO.450/2025

Nilesh Gyaneshwar Gawai,
Aged about 31 yrs., Occ. Labour,
R/o. Ramji Ambedkar Nagar,
Davlameti, Wadi, Nagpur.
Maharashtra, India – 440023.

...PETITIONER

VERSUS

1. The State of Maharashtra,
through the Divisional Commissioner,
Nagpur District, Nagpur.
2. The Deputy Commissioner, Zone-1,
Nagpur.
3. The State of Maharashtra,
through the Police Station,
P.S. Wadi, Nagpur.

...RESPONDENTS

Mr. Rajendra G. Sahu and Gurpreet Singh Chandoke, Advocates for
petitioners.
Mr. A. M. Joshi, APP for respondents/State.

with

CRIMINAL WRIT PETITION NO.451/2025

Pratik Shamrao Lonare,
Aged about 26 yrs., Occ. Labour,
R/o. Ghar K. 15, Amravati Road,
Ramji Ambedkar, Nagar,
8th Mail, Nagpur, Maharashtra,
India, Pin Code – 440023.

...PETITIONER

VERSUS

1. The State of Maharashtra,
through the Divisional Commissioner,
Nagpur District, Nagpur.
2. The Deputy Commissioner, Zone-1,
Nagpur.
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P.S. Wadi, Nagpur.

...RESPONDENTS

CORAM : **M. M. NERLIKAR, J.**
DATE : **23.09.2025**

ORAL JUDGMENT :

Heard.

2. On oral request, the learned counsel is permitted to amend the petitions forthwith.

3. Issue Rule, returnable forthwith. Mr. A. M. Joshi, learned APP waives service for respondents. With consent of learned counsel for the parties, the petitions are taken up for final hearing.

As both these petitions arising out of common order dated 12.11.2024 extorning the petitioners, therefore, taken together for hearing.

4. By these petitions under Articles 226 and 227 of the Constitution of India, the petitioners challenge the orders dated 06.05.2025 and 10.03.2025 passed by respondent No.1-Divisional Commissioner, Nagpur as well as orders dated 12.11.2024 and 28.11.2024 (as per amendment) passed by the Deputy Commissioner of Police, Zone -1, Nagpur.

5. Somewhat peculiar facts are brought on record in Criminal Writ Petition No.450/2025. As the matter pertains to

an order of externment and involves the question of personal liberty, peculiar facts are brought to my knowledge.

6. The petitioner in the aforementioned petition is said to be externed by an order dated 12.11.2024. The said order accordingly was challenged by the petitioner by filing an appeal before the Divisional Commissioner, Nagpur, however, the same was dismissed. It appears from the record that the order dated 12.11.2024 was passed under Section 55 of the Maharashtra Police Act, 1951 ("Act of 1951") against as many as 11 persons.

7. It appears that while passing the order dated 12.11.2024, the petitioner and one Akshay More were in Jail. The Deputy Commissioner of Police, Zone-1, Nagpur has stated in the order that a separate order would be passed as the petitioner is in Jail. The said part from the order dated 12.11.2024 is reproduced as under:-

“1) निलेश उर्फ छोटु ज्ञानेश्वर गवई वय 29 वर्ष रा. रामजी आंबेडकर नगर, आठवा मैल, पो. ठाणे वाडी नागपूर 2) अक्षय बंडु मोरे, वय 29 रा. स. रामजी आंबेडकर नगर वाडी यापैकी अ.क. 1 आरोपी मध्यवर्ती कारागृहात असून अ.क. 2 आरोपीचे राहते घर

दर्शनीय भागात दोन पंचासमक्ष पंचनामा करण्यात आला आहे. अ.
क्र. 1 आरोपी मध्यवर्ती कारागृहात असल्याने अ.क्र.२ आरोपीचे
हद्दपारी बाबत स्वतंत्र निर्णय घेण्यात येईल.”

Thereafter, the petitioner was released on bail on 28.11.2024. It appears from the original record that the statement of petitioner was recorded on 28.11.2024 stating that he has been served with the order dated 12.11.2024 on 28.11.2024 and accordingly, the said order was received by the petitioner. Signature of the petitioner appears the said statement. It further appears from the original record that a separate order which is titled as “*Sudharit Haddapar Adesh*” was passed by the Deputy Commission of Police, Zone 1, Nagpur on 28.11.2024 stating that for the reasons recorded in the order dated 12.11.2024 and on the same terms and conditions, the petitioner is externed. It appears that this order dated 28.11.2024 which was said to be passed under Section 55 of the Act of 1951 against the petitioner was never served on the petitioner. Therefore, the petitioner has challenged the order dated 12.11.2024 before the Divisional Commissioner, Nagpur.

However, the actual order dated 28.11.2024 was not challenged before the Divisional Commissioner, Nagpur as it was not served on the petitioner. During argument this fact of passing the order dated 28.11.2024 was brought to the notice, and accordingly leave was granted to challenge the said order. Therefore, prayer was added by way of an amendment in the present petition challenging the order date 28.11.2024.

8. It is an admitted fact that the proceedings were initiated against the petitioner, when the petitioner Nilesh was in Jail. Learned APP fairly submits that SDPO has not issued notice under Section 59 of the Act of 1951 even though the report of enquiry was submitted by the Assistant Commissioner of Police, Zone-1, Nagpur and therefore, learned APP prayed to remand back the matter so that the petitioner would be served with the notice in compliance with the provisions of the Act of 1951. It is very painful to record that the Authorities i.e. respondent Nos. 1 and 2 have without adhering to the principles of the natural justice as laid down under the Act which are fundamental to procedural fairness have passed the

impugned orders. It was mandatory on part of the Assistant Commissioner of Police, Zone-1, Nagpur who was conducting inquiry under Section 59 of the Act of 1951, that the notice under Section 59 be issued to the petitioner. However, the notice was never issued as the petitioner Nilesh was in Jail. The entire process of exterment was completed behind the back of the petitioner and the order was served on him on 28.11.2024 which is dated 12.11.2024. It appears from the record that a separate order was passed against the petitioner, however, surprisingly even that order dated 28.11.2024 was not served on the petitioner.

9. Therefore, the mess has been created by the authorities. Firstly, the petitioner was in Jail and the proceedings were initiated under Section 55 of the Act of 1951, secondly no notice was served and therefore, the petitioner has been deprived of the opportunity of hearing. Thirdly, the entire stages of the proceedings of externment were conducted behind the back of the petitioner and order dated 12.11.2024 was passed and said to have been served on the petitioner on

28.11.2024. In the said order dated 12.11.2024, it is stated that a separate order would be passed, however, though the separate order dated 28.11.2024 was passed the same was not served on the petitioner and therefore, I am of the opinion that the entire proceedings against the petitioner is required to be quashed and set aside.

10. So far as the other petitioner namely Pratik in Criminal Writ Petition No. 451/2025 is concerned, one crime is shown to been registered against him and Nilesh is shown as a Gang Leader. It is portrayed that he has committed the Crime No.283/2024 which is registered for the offence punishable under Sections 307, 341, 143, 147, 149, 504, 148 and 506 of the Indian Penal Code.

11. I have gone through the First Information Report of the said crime. It appears that there is no name in the said FIR, however still the Deputy Commissioner of Police, Zone-1, Nagpur has passed an order on the basis of registration of this First Information Report, meaning thereby, there was no material or copy of the charge-sheet before the Deputy

Commissioner of Police, Zone-1, Nagpur to satisfy himself about involvement of Pratik in the said crime. In the absence of this material, how the Deputy Commissioner of Police, Zone-1, Nagpur came to the subjective satisfaction, is best known to him. In absence of material, the Deputy Commissioner of Police, Zone-1, Nagpur cannot said to arrive at the subjective satisfaction in order to extern the petitioner Pratik and therefore, the order passed without application of mind, mechanically and without subjective satisfaction.

12. At this stage, learned APP again submits that after giving an opportunity to the petitioner Nilesh, liberty be granted to the respondents to pass further orders. As was recorded above, the entire procedure which was followed by the Deputy Commissioner of Police, Zone-1, Nagpur is unknown to law and therefore, allowing the said prayer would perpetuate illegality and tantamount to deprivation of the liberty of the petitioner guaranteed under Article 19(1)(d) of the Constitution of India.

13. Further, it was expected of the Divisional Commissioner to have considered all the above factors which are recorded, however even the Divisional Commissioner, Nagpur has passed the order mechanically, without going into the merits of the matter and without adverting to the fact, the appeal was rejected. Even in respect of Appeal of Pratik, without going into the FIR and other material, the Divisional Commissioner, Nagpur has rejected the appeal.

14. For the above reasons, both the petitions are allowed. The orders dated 12.11.2024 and 28.11.2024 passed by the Deputy Commissioner of Police, Zone-1, Nagpur as well as the orders dated 06.05.2024 and 10.03.2025 passed by the Divisional Commissioner, Nagpur are hereby quashed and set aside.

15. Rule is made absolute in above terms.

(M. M. NERLIKAR , J.)

Gohane