



Judgment

Cr.WP-828-2025

1

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

CRIMINAL WRIT PETITION NO. 828 OF 2025

...

Vikrant s/o Vijay Sahare,
Aged: 36 years, Occu: Business,
R/o. Ambedkar Chouk, Indiranagar Mul Road,
Chandrapur, Dist. Chandrapur.

... **PETITIONER**

- - V E R S U S - -

- 1] Divisional Commissioner (Revenue),
Nagpur Division, Nagpur.
- 2] Sub-Divisional Magistrate,
Chandrapur District – Chandrapur.
- 3] Sub-Divisional Police Officer,
Chandrapur, District – Chandrapur.
- 4] State of Maharashtra,
Through P.S.O., P.S. Ramnagar,
Chandrapur, District – Chandrapur.

... **RESPONDENTS**

Mr. M.V. Rai, Advocate for the Petitioner.

Mr. A.M. Joshi, A.P.P. for the Respondents/State.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 19, 2025.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for both the parties.

2. The order dated 22/07/2025 passed by the respondent No.2, wherein, the petitioner was externed from Chandrapur District for a period of three months and the confirmation order dated 03/10/2025 passed by respondent No.1 are under challenge. The learned counsel appearing for the petitioner submits that the impugned order is based on six offences and two in-camera statements. He submits that offences, wherein, the petitioner is acquitted and even those offences in which investigation is still pending are considered.

3

He further submits that the offences which does not fall under Chapter XII, XVI and XVII of the Indian Penal Code, 1860, are also taken into consideration. Though there is reference in the order that they have recorded in-camera statements, however, the same is not reflected in the notice which is issued under Section 59 of the Maharashtra Police Act, 1951, and therefore, there is gross violation of principles of natural justice. Accordingly, he submits that the respondent No.2 has without application of mind passed the order. After preferring the appeal before the Divisional Commissioner, even the Divisional Commissioner has not taken into consideration the submissions which are made by the petitioner and without application of mind has confirmed the order. Lastly, he submitted that the petition be allowed.

3. On the other hand, the learned A.P.P. appearing for the respondents submit that a detailed order has been passed by the respondent No.2. The petitioner is involved in serious

4

crimes which are registered under the Arms Act and is a habitual offender. He is also involved in unlawful assembly, and therefore, he submits that there is sufficient material against the petitioner to pass the impugned order. He further submits that in-camera statements were recorded which shows that the petitioner is doing business of illicit liquor, and due to the fear created by him by assaulting people, no one is willing to come forward to give evidence. Therefore, he submits that no interference is required at the hands of this Court.

4. Upon hearing the learned counsel for the petitioner and the learned A.P.P., it appears that the notice under Section 59 of the Maharashtra Police Act, was issued to the petitioner, wherein approximately 11 offences are referred, however, there is no reference about the recording of in-camera statements, and therefore, it could be said that the petitioner was denied the opportunity to present his case. The principles of natural justice is the cardinal principle of law, and therefore, it cannot

5

be denied. Accordingly, it vitiates the entire proceedings.

5. If the chart of the offences is considered, the first offence in the chart relates to the year 2015 and was registered under Section 65 of the Maharashtra Prohibition Act. This offence cannot be considered for externing the petitioner. Secondly, the offence at serial Nos.2 and 3 is shown as pending in the Court, however, the petitioner is already acquitted in the above crimes in the year 2022 and 2023 respectively. Further, the crime at serial Nos.4 and 5 are shown as pending at the stage of investigation. The last crime at serial No.6 is under Sections 147 and 186 of the IPC. So far as 6th offence is concerned, it does not fall under Chapter XII, XVI and XVII of the IPC, and therefore, cannot form basis to extern the petitioner. So far as crime at serial Nos.4 and 5 are concerned, those are registered in the year 2023 and 2024 respectively, however, the order was passed on 22/07/2025, i.e., almost after one year. Both these offences are quite old, and therefore,

6

it can be said that there is no live link between the date of registration of the offence and the passing of order, and those could be regarded as stale offences. Even those offences are shown as pending investigation, on this ground also, those offences cannot be considered in view of the judgment in the case of *Imtiyaz Hussain Sayyad VS. The State of Maharashtra & Ors.*, (2024) SCC Online Bom 442. Paragraph No.19 is reproduced below:-

“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 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. State of Maharashtra appears to be well founded.”

6. Considering the material which was placed before the respondent No.2, it can be said that without application of mind, the order came to be passed. When the fundamental right of the petitioner is at stake, it is the duty of the concerned authorities to deal such matters with sensitivity. Passing of such order without following the mandate of law violates the fundamental right guaranteed under Article 19(d) of the Constitution of India. Further, when the statutory remedy under Section 60 of the Maharashtra Police Act is provided, it was expected from the Divisional Commissioner to consider the case from all angle. Merely repeating the findings of respondent No.2, without independent consideration, is not expected from the Divisional Commissioner. He should arrive at an independent conclusion after perusal of the material and after considering the entire submissions of the petitioner, however, even the respondent No.1 has failed to do so.

8

7. Considering the above facts and circumstances of the case, the following order is passed:-

ORDER

- (i) The petition is **allowed**;
- (ii) The impugned order dated 03/10/2025 passed by the respondent No.1, in Appeal No. 63/2025 and the order dated 22/07/2025 passed by the respondent No. 2 in Externment Case No. 31/2024, are hereby quashed and set aside;
- (iii) Rule is made absolute in above terms.

[**M. M. NERLIKAR, J**]