



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

CRIMINAL WRIT PETITION NO. 833 OF 2025

Rohan s/o Roshan Bahuriya

Vs.

SDPO, Sub-Division Mul, Dist. Chandrapur and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Daga, Advocate for petitioner.

Mr. Bhagwan N. Lonare, APP for respondent Nos.1 to 3/State.

CORAM : M.M. NERLIKAR, J.

DATE : 12.11.2025

Heard.

2. The petition filed under Article 227 of the Constitution of India challenges the order dated 02.10.2024 passed by respondent No.2 and the order dated 07.10.2025 passed by respondent No.3 wherein the petitioner was externed from Chandrapur District for a period of two years. The appeal preferred under Section 60 of the Maharashtra Police Act was dismissed by respondent No.3. Both these orders are under challenge before this Court in the present petition.

3. I have heard the learned counsel for petitioner and learned Assistant Public Prosecutor for respondent Nos.1 to 3/State.

4. The learned counsel for petitioner submits that there is no common crime which has been committed by the present petitioner with all other persons who have been named in the externment order. He invited my attention to the chart, showing the crimes committed by the present petitioner where the last crime is shown to be committed i.e. Crime No.1331/2023 on 23.12.2023. Thereby stale crimes have been considered as the last crime was committed on 23.12.2023, however, the order is passed on 02.10.2024 i.e. after almost ten months. So far as other persons are concerned, he submits that all have been shown as 'Gang Leader'.

5. He further invited my attention to the notice issued under Section 59 of the Maharashtra Police Act, wherein there is no reference to in-camera statements recorded by the police officials. However, he submits that there is a reference of in-camera statements in the impugned order and therefore, the opportunity of hearing is denied in this regard. There is non-application of mind by the authorities and therefore, the impugned order is bad in law.

6. On the other hand, the learned APP submits that the order is passed under Section 55 of the Maharashtra Police Act. The persons against whom the order is passed are hardcore criminals as there are several

serious offences which are registered against them. He submits that the present petitioner is shown as a 'gang leader' and even other persons are also shown as 'gang leader'. He further submits that there is a common crime i.e. Crime No.1331/2023 between present petitioner and one Prem Pappa Bahuriya and Abhishek Narayan Nakawar. Even Crime No.196/2022 was committed along with Prem Pappa Bahuriya and Crime No.1013/2022 was committed along with Kaushik Shankar Dongre. All these crimes are serious in nature and have direct impact on the society and therefore, submits that the respondent No.2 was justified in passing the order.

7. He further submits that though the notice issued under Section 59 of the Maharashtra Police Act does not state about in-camera statements, however, that by itself will not come in the way of respondent No.2 for passing the impugned order. Both the authorities i.e. Superintendent of Police, Chandrapur – respondent No.2, as well as the Divisional Commissioner, Nagpur – respondent No. 3, have considered the entire record which was placed before them and after arriving at subjective satisfaction have passed the orders.

8. Upon hearing both the parties at length it is not in dispute that the impugned order is passed under Section 55 of the Maharashtra Police Act. The record

shows that all persons against whom the order of externment is passed are shown as 'gang leader'. It is true that there are some common offences between the petitioner, another gang leader Prem so also another gang leader Kaushik. However, those offences are stale offences as those are registered either in the year 2022 or in the year 2023. Under such circumstances, if the date of order of externment is considered then there is hardly any live link between the last offence committed by the petitioner and the order passed by respondent No.2. The very purpose of externment is frustrated as stale offences are considered.

9. The another important point which goes to the root of the matter is the notice issued under Section 59 which does not state about the recording of in-camera statements. However, in the impugned order dated 02.10.2024, there is reference of recording of two in-camera statements. Under such circumstances, the petitioner could not get opportunity to answer to the material allegations made against him. The learned counsel for the petitioner relies on the judgment delivered by this Court on 09.09.2025 in Criminal Writ Petition No.670/2025 in the case of *Asgar @ Azhar Khan @ Bablu Don Vs. State of Maharashtra*, in para No.15, 16, 17 and 18 :-

“15. So far as in-camera statements are concerned, the show cause notice issued by respondent No.2 dated 08.04.2024 does not disclose recording of in-camera statements. However, the report submitted to respondent No.1 by respondent No.2, Clause 3 of the same discloses about recording of in-camera statements of witnesses.

16. However, when the notice itself does not indicate that in-camera statements were recorded, then it can be said that no opportunity was given to the petitioner to put-forth his case and to counter the allegations in the in-camera statements and therefore he was deprived of his rights.

17. It is needless to mention that strict compliance of Section 59 of the Act of 1951 is required to be made. It is further to be noted that the order of externment deprives the citizen of his fundamental right of free movement throughout the territory of India.

18. So far as the impugned order is concerned, no subjective satisfaction is arrived at by the Externing Authority either on in-camera statements or on the offences committed by the petitioner. Bare perusal of the impugned orders depicts that respondent No.1 has only reproduced the contents from the report of respondent No.2. There is no independent application of mind, nor there is subjective satisfaction. It is to be borne in mind that as it is a question of personal liberty of a person, same cannot be taken away in such a casual manner. The best example of non-application of mind by respondent No.1 is that, it is observed in the impugned order that crimes at Serial Nos. 3 to 7 are pending for further adjudication in the Court. It is further observed that though the petitioner in his say has submitted that in crimes at Serial Nos. 3 to 5 in the chart, he was acquitted, however in support of this, the petitioner has not placed

anything on record. It is necessary to mention at this juncture that all the copies of acquittal are placed by the petitioner before respondent No.2 during inquiry under Section 59 of the said Act. It is further necessary to mention that there is only a passing reference to recording of two in-camera statements, however there is nothing to show that those in-camera statements are considered in order to arrive at subjective satisfaction. There is no whisper about the same. Section 59 enquiry, vitiated, as enquiry was not conducted on the facts. Though formality of giving notice is completed, but the respondent No.2 has not taken pains to state in the notice dated 08.04.2024 about receiving of incamera statements. Further, after the reply filed by the petitioner to the show cause notice dated 08.04.2024, respondent No.2 submitted his report dated 20.04.2024, even in that report, it is not stated that out of eight crimes, petitioner was acquitted in five crimes. Further, it is to be noted that stale crimes are taken into consideration though last crime was shown to be committed in the year 2023. It is to be noted that the last crime committed by the petitioner on 05.03.2023. Notice under Section 59 of the said Act was issued by respondent No.2 on 20.04.2024. Reply to the same was submitted by the petitioner along with documents. Again respondent No.1 issued show cause notice on 17.05.2024. Reply to the said notice was submitted on 17.10.2024. However, the order was passed on 07.04.2025. Therefore, from the date of the issuance of notice under Section 59 of the said Act till passing of the final order dated 07.04.2025, the respondent No.1 has taken almost one year. Therefore, from the date of last committed crime till the passing of the final order, almost two years have lapsed and therefore, the very object of externment of the petitioner was frustrated. The order of externment cannot be passed on the basis of these stale crimes and therefore, live link of these crimes and the order of externment would get completely snapped. It is further to be noted that the

respondent No.1 relied upon the stale crimes to form his subjective satisfaction and therefore, the respondent No.1 miserably failed to take into consideration the very object of Section 56 of the said Act.”

10. This Court time and again has observed that compliance of Section 59 in accordance with law is mandatory. Giving a go by to the enquiry contemplated under Section 59 would vitiate the entire proceedings. In the present case, it is an admitted fact that though the notices were issued under Section 59, however, there is no reference of in-camera statements in the said notice. On the other hand, the impugned order dated 02.10.2024 goes to show that the in-camera statements are recorded and respondent No.2 has duly considered and relied on the said in-camera statements. When the notice issued to the petitioner under Section 59 does not refer to any of the statements recorded by the sponsoring authority, it would amount to denial of opportunity of hearing to the petitioner as he was unable to answer the contents of in-camera statements or rather he was unable to answer to the allegations made in in-camera statements.

11. For the aforesaid reason impugned orders suffer from non-application of mind. Even the appellate authority i.e. Divisional Commissioner, failed to consider the contentions which are raised in appeal which would demonstrate that the petitioner has been denied the

opportunity of hearing. Further, there is no live link between the date of registration of last crime committed by the petitioner and the date of impugned order.

12. Considering these vital aspects, I deem it appropriate to quash and set aside both the orders, hence, the following order :

ORDER

a) The order dated 02.10.2024, passed by respondent No.2 – Superintendent of Police, Chandrapur in externment Case No.3303/2024 (Chandrapur) against the petitioner and order dated 07.10.2024, passed by respondent No.3 – Divisional Commissioner, Nagpur in Appeal No.98/2025 are hereby quashed and set aside.

b) The writ petition is allowed and disposed of accordingly.

(M.M. Nerlikar, J.)