

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

CRIMINAL WRIT PETITION NO.883/2025

(Shahrukh Sardarkhan Pathan Vs. Divisional Commissioner, Nagpur Division, Nagpur & ors.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. B. H. Sheikh, Advocate for petitioner.
 Mr. Bhagwan M. Lonare, APP for respondent Nos. 1 to 3.

CORAM: M. M. NERLIKAR, J.

DATED : 01/12/2025.

Heard.

2. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 25.08.2025 passed by the respondent No.2, under Section 56(1)(a) of the Maharashtra Police Act ('Police Act'), thereby externing the petitioner for one year from Wardha District. Against same, an appeal was preferred under Section 60 of the Police Act, which came to be dismissed vide order dated 17.10.2025 by the respondent No.1.

3. The learned counsel for the petitioner submits that the Externing Authority has not applied its mind and there is no subjective satisfaction arrived before passing the impugned order. He submits that the offence is registered under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, ('NDPS Act'), wherein name of the petitioner was taken by the accused who has been caught red handed, therefore, the Externing Authority failed to take into consideration the entire material in the charge-

sheet. Further, there is no compliance of Section 56(1)(b) of the Police Act. Lastly, he prayed to allow the petition.

4. On the other hand, learned APP submits that the petitioner is accused in serious crime punishable under NDPS Act. There are total five crimes which are registered against the petitioner. In last three crimes, the FIR was registered under the Provisions of NDPS Act. His role has surfaced during investigation and accordingly, charge-sheet was filed against him in one of the crimes. Both the Authorities i.e. Externing Authority and the Appellate Authority has concurrently held against the petitioner. He further submits that after going through the record, respondent No.2 on the basis of material placed before it and after subjectively satisfying itself himself has passed the order, therefore, this Court may not go into the findings of the proceedings arrived by the Authorities in original as well as appellate proceedings under Article 226 and 227 of the Constitution of India. Lastly, he prayed to dismiss the petition.

5. Upon perusal of the impugned orders, it appears that the order is passed under Section 56(1)(a)(b) of the Police Act. The notice under Section 59 of the Police Act was issued to the petitioner on 08.07.2025. After perusal of the notice, it appears that though it was stated in the notice that the Sponsoring Authorities has recorded some statements, however on the assurance of concealing their names, they have not provided statements. Apparently, requirement of Section 59 of the Police Act was not complied with as Section 59 speaks about hearing to be

given before an externment order under Sections 55, 56, 57 or 57(A) of the Police Act is passed. Section 59 also speaks about the notice to be given against whom externment proceedings are instituted and notice should be in writing disclosing the general nature of the material allegations against him and giving him a reasonable opportunity of tendering explanation regarding the allegations. Inquiry Officer can file the report to the Externment Authority.

6. The notice issued under Section 59 of the Police Act to the petitioner does not disclose what has been stated by the witnesses in their statements. It is necessary and mandatory on part of the respondent No.2 to disclose the gist of the material allegations and merely referring the charge crime against the petitioner would not by itself be sufficient. Inquiry under Section 59 of the Act is the soul of the entire proceedings which is to be initiated for passing orders under Sections 55, 56, 57 or 57(A) of the Police Act. If there is no compliance under Section 59, it could be said that the petitioner did not get an opportunity to give explanation or tender his explanation against allegations which are levelled in the notice under Section 59.

7. This Court time and again observed in catena of judgments that Section 59 is an important stage, wherein the opportunity to give explanation is granted to the persons against whom the proceedings of externment was instituted. If the mandatory requirement provided under Section 59 of the Police Act is not complied then the entire

proceedings are vitiated.

8. As observed above, there is no gist of the in-camera statements recorded by the Sponsoring Authority in the show cause notice issued under Section 59 of the Police Act and therefore, the proceedings is vitiated. Further, it is necessary to mention at this juncture that after perusal of the impugned order passed by respondent No.2, apparently it is clear that even in the order, there is no reference of the in-camera statements. Therefore, the orders cannot be said to be passed under Section 56(1)(b) of the Police Act. Section 56(1)(b) speaks about involvement of the Externee in the crimes punishable under Chapters XII, XVI, or XVII of the Indian Penal Code and also speaks about the contingency when in the opinion of the officer, the witnesses are not willing to come forward to give evidence in public against such persons by reason of apprehension on their part as regards the safety of the persons or their property. There are two limbs of Clause 'b', first is involvement in crimes punishable under Chapters XII, XVI and XVII of the Indian Penal Code and second that witnesses are not willing to come forward to give evidence due to conduct of exteree, therefore the impugned orders do not comply with the requirement of the second limb of Section 56(1)(b). Even the Appellate Court has failed to consider the mandatory requirements provided under Section 59 as well as 56 of the Police Act and if there is no compliance of requirement, then the entire proceedings do not sustain.

9. Considering the above facts and circumstances, the case is made out to interfere in the impugned orders and accordingly the following order is passed:-

ORDER

(I) The petition is allowed.

(II) This Court hereby quashed and set aside the order dated 25.08.2025 passed by respondent No.2 and order dated 17.10.2025 passed by respondent No.1 in appeal No.119/2025.

10. Petition stands disposed of in above terms.

(M. M. NERLIKAR, J.)