



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

CRIMINAL WRIT PETITION NO. 798 OF 2024
with
CRIMINAL WRIT PETITION NO. 679 OF 2024

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CRIMINAL WRIT PETITION NO. 798 OF 2024

PETITIONER : Yogesh Gaidhane,
Aged about 29 years,
R/o Shahar Ward, Tumsar, Bhandara

VERSUS

RESPONDENTS : 1] The State of Maharashtra,
through Police Officer,
Police Station, Tumsar,

2] The State of Maharashtra,
through Superintendent of Police,
Bhandara, Dist. Bhandara.

3] The State of Maharashtra,
through Divisional Commissioner, Nagpur,
Office at : Old Secretary Building,
Samaj Kalyan Office road, Civil Lines,
Nagpur, Maharashtra 440 001.

with

CRIMINAL WRIT PETITION NO. 679 OF 2024

PETITIONER : Nishikant Kishor Raut,
Aged about 30 years,
R/o Ambedkar Ward, Tumsar, Bhandara

VERSUS

RESPONDENTS : 1] The State of Maharashtra,
through Police Officer,
Police Station, Tumsar,

2] The State of Maharashtra,
through Superintendent of Police,
Bhandara, Dist. Bhandara.

3] The State of Maharashtra,
through Divisional Commissioner, Nagpur,
Office at : Old Secretary Building,
Samaj Kalyan Office road, Civil Lines,
Nagpur, Maharashtra 440 001.

Mr. Prateek D. Sharma with Mr. Pradumnya Sharma, Sayali Kulkarni
and Anushree Pande, Advocates for the petitioners
Ms. Soniya N. Thakur, A.P.P. for the respondents.

CORAM : M. W. CHANDWANI, J.

DATE OF RESERVING THE JUDGMENT : APRIL 15, 2025

DATE OF PRONOUNCEMENT OF JUDGMENT : JULY 11, 2025

JUDGMENT

1. **RULE.** Rule made returnable forthwith. Taken up for final disposal forthwith by the consent of the learned counsel appearing for the parties.

2. Since both these petitions arise out of a common order passed by respondent no.2 and confirmed by respondent no.3, they are being disposed of analogously.

3. By these petitions, the petitioners challenge the order dated 22.03.2024 passed by respondent no.2 – the Superintendent of

Police, Bhandara while acting as Sub Divisional Magistrate, under Section 55 of the Maharashtra Police Act, 1951 (hereinafter referred to as “the Act of 1951” for short), whereby the petitioners have been externed from the entire Bhandara District for a period of two years from the date of the order. The said order has been confirmed by respondent no.3 – Divisional Commissioner, Nagpur vide order dated 11.07.2024, which is also challenged by the petitioners in these petitions.

4. I have heard Mr. P. D. Sharma, learned counsel for the petitioners and Ms. Soniya Thakur, learned Additional Public Prosecutor for the respondents. Perused the record and proceedings.

5. Perusal of the impugned order passed by respondent no.2 depicts that in clause 2.1, the offences registered against the so called ‘gang’ at Tumsar Police Station are shown and thereafter, from clauses 2.2 to 2.8, the crimes registered at the said Police Station against each member of the so called ‘gang’ are shown. The crimes registered against the present petitioners are at clauses 2.8 and 2.7, respectively. The crimes registered against the so called ‘gang’ and the present petitioners being the members of the said ‘gang’, are

reproduced as under in a tabular form :

2.1 टोळी प्रमुख व टोळीतील सदस्यांनी मिळून केलेल्या गुन्ह्याची माहिती

अ. क्र.	पोलीस स्टेशन	अप. क्र.	कलम	दोषा. क्र. व दिनांक	केस क्र. व दिनांक	निकाल
1	तुमसर	43/2017	307,302,147,148, 149 भादंवि सहकलम 3/25 भाहंका	26/2017 14/07/2017	14/2017 24/07/2017	रिहा
2	तुमसर	12/2021	307,143,147, 148, 149,120(ब), भादवी, सहकलम 3/25, 4/25, 27 भारतीय हत्यार कायदा	104/2022 24/03/2022	32/2022 24/03/2022	कोर्ट प्रलंबित
3	तुमसर	499/2023	399 भा.दं.वि	---	---	तपासावर

2.8 वरील गुन्यापैकी टोळीतील सदस्य योगेश हिरालाल गायधने वय 29 वर्षे रा शहर वार्ड तुमसर, जि.भंडारा.याचे विरुद्ध दाखल असलेले गुन्हे.

अ. क्र.	पोलीस स्टेशन	अप. क्र.	कलम	दोषा. क्र. व दिनांक	केस क्र. व दिनांक	निकाल
1	तुमसर	164/2017	143,147,452,324 भादवी	49/2017 21/07/2017	73/2017 24/07/2017	रिहा
2	तुमसर	263/2021	12 (अ) म.जु.का. सह कलम 109 भादवी	55/2021 28/09/2021	861/2021 01/10/2021	रिहा
3	तुमसर	371/2021	143 भादवी, सह क. 4/25 भा.ह. कायदा	03/2022 03/01/2022	01/2022 03/01/2022	कोर्ट प्रलंबित
4	तुमसर	512/2023	384,386 भादवी	---	---	पो.पे.

6. The impugned order has been passed by respondent no.2 under the provisions of Section 55 of the Act of 1951 externing the petitioners from the territory of Bhandara District for a period of two years from the date of the order. Therefore, it would be necessary to refer to Section 55 of the Act of 1951 which is reproduced hereunder for ready reference :-

55. Dispersal of gangs and bodies of persons.

Whenever it shall appear in ²[Brihan Mumbai], and in other areas in which a Commissioner is appointed under section 7 to the Commissioner and in a district to the District Magistrate, the Sub-Divisional Magistrate or the ³[Superintendent] ⁴[* *] empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction ⁵[or such area and any district or districts, or any part thereof, contiguous thereto] within such time as such officer shall prescribe, and not to enter to area ⁶[for the areas and such contiguous districts, or part thereof, as the case may be,] or return to the place from which each of them was directed to remove himself.*

7. Section 55 provides for dispersal of gangs and bodies of persons if the movement or encampment of any gang or body of persons in the area in charge of the Sub Divisional Magistrate is causing danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof. Hence, the overarching aspect is the danger or alarm or reasonable suspicion that unlawful designs are being entertained by such gang or body of persons.

8. From the reading of Section 55 of the Act of 1951 or rather the provisions contained thereunder, it can be seen that the action under Section 55 of the Act of 1951 can be invoked against the movement or encampment of any gang or body of persons in the area of a Commissioner and in a district by the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered by the State Government in that behalf. Therefore, the *sine qua non* for Section 55 to apply is the movement or encampment of any gang or body of persons. There has to be collective action or concerted action on the part of the gang members. Only when there is a collective or concerted action, that the action of dispersal or removal of each of the gang members can be taken.

9. The word 'gang' has not been defined in any police act. However, going by the dictionary meaning of the word 'gang', the same indicates that a gang has to be a collection of persons or a body of persons who are acting in concert towards a common unlawful object. Just because an offence is registered against one member of a group, the same would not mean that they constitute a gang so as to come within the sweep of Section 55 of the Act of 1951.

10. Here, it is required to be noted that the impugned order depicts that three offences are registered against the entire gang and four offences are registered against petitioner Yogesh. By comparing these two tables showing the crimes registered against the gang and petitioner Yogesh in tabular form, I do not find that any of the crimes mentioned in the table showing the offences registered against petitioner Yogesh find place in the table showing the offences registered against the entire gang. Petitioner Yogesh did not participate in any of the crimes which have been relied upon by respondent no.2 for subjective satisfaction to arrive at a conclusion that the movement of such gang is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof. That apart, out of four offences relied upon by respondent no.2 in the impugned order against petitioner Yogesh, he is acquitted in the crimes at serial Nos.1 and 2 i.e. Crime Nos. 164/2017 and 263/2021 whereas, the crime at serial No.4 i.e. Crime No. 512/2023 is under investigation. The crime at serial no.3 is of the year 2021. It is an incident which occurred three years back. Thus, there is no live link between this crime and the impugned order.

11. So far as petitioner Nishikant is concerned, apart from the offences registered against the so called 'gang' mentioned in a tabular form above, respondent no.2 relied upon two offences against petitioner Nishikant to show that he is a member of the said gang. The offences relied upon by respondent no.2 against petitioner Nishikant are referred in the table reproduced here.

2.7 वरील गुन्हापैकी टोळीतील सदस्य निशिकांत किशोर राउत वय 30 वर्षे रा आंबेडकर वार्ड तुमसर, जि.भंडारा. याचे विरुद्ध दाखल असलेले गुन्हे.

अ. क्र.	पोलीस स्टेशन	अप. क्र.	कलम	दोषा. क्र. व दिनांक	केस क्र. व दिनांक	निकाल
1	तुमसर	43/2017	307,302,147,148, 149, भा.दं.वि सहकलम 3/25 भा.हंका	26/2017 14/07/2017	14/2017 24/07/2017	रिहा
2	तुमसर	499/2023	399 भा.दं.वि	---	---	पो.पे.

No doubt these two offences are also collectively registered against the group including petitioner Nishikant, but the fact remains that in the crime at serial no.1 in the table of crimes registered against petitioner Nishikant i.e. crime no. 43/2017, he is already acquitted by the competent Court. This offence could not have been relied upon by respondent no.2 for arriving at subjective satisfaction. So far as the crime at serial no.2 in the said table i.e. Crime no. 499/2023 is concerned, the same is under investigation and it has not culminated into filing of charge-sheet till passing of the impugned order.

Therefore, the crimes mentioned against petitioner Nishikant could not have been relied upon by respondent no.2 for arriving at the conclusion that the movement of the petitioner as a member of the group is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by present petitioner Nishikant as a member.

12. I have gone through the confidential statements of the witnesses. The statements are general in nature and do not show that they witnessed or have personal knowledge about the activities of the petitioners. Therefore, those statements also cannot be the basis of the subjective satisfaction of the external authority.

13. In view of the above, the impugned orders do not sustain against both the petitioners. Consequently, both the petitions i.e. Criminal Writ Petition Nos. 798/2024 and 679/2024, are allowed.

(i) The impugned order dated 22.03.2024 passed by respondent no.2 – Superintendent of Police, Bhandara and confirmed by respondent no.3 – Divisional Commissioner, Nagpur, on 11.07.2024, are quashed and set aside.

(ii) Rule is made absolute accordingly. The petitions stand disposed of.

(M.W.Chandwani, J.)

Diwale