IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 733 OF 2026

Mehboob Daula Abdul Razzaq Shaikh @ Daula Kumathe ...Petitioner

Versus

The State of Maharashtra And Others ...Respondents

Mr. Mohammad S. Mulla, for the Petitioner.

Mr. Shrikant Yadav, APP for the Respondents-State.

Mr. Yele N.R. (PSI) and Mr. Nimbal (HC), MIDC Police Station Solapur, present in the Court.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : OCTOBER 30, 2026

P. C. :

1. At the outset, learned counsel appearing for the Petitioner seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith. Reverification is dispensed with.

2. Rule. Rule made returnable forthwith and with consent taken up for final disposal.

3. By the present Petition, the challenge is to the externment order passed by Respondent No.3 exercising powers under Section 56(1)(a) and (b) of the Maharashtra Police Act, 1951 directing the Petitioner to remove himself from Solapur City, Solapur District, and Dharashiv District for a period of two years.

4. The Respondent No.3 relied upon four offenses, the details of which are set out as under :

"प्रस्तावित तडीपार इसम यांचे विरुद्ध दाखल गुन्ह्यांची माहिती खालील प्रमाणे

अ.क्र.	पोलीस ठाणे	गुरनं.	कलम	गुन्ह्याची सद्यास्थिती
१.	एमआयडीसी	४७५/२०२५	भारतीय न्याय संहिता ३१६(१), ३१६(३), ३१८(१), ३१८(४), ३३६(१),३३६(३),३३८,३४०(२),३(५) प्रमाणे	न्यायप्रविष्ट
२.	सदर बाजार	३००२/२०१५	भादवि कलम १८६, म.पो.का.कलम ३७ (१) (३), १३५ प्रमाणे	न्यायप्रविष्ट
३.	सदर बाजार	२८६/२०१८	महा. जुगार प्रतिबंधक अधि. १२(अ) प्रमाणे	निकाली काढला.
४.	सदर बाजार	३१२/२००५	भादवि कलम ३३७,३२४,४५२,३४ प्रमाणे	निर्दोष मुक्तता

5. In addition, Respondent No.3 relied upon confidential *in-camera* statements of Witnesses A and B. The Appeal which was preferred against the externment order has been rejected by order dated 5th August 2026.

6. Learned counsel appearing for the Petitioner would submit that out of the four offences based on which the order of externment was passed, the Petitioner has been acquitted of offences registered by CR No.3002 of 2015, CR No.286 of 2018, and CR No. 312 of 2005, and CR No. 475 of 2025 is still under investigation. He would submit that for the purpose of externing the Applicant, the crime which is under investigation cannot be considered, drawing support from the decision of this Court in the case of ***Imtiyaz Hussain Sayyad vs. The State of***

Maharashtra & Ors. in Writ Petition No. 2805 of 2023. He would further submit that some of the offences with which Petitioner has been charged under CR No.475 of 2025 includes an offence under Chapter XVIII, which does not satisfy the requirement under Section 56(1)(b) of the Maharashtra Police Act, 1951.

7. *Per contra* learned APP would submit that subsequent to the order of externment being passed, another FIR has been registered. He would further submit that the Respondents have also taken into consideration the confidential *in-camera* statements of Witnesses A and B, which satisfies the requirement of Section 56(1)(b) of the Maharashtra Police Act, 1951.

8. The order of externment is passed under Section 56(1)(a) and (b) of Maharashtra Police Act, 1951, which provides as under:

> **"56. Removal of persons about to commit offence:**
>
> (1) Whenever it shall appear in Brihan Mumbai and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the State Government in that behalf-
> (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or
> (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abatement of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or
>
> (bb)……. Or
>
> (c)….

> the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act,] or the outbreak or spread of such disease or [notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself]."

9. Section 58 of Maharashtra Police Act provides that the maximum period for operation of order under Section 56 shall be two years.

10. In the present case, the Respondent No 3 has relied upon four offences registered against the Petitioner, out of which the Petitioner has been acquitted of three offences registered by CR No.3002 of 2015, CR No.286 of 2018, and CR No. 312 of 2005. The only surviving crime registered was CR No. 475 of 2025 which was still under investigation and thus could not have been taken into consideration. In the case of ***Imtiyaz Hussain Sayyad*** (supra), the Hon'ble Single Judge of this Court has held in paragraphs 18 and 19 as under:

> "18. Likewise, when the notice was issued on 9 July 2022, two of the crimes i.e. Sr. Nos. 6 and 7 were under investigation and the chargesheet had not been lodged. On the date of the externment order also, the crime at Sr. No.6 i.e. C.R.No.284 of 2020 for the offences punishable under Sections 354, 354BD, 509, 323, 504 of IPC was under investigation.
>
> 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. <u>It is trite, the crimes which are still under investigation cannot be taken into</u>

> 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/s. State of Maharashtra and Ors**[1]**.** appears to be well founded."

(Emphasis supplied).

11. It would be appropriate to bear in mind the observations of the Hon'ble Apex Court in the case of ***Deepak s/o Laxman Dongre vs. State of Maharashtra and Ors***[2]***.*** The Hon'ble Apex Court has observed that Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India, and care must be taken to ensure that the requirements of Section 56 is strictly complied with. It has further held that recourse should be taken to Section 56 very sparingly, keeping in mind that it is an extraordinary measure.

12. The externment order is passed under Section 56(1)(a) and (b) of Maharashtra Police Act. Clause (a) provides that the movements or acts of any person are causing or calculated to cause alarm, danger of harm to person or property. To arrive at that subjective satisfaction, there should be objective material on record. The confidential *in-camera* statements of witness "A" alleges about abuse and assault by the Petitioner.

1 AIR Online 2023 Bom 231.
2 (2023) 14 SCC 707.

13. It is not the mere recording of *in-camera* statements, but the arriving of subjective satisfaction on the basis of objective material that the movements are causing or calculated to cause alarm, danger of harm to person or property, which is sine qua non for invoking Clause (a) of Section 56(1). The *in-camera* statements, are in nature of alleged altercation between the witnesses and the Petitioner, and cannot form the basis to arrive at subjective satisfaction required by Clause (a) of Section 56(1).

14. Learned APP would submit that *in-camera* statement satisfy requirement of Clause (b) of Section 56(1). In so far as Clause (b) of Section 56(1) is concerned, as the Petitioner has been acquitted of three crimes and the fourth crime was under investigation, the same could not have been considered. Even otherwise, for the purpose of application of Section 56(1)(b) of the Maharashtra Police Act, 1951, there must be reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offense involving force or violence or an offense punishable under Chapter XII, XVI or XVII of the Indian Penal Code. The offenses under Chapter XII are relating to coin and government stamps, the offences under Chapter XVI are offences affecting the human body, and offences under Chapter XVII of IPC are offences relating to property. The crime which is under investigation includes offences under Chapter XVIII of IPC. Even if the offences are

registered , to invoke Clause (b) of Section 56(1), the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The externment order does not record such subjective satisfaction, which is *sine qua non* for applying Clause (b) of Section 56(1).

15. The externment order is also vitiated as it fails to record the necessity of externing the Petitioner for the maximum period of two years. The Hon'ble Apex Court has held that while passing an order under Section 56, the competent authority is required to apply its mind for deciding the duration of restraint on the basis of objective assessment of the material on record and to record subjective satisfaction that the restriction should be imposed for the maximum period. It must record reasons justifying the externment for the maximum period, which is absent in present case. Upon perusal of the externment order, there is no recording of necessity of passing the order of externment for the maximum period of two years.

16. In the light of the above, the impugned order dated 5th August, 2026 passed by the Divisional Commissioner externing the Petitioner from externing the Petitioner from Solapur City, Solapur District, and

Dharashiv District for a period of two years is hereby quashed and set aside.

17. Petition is allowed in terms of prayer clause (a), which reads as under:

> "**a.** That this Hon'ble High Court may be pleased to issue writ of certiorari or writ in the like nature, thereby quash and set aside the impugned order dated 05.08.2026 passed by the Divisional Commissioner, Pune Division, Pune in appeal no.10 of 2026 against the Petitioner whereby the Petitioner is illegally externed from Solapur City & Solapur District & Dharashiv District for a period of 2 years as well as the impugned order dated 18/12/2025 passed by the learned Superintendent of Police, Solapur City, Solapur."

18. Rule is made absolute in above terms.

[SHARMILA U. DESHMUKH, J.]