

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

CRIMINAL WRIT PETITION NO. 49 OF 2026

Dilip Ashok Jadhav

....Petitioner

VERSUS

1. State Of Maharashtra
2. The District Collector & District Magistrate,
Kolhapur.
3. The Sub-Divisional Magistrate,
Karveer Sub-Division, Kolhapur.
4. The Police Inspector, Karveer Police Station,
Kolhapur.

....Respondents

Mr. Kunal Patil i/b Mr. Rajnandani Katkar and Adv. A. J. Sarvarmulla,
for Petitioners.

Mr. Anand Subhash Shalgaonkar, APP, for the Respondent-State in all
petitions.

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 6th FEBRUARY, 2026.

ORAL JUDGMENT.

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of the parties.
3. By this petition, the Petitioner challenges the order issued by Respondent No.3 under Section 163(2) Bharatiya Nagarik Suraksha Sanhita, 2023, (for short, "BNSS Act"), thereby externing the Petitioner from Karveer Taluka from 3rd February, 2026 till 10th

February, 2026, i.e. the period during which the Zilla Parishad Elections are scheduled.

4. The Petitioner is member of Indian National Congress Party. The Petitioner's relative namely, Sangram Gopal Patil is contesting Zilla Parishad Election from Pachgaon Constituency, Taluka: Karveer, District: Kolhapur on the ticket of Indian National Congress Party. The Petitioner is prohibited from campaigning during the on going Zilla Parishad Election. According to the Petitioner this action of externment is arbitrary and it is in violation of Petitioner's fundamental rights.

5. Learned APP, on instructions, from the police officer of the concerned police station submits that the action of the Respondent No.3 is justified in view of sub-section 2 of Section 163 of the BNSS Act. In support of his submissions, he relied on the decision of the Hon'ble Apex Court in case of ***Anuradha Bhasin Vs. Union of India and Ors. in Writ Petition (Civil) No.1031 of 2019.***

6. Heard learned advocate for the Petitioner and learned APP for the Respondent – State at length. Perused the impugned order.

7. In the impugned order a reference of report of Respondent No.4 dated 23rd January, 2026 is given. It is also mentioned that Crime No.0509 of 2025 under Sections 135, 111, 110 of the Maharashtra Police Act, 1951 and 126(2) of the Bharatiya Nyaya

Sanhita, 2023 (for short, “BNS Act”) is registered against Petitioner. The impugned order refers to report of Respondent No.4 dated 23rd January, 2026. It is further mentioned that it is necessary to extern the Petitioner and prohibit him from entering into Karveer Taluka for the period from 3rd February, 2026 to 10th February, 2026, except two hours for voting.

8. Admittedly, no notice was issued to the Petitioner before passing the impugned order. The copy of the report of Respondent No.4 dated 23rd January, 2026 is also not made available to the Petitioner. Zilla Parishad Election program is declared on 13th January, 2025. Since then, Respondent No.4 had sufficient time for calling upon the Petitioner to show cause as to why the proposed action should not be taken against him. Since the impugned order is passed in flagrant violation of principles of natural justice, the same is unsustainable on that ground alone.

9. Learned APP has relied on sub-section 2 of Section 163 of the BNSS Act read thus:

“163. Power to issue order in urgent cases of nuisance or apprehended danger..

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a

written order stating the material facts of the case and served in the manner provided by Section 153, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot, or an affray.

- (2) *An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex-parte.”*

10. Though, sub-section 2 of Section 163 of the BNSS Act permits for passing of the *ex-parte* order, the said power has to be exercised only in deserving cases, where there is material to justify the apprehension of Respondent No.4 about disturbance of public tranquility by the Petitioner. Only, in such cases as an emergent measure of *ex-parte* order can be passed.

The Petitioner is not habitual criminal and there are no criminal antecedents against him and only one offence is registered against him earlier. There has to be some foundation and/or material with the Externment Authority to arrive at the conclusion that *ex-parte* externment order needs to be passed in the case.

Learned APP could not point out any relevant material justifying the action of Respondent No.4 of passing *ex-parte*

externment order. Therefore, there is absolutely no material to justify passing of the impugned order *ex-parte*.

It is thus clear that the apprehension expressed by Respondent No.4 in the present case is ill founded, misplaced and misconceived, and hence, the impugned order is unsustainable in law and facts of the present case.

11. In ***Anuradha Bhasin*** (*supra*), the Hon'ble Apex Court has summarized legal position in respect of Section 144 of Cr.P.C.. It is held that *ex-parte* externment order can be passed. It is also held that:

- I. The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.*
- II. The power under Section 144, Cr.P.C. cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.*
- III. An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.*
- IV. While exercising the power under Section 144, Cr.P.C. the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.*

12. It is further held that, whenever there is apprehension of danger preventive action can be taken under the said Section. There cannot be any dispute about the aforesaid proposition, however, to justify the apprehension of danger to human life, health of safety or a disturbance of the public tranquility, or a riot, or an affray, there has to be some material before the Externing Authority, which is totally absent in the present matter.

13. Applying the aforesaid ratio, it is clear that the impugned order is passed contrary to the aforesaid principles, and therefore, it cannot be sustained.

14. For the aforesaid reasons, Criminal Writ Petition is allowed. The impugned order dated 31st January, 2026 passed by Respondent No.3 - The Sub-Divisional Magistrate, Karveer Sub-Division, Kolhapur is hereby quashed and set aside.

15. Learned APP shall forthwith intimate this order to the Respondents.

16. Rule is made absolute in the above terms.

(NITIN B. SURYAWANSHI, J.)