IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6067 OF 2025

Abu Salim Shamim Ahmad Khan & Anr. …Petitioners

Versus

The Divisional Commissioner & Ors. …Respondents

Mr. Mateen Shaikh a/w. Mr. Hassan Siddiqui, Ms. Muskan Shaikh, Mr. Rarique Shaikh and Mr. Arshad Shaikh, for the Petitioners.
Ms. S. D. Shinde, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 13th OCTOBER 2026

PC:-

1. Heard Mr. Shaikh, learned Counsel appearing for the Petitioner and Ms. Shinde, learned APP appearing for the Respondent-State.

2. By this Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the impugned order dated 21st February 2025 passed by the Deputy Commissioner of Police, Zone-1, Mumbai, in Externment Case No.43 of 2025 as also the order dated 7th October 2025 passed by the Divisional Commissioner, Konkan Division, Mumbai,

in Appeal No.59 of 2025 filed under the provisions of Section 60 of the Maharashtra Police Act, 1951.

3. It is the contention of Mr. Shaikh, learned Counsel appearing for the Petitioners that although there are 19 cases registered against the Petitioner No.1 and 3 cases registered against the Petitioner No.2, all the cases are lodged on the allegation that the Petitioners are dealing with Gutkha i.e. Pan Masala with Tobacco. He submits that the Show Cause Notice was issued on 21st October 2024 and the impugned order has been passed on 21st February 2025 i.e. after a period of about four months. He further submits that the offence which is not part of the Show Cause Notice has also been taken into consideration. In any case, he submits that all the offences are bailable offences, except offence under Section 123 of the Bharatiya Nyaya Sanhita, 2023 ("**BNS**") [Section 328 of the Indian Penal Code, 1860 "**IPC**")]. He submits that the Supreme court is considering the issue whether to such facts offences under said sections will apply. He submits that the Petitioners are ready to give undertaking in terms of the directions issued by the Supreme Court in the case of ***Abhijit Jitendra Lolage vs. State of***

Maharashtra[1]. He submits that as far as the Petitioner No.2 is concerned, three offences are taken into consideration. One is of the year 2015 and two are of the year 2024. Both these offences of the year 2024 were under investigation when the Show Cause Notice was issued and order is passed and therefore, they could not have been taken into consideration.

4. On the other hand, Ms. Shinde, learned APP strongly opposes the Writ Petition. She submits that as far as Petitioner No.1 is concerned, there are 19 offences. As far as Petitioner No.2 is concerned, there are 3 offences. Therefore, action taken is in accordance with law. She submits that the subjective satisfaction recorded under Section 56 of the Bombay Police Act, 1951 has been recorded on the basis of the material on record and therefore, no interference in the impugned order is warranted.

5. Perusal of the record shows that although it is correct that there are 19 offences registered against the Petitioner No.1, one offence is of the year 2013, four offences are of the year 2015, two offences are of the year 2016, three offences are of the year 2020,

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one offence is of the year 2021, three offences are of the year 2022, one offence is of the year 2023 and three offences are of the year 2024. Therefore, it cannot be said that there is live-link between most of the offenes and action taken for externment.

6. Apart from that, it is required to be noted that all the offences are registered as according to the prosecution, the Petitioner No.1 is in the trade of Gutkha i.e. Pan Masala with Tobacco. Most of the offences under which the offences are registered, are bailable offences, except offence under Section 123 of the BNS (Section 328 of the IPC). The Supreme Court is considering whether Section 123 of the BNS (Section 328 of the Indian Penal Code, 1860) is applicable to offences relating to the sale of Gutkha, i.e., Pan Masala with Tobacco.

7. The Supreme Court in the case of ***Abhijit Jitendra Lolage*** (supra) has, while granting bail, has imposed following condition:

> "*It is deemed appropriate to impose the condition – "I, Abhijeet Jitendra Lolage do undertake to* ***not deal with Gutkha, that is, Pan Masala with Tobacco****". In case, the appellant – Abhijeet Jitendra Lolage* ***violates the terms and conditions of bail, including the undertaking imposed, it***

> *would be open to the prosecution to seek cancellation of bail.*"
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> (Emphasis added)

8. Mr. Shaikh, learned Counsel appearing for the Petitioners submitted that all the Petitioners are ready to give such undertaking and accordingly, tenders such undertaking of all the Petitioners which is in terms of the said order of the Supreme Court in the case of ***Abhijit Jitendra Lolage*** (supra).

9. As far as the Petitioner No.2 is concerned, there are total three offences registered against him. Out of the said 3 offences, one is of the year 2015 and two are of the year 2024. As far as two offences of the year 2024, they were under investigation when show cause notice is issued and when the order is passed and therefore, those offences could not have been taken into consideration while passing the externment order.

10. Perusal of the record shows that all the offences are of bailable nature except offence under Section 328 of the IPC. As noted earlier, whether Section 328 of the IPC will apply to the said offence concerning dealing with Gutkha i.e. Pan Masala with

Tobacco is being considered by the Supreme Court. The Petitioners have already given the undertakings that they will not indulge in the offences related to the Gutkha i.e. Pan Masala with Tobacco. The said undertakings given by the Petitioners are accepted.

11. Accordingly, in the facts and circumstances, case is made out for interference in the impugned orders. The Writ Petition is disposed of by passing the following order:

ORDER

(a) The impugned order dated 21st February 2025 passed by the Deputy Commissioner of Police, Zone-1, Mumbai, in Externment Case No.43 of 2025 as also the order dated 7th October 2025 passed by the Divisional Commissioner, Konkan Division, Mumbai, in Appeal No.59 of 2025 are quashed and set aside, subject to the Petitioners strictly complying with the undertakings given to this Court and accepted by this Court.

[MADHAV J. JAMDAR, J.]

SONALI MILIND PATIL
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