

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1011 OF 2026

1. Murtuza Mustakin Qureshi

2. Fahad Mustakin Qureshi

...Petitioners

Versus

1. Deputy Commissioner of Police, Zone VI,
Mumbai

2. Divisional Commissioner, Konkan
Division, Mumbai

3. The Senior Inspector of Police,
Chunabhatti Police Station, Mumbai

...Respondents

4. State of Maharashtra

Mr. Arif Khan, a/w Moin Khan, for the Petitioners.

Mr. P. P. Malshe, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 13th MARCH, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioners assail the legality and correctness of an order dated 6th February, 2026 passed by the Divisional Commissioner, Konkan Division, in Appeal Nos.118/2025 and 119/2025, whereby the appeal preferred by petitioner Nos.1 and 2, respectively, against an order of externment passed by the

Deputy Commissioner of Police, Zone VI, Chmebur, dated 25th July, 2025, thereby externing the petitioner and Mohammad Sayeed Mohammad Rakib Khan alias Gabbar, the alleged gang leader, and other members of the gang from the limits of Mumbai City, Mumbai Suburban, Thane, and Raigad Districts for a term of two years under the provisions of Section 55 of the Maharashtra Police Act, 1951 ("the Police Act, 1951") came to be dismissed by affirming the said order of externment.

3. A notice was served on the petitioners and Mohameed Sayeed, the alleged gang leader, and five other persons alleged to be the members of a gang under the provisions of Section 59 of the Police Act, 1951 calling upon them to show cause why action under Section 55 of the Police Act, 1951 shall not be initiated against the alleged gang leader and members of the gang. It was, *inter alia*, alleged that multiple crimes have been registered against the alleged gang leader and other members of the said gang and their movements were calculated to cause danger or alarm or reasonable suspicion that unlawful designs were entertained by such gang or members thereof.

4. Qua the petitioners, it was, *inter alia*, alleged that CR No.100/2025 for the offences punishable under Sections 189(3),

191(2), 190 and 132 of the Bharatiya Nyaya Sanhita, 2023 (“BNS, 2023”), was registered against the petitioners.

5. Eventually, the Competent Authority passed an order of externment, externing the petitioners and the other members of the gang from Mumbai City, Mumbai Suburban, Thane, and Raigad Districts for a term of two years.

6. The petitioners preferred appeals before the Divisional Commissioner. By the impugned orders the Divisional Commissioner dismissed the appeals.

7. Being further aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

8. I have heard Mr. Arif Khan, the learned Counsel for the petitioners, and Mr. P. P. Malshe, the learned APP for the State, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

9. Mr. Khan, the learned Counsel for the petitioners, submitted that the petitioners have been arraigned as the members of the alleged gang of which Mohammad Sayeed is alleged to be the gang leader, on the basis of a frivolous crime registered at CR No.100 of 2025 for the offences punishable under Section 189(3), 191(2), 190 and 132 of the BNS, 2023.

There is no other material to indicate that the petitioners were associated with the alleged gang led by Mohameed Sayeed. The material on record does not indicate that the alleged offences were committed by the petitioners as a part of a concerted group action. The petitioners, thus, could not have been roped in as the members of the alleged gang on the basis of a sole crime registered against the petitioners vide CR No.100/2025.

10. In opposition to this, Mr. Malshe, the learned APP for the State, endeavoured to support the impugned order. It was submitted that a number of crimes have been registered against Mohammad Sayeed, the alleged gang leader, and other members of the gang. A reference was made to the statements of the confidential witnesses taken into account by the Competent Authority to invoke the provisions contained in Section 55 of the Act, 1951. Mr. Malshe, however, fairly submitted that, apart from CR No.100/2025, in which the petitioners have been arraigned, there is no material to show that there was commonality in the crimes registered against the alleged gang leader, other members of the gang and the Petitioners.

11. Section 55 of the Police Act, 1951 empowers the Competent Authority to address the mischief caused by collective strength and concerted action of the members of a

group or gang. The provisions contained in Section 55 are intended to address a situation which emerges on account of the threat posed by the movements or encampments of the members of a group or gang as such. Collective action and responsibility is the linchpin of the provisions contained in Section 55 of the Police Act, 1951.

12. In the case of *Ahammad Mainuddin Shaikh V/s. The State of Maharashtra and Anr.*¹, a Division Bench of this Court had an occasion to consider the import of the provisions contained in Section 55 of the Act, 1951, After analyzing the provisions of the Act, 1951, the Division Bench observed that Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively. The observations in paragraphs 8 and 14 read as under :

“8.....Upon a careful reading of this section, it becomes clear that, whenever it appears to the competent authority that the movement or encampment of any gang or body of persons in the area under 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 of persons or by its members, such officer may by notification addressed to the leaders or chief men of such gang or body of persons and suitably published, issue two

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types of directions. The first direction is about regulating of conduct of such gang or body of persons in a manner prescribed in the direction in order to prevent violence and alarm. Such direction, in the alternative, can also be in the form of an order for dispersal of members of such gang or body of persons. The second direction which follows the first one, is about removal of each of the members of the gang or body of persons outside the area within the local limits of jurisdiction of the competent authority. In suitable cases, the order of removal can also be from district or its parts or together with contiguous districts or parts thereof. This second direction, in order to be reasonable, has to be passed for a definite period of time. In the entire section, there is common thread of participation by all and collective action against all that holds together all its parts. The section starts with gang or body of persons, sails through the dangerous impressions that the movement or encampment of gang or body of persons creates and ends with a direction of removal passed against each of the members of the gang or body of persons. This common thread is the essence of Section 55 and that is the mandate of the legislature. In other words, Section 55 would be applicable only when the persons are seen to be acting as members of the gang or body of persons and it is only then that action under Section 55 of the Act can be taken and which is to be taken against all members and not only a few of them selectively.

(emphasis supplied)

13. In the case of *Vijay Lalaso Jadhav V/s. State of Maharashtra and Ors.*², another Division Bench of this Court enunciated the law as under :

“8..... Section 55 of the Bombay Police Act contemplates collective action against the gang or body of persons and therefore, the final direction which is required to be issued in terms of the said Section, will have to be necessarily against each of the members of the gang and not against one or a few of them on selective basis. It is therefore, apparent that an illegality has been committed by both the Authorities, i.e. the Competent Authority and the Appellate Authority by passing the externment order and confirming the same only qua the Petitioners and not against the other members of the alleged gang.”

(emphasis supplied)

14. On the aforesaid touchstone, reverting to the facts of the case, evidently, the petitioners are not arraigned in any of the crimes registered against Mohameed Sayeed, the alleged gang leader, or other members of the gang. The petitioners seem to have been roped in on the basis of registration of CR No.100/2025 for the offences punishable under Sections 189(3), 191(2), 190 and 132 of the BNS, 2023 only. A perusal of the final report filed in the said crime indicates that on 15th February, 2025, the police party found that two groups of persons were involved in a fight. When the police party tried to intervene, the gang leader and his nephew Zaid, pushed the police party aside and fled away. A report was, thus, came to be lodged with the allegations that the members of the said two groups, which were engaged in the fight, including Mohammad Sayeed, the alleged gang leader, and Zaid, a member of the alleged gang, formed an unlawful assembly and committed rioting, and used criminal force to a public servant with intent to deter the said public servant from discharging his duty as such public servant. The petitioners have been arraigned as the members of the said unlawful assembly.

15. Even if the allegations in the said FIR are taken at par, it does not appear that the petitioners were involved in the

offences as the members of the gang allegedly led by Mohammad Sayeed. On the contrary, it appears that two groups of persons were involved in a fight and thereby they formed an unlawful assembly and used criminal force to the public servants, when the later tried to intervene. There is no clarity as to whether the petitioners were in fact the members of the alleged gang led by Mohammad Sayeed. At best, the offences arrayed against the petitioners are individualistic in nature rather than a part of a concerted action by a group or gang. In substance, the acts attributed to the petitioners lack the element of gang or group based criminal conduct. Thus, the externment order suffers from a fundamental error.

16. For the foregoing reasons, the impugned orders as well as the externment order deserve to be quashed and set aside.

17. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned orders as well as the order of externment dated 25th July, 2025 stand quashed and set aside.
- (iii) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]