



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

CRIMINAL WRIT PETITION NO.253 OF 2023

Sachin S/o. Sanjay Raut,
Aged about 22 Yrs., Occ.: Labour,
R/o. Mahatma Phule Nagar,
Amravati, Tq. and Dist. Amravati

... PETITIONER

// VERSUS //

1 **The Divisional Commissioner,**
Amravati Division, Amravati

2. **Deputy Commissioner of Police,**
Zone-1, Amravati

3. **Police Station Officer,**
Police Station Gadge Nagar,
Amravati.

... RESPONDENTS

Mr. Sumit B. Gandhe, Advocate for the petitioner
Ms Mayuri H. Deshmukh, Advocate for respondents

CORAM : G. A. SANAP, J.

DATE : 10/07/2023

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2 In this writ petition, the petitioner has prayed for quashing the order of externment passed by the respondent No.2- Deputy Commissioner of Police, Zone-1, Amravati dated 03.03.2022 and the order in appeal dated 17.02.2023 passed by the respondent No.1-Divisional Commissioner, Amravati, District Amravati. The respondent No.2 initiated the proceedings for externment of the petitioner from Amravati District by invoking the provisions of Section 56(1)(a) & (b) of the Maharashtra Police Act, 1951 (hereinafter referred to as “the Act of 1951”). The respondent No.2 to record his subjective satisfaction, relied upon the following crimes. The said crimes are set out hereinbelow in tabulated form:

Sr. No.	Police Station	Crime No.	Sections	Dated	Case status
1.	Gadge Nagar	1293/2018	325,324, 506 IPC	12/12/2018	Pending in Court
2.	Gadge Nagar	68/2019	324, 394, 427, 506, 34 IPC	20/01/2019	Pending in Court
3.	Gadge Nagar	778/2019	324, 34 IPC	24/07/2019	Pending in Court
4.	Gadge Nagar	243/2020	392 IPC	14/03/2020	Pending in Court
5.	Gadge Nagar	251/2020	326, 504, 34 IPC	19/03/2020	Under investigation
6.	Gadge Nagar	01/2021	324, 34 IPC	01/01/2021	Under investigation
7.	Gadge Nagar	2853/2021	324, 504, 506 IPC	15/11/2021	Under investigation

8.	Gadge Nagar	2888/2021	324, 34 of IPC	25/11/2021	Under investigation
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PREVENTIVE ACTIONS

Sr. No.	Police Station	Iste. No.	Section	Dated
1.	Gadge Nagar	391/2020	107, 116(3) of Cr.PC	16/12/2020
2.	Gadge Nagar	546/2021	107, 116 (3) of Cr.PC	09/08/2021

3 Besides above crimes, the respondent No.2 placed heavy reliance upon the confidential in-camera statements of two witnesses. On the basis of the crimes and the confidential in-camera statements of the witnesses, the respondent No.2 recorded a satisfaction that the activities of the petitioner are fully covered under the provisions of Section 56(1)(a) & (b) of the Act of 1951 and as such warranting his externment.

4 The respondent No.2 conducted necessary inquiry. He issued a notice to the petitioner on 15.02.2022 to show cause as to why he should not be externed from the Amravati District. The respondent No.2, based on the material collected, passed the order

of externment on 03.03.2022. The petitioner challenged the said order by filing an appeal before the respondent No.1. The respondent No.1 *vide* order dated 17.02.2023, dismissed the appeal and confirmed the said order.

5 I have heard Mr. S. B. Gandhe learned Advocate for the petitioner and Ms Mayuri H. Deshmukh, learned APP for the respondents/State. Perused the record and proceedings.

6 Learned Advocate for the petitioner submitted that orders passed by the respondent Nos. 1 and 2 cannot be sustained at all as on the date of the notice and the order of externment out of the eight crimes the four crimes were under police investigation. Learned Advocate submitted that four stale crimes were taken into consideration to record the subjective satisfaction. Learned Advocate submitted that these crimes could not have been considered for recording the subjective satisfaction. There was no live link between those crimes as well as the externment proceeding initiated in the year 2022. Learned Advocate further submitted that

the statements of the confidential witnesses were not properly verified to place reliance on the same. Learned Advocate further submitted that in the show cause notice dated 15.02.2022 the substance of statement of the witnesses, was not stated. The petitioner, therefore, did not get an opportunity to deal with the show cause notice properly. Learned Advocate submitted that the petitioner had replied the notice vide reply notice dated 28.02.2022. Learned Advocate further submitted that two chapter cases, wherein the petitioner has executed bonds were taken into consideration. Learned Advocate further submitted that the order of externment from the entire Amravati District and that too for a period of two years was excessive. Learned Advocate pointed out that no reasons have been recorded in the order for warranting the externment of the petitioner from entire Amravati District and that too for a period of two years. On all these grounds the learned Advocate submitted that the order of externment passed by the respondent No.2 and confirmed in appeal by respondent No.1 deserves to be quashed and set aside.

7 Learned Additional Public Prosecutor for the respondents submitted that continuous indulgence in the commission of serious crimes till the issuance of show cause notice weighed with the respondent No. 2 to record the satisfaction that the movements and acts likely to cause danger or harm to the person or property. Learned APP on the basis of the statements of the confidential witnesses submitted that same are sufficient to form an opinion that the people from locality are not willing to come forward to give a statement against the petitioner by reason of apprehension in their mind with regard to the safety of their person or property. Learned APP submitted that the crimes registered against the petitioner under the Indian Penal Code were serious in nature and as such, sufficient for his externment. Learned APP further submitted that the statements of the confidential witnesses were duly verified. Learned APP submitted that even if it is assumed that four crimes which are under police investigation were taken into consideration, the same could not be the basis to discard the remaining crimes. Learned APP submitted that remaining crimes registered against the petitioner and relied upon by the

respondents are sufficient to justify the order.

8 In order to appreciate the rival submissions I have gone through the record and proceedings and also the provisions of Section 56(1)(a) & (b) of the Act of 1951. The record of externment proceeding has been placed on record. I have gone through the same. The externment order was passed by relying upon the provisions of Section 56 of the Act of 1951. It would be necessary to reproduce the said section. Section 56 reads thus:

“ 56. Removal of person about to commit offence:-

(1) Whenever it shall appear in Greater Bombay 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 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 abetment 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) that there are reasonable grounds for believing that such person is acting or is about to act

(1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or

(2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or other wise 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 said area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself].

(2) An Officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such person that during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said

period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State send a report in writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to the State he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer in-charge of the police station nearest to the place where he may be staying.”

9 It is not out of place to mention that against the petitioner, the externment order came to be passed by relying upon clauses (a) and (b) of Section 56 sub-section (1) of the Act of 1951. The ground under clause (a) provides that the movements or acts of any person must be causing or calculated to cause alarm, danger or harm to person or property. The ground under clause (b), requires that on the basis of the material it must be established that there are reasonable grounds for believing that person sought to be externed is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or abetment of any such offence. The second part of clause (b), which is required to be read with first part, clearly provides that the competent authority empowered to pass an order should form an opinion that the

witnesses are not willing to come forward to give evidence in public against such person, only because of an apprehension on their part as regards safety of their person or property. The conjoint reading of clauses (a) and (b) would, therefore, show that in arriving at subjective satisfaction as to the grounds, there must be objective material on record before the authority and the same must be considered in accordance with law.

10 Before proceeding to the merits of the arguments, at this stage, it would be necessary to consider the law laid down by the Hon'ble Apex Court in the case of *Deepak s/o Laxman Dongre .vs. State of Maharashtra and others*¹. In this case the Hon'ble Supreme Court has considered the decision in the case of *Pandharinath Shridhar Rangnekar .vs. Dy. Commissioner of Police, State of Maharashtra*². On consideration of this decision, it is held that the reasons which necessitate or justify passing of an extraordinary order of externment arise out of extraordinary circumstances. It is held that, therefore, strict compliance of Section 59 of the Act of 1951 is

1 2022 ALL.M.R.(Cri.)761(S.C.)

2 (1973) 1 SCC 372

required to be made. It is further held that the order of externment deprives the citizen of his fundamental right of free movement throughout the territory of India. The order of externment in fact prevents the person even from staying in his own house along with his family members during subsistence of the externment order. It is, therefore, held that the subjective satisfaction must be arrived at on the basis of the objective material.

11 In order to consider applicability of the proposition to the facts of the case on hand, it would be necessary to go through the show cause notice and the material relied upon in the show cause notice, which ultimately converged into the order of externment thereby recording subjective satisfaction on the basis of the said material.

12 After excluding four crimes which are under police investigation, only four crimes are available for being considered by the respondent No.2 to form an opinion to proceed further against the petitioner under Section 56 of the Act of 1951. It is to be noted

that these crimes are also stale crimes. The same could not have been taken into consideration at all. The crimes at Serial Nos. 1 to 4 were registered in the year 2018, 2019 and 2020 respectively. It is, therefore, apparent that the respondent No.2 took into consideration the crimes, which were registered two years prior to the issuance of notice. These crimes, apart from being stale crimes for this purpose, would also not be sufficient to establish the live link for passing the impugned order. It is to be noted that in order to justify the live link, the serious nature of the crime has been made the bone of contention. In my view, the serious nature of the stale crime cannot be made the foundation to establish the live link. The object of this proceeding is to prevent a person from indulging in such offences repetitively in future, so that peace and tranquillity in the society is maintained. The order of externment was passed on 03.03.2022. Perusal of the order would show that no justifiable reason has been stated in the order on this count. It is, therefore, seen that there was no live link between the crimes at Sr. Nos. 1 to 4 relied upon to justify the proceeding and the actual order dated 03.03.2022. In my view, this is very important aspect. This aspect

would largely reflect upon the subjective satisfaction asserted in this proceeding by the respondents. In my view, this basic lacuna is sufficient to set aside the order of externment.

13 It is submitted that in all the crimes the petitioner was released on bail. It is seen on perusal of the notice as well as the order that the respondent No. 2 has not at all considered the bail orders granted in favour of the petitioner. It is not the case of the respondent that the prosecution has moved any application for cancellation of bail on the ground of breach of the conditions of the bail order or on the ground that the petitioner has threatened the witnesses in the cases.

14 The grievance is made that the substance of the statements of the confidential witnesses was not mentioned in the notice as well as in the externment order. Perusal of the notice would show that cursory reference was made in the second last para of the notice with regard to the recording of the statements of the confidential witnesses. The substance of their statements was not

briefly stated in the notice. In my view, in order to grant a fair and reasonable opportunity to the person who is proposed to be externed, he has right to know the material relied upon against him as well as opportunity to effectively and meaningfully deal with the said material. It is seen that on this count fair and reasonable opportunity was not granted to the petitioner to effectively and meaningfully deal with the relied material, before passing the order. In my view, on this ground also the dent is caused to the notice as well as to the externment order.

15 It is the case of the respondents that during the course of inquiry the respondent No. 3 found that the petitioner was a terror in the locality and therefore, the witnesses were not coming forward to depose against the petitioner. It is seen that those confidential witnesses were called by Assistant Commissioner of Police on 10.02.2022 for verification of the statements. The sealed envelope containing the statements of the witnesses was opened in the Court at the time of argument. I have perused those statements. Perusal of the statements would show that the statements were not

properly verified. It is seen that the statement was recorded by Senior Police Inspector and verified by Assistant Commissioner of Police. The statement is not verified by Deputy Commissioner of Police. The verification of the statements does not show that either the respondent No.3 or respondent No. 2 visited the area and verified the correctness of the statements by making enquiry with the people in that area. It has not been stated either in the notice or in the externment order that the respondent No. 2 personally called the witnesses and verified those statements. In my view, this exercise cannot be done in a mechanical manner. The statements of the confidential witnesses in the given set of facts, in my view, are the most important material to substantiate the subjective satisfaction. On this ground also the satisfaction is flawed.

16 Perusal of the show cause notice as well as the order passed by the respondent No.2 would indicate that two chapter cases under Sections 107 and 116(3) of the Code of Criminal Procedure, 1971 were initiated against him. At the conclusion of such proceeding, the party concerned is called upon by the

Executive Magistrate to execute a bond for good behavior. The duration of such a bond is normally for a period of six months. The show cause notice as well as the order of externment is silent with regard to the execution of bond for good behavior. The show cause notice as well as the externment order is silent on the point whether there was breach of the undertaking and conditions of the bond executed in those proceedings. The bond is executed in the proceeding, which is of preventive nature. This aspect has not been considered and appropriately dealt with by respondent Nos.1 and 2.

17 It is to be noted that considering the serious apprehension placed on record on the basis of the material, one can say that the acts of the petitioner were found to be of the nature and kind stipulated under Section 56(1)(a)(b) of the Act of 1951. In my view, in this backdrop, respondent Nos.1 and 2 ought to have invoked the provisions of Section 151 of the Code of Criminal Procedure in its application to the State of Maharashtra. Section 151 of the Cr.P.C. provides that the arrest of a person can be made to prevent a person from committing cognizable offence. If a police

officer apprehends a design of a person to commit any cognizable offence, the police officer can arrest him without order from the Magistrate. It further provides that if it appears to such officer that the commission of the offence cannot be otherwise prevented, the said person can be detained in custody for a total period of thirty days from the date of arrest of such person as per the order of the Magistrate. In this case, considering the apprehension sought to be placed on record and invocation of Section 56(1) Clauses (a) and (b) of the Act of 1951, the respondent No.2 ought to have taken recourse to this remedy. If he had taken recourse to this remedy, then he would have been justified in passing the order on the basis of the said material. It is to be noted that the remedy provided under Section 151 of the Cr.P.C. is a speedy remedy. The police officer is required to form an opinion that the person is likely to commit a cognizable offence and that said person cannot be prevented from committing the said offence unless and until he is arrested and detained, as provided under Section 151 of the Cr.P.C. The Judicial Magistrate, who is an independent authority, would definitely make objective analysis of the material on record before

granting the prayer for detention of the concerned person. It is to be noted that after taking recourse to the remedy provided under Section 151 of the Cr.P.C. and after completion of the detention period, if the said person comes out and commits an offence then, in my view, it would be a strong circumstance justifying his externment.

18 As per the provisions of Section 56 of the Act of 1951, the maximum period of externment is two years. In this case, the respondent No.2 has ordered externment of the petitioner from the entire Amravati District for a period of two years. It is to be noted that this order passed by the respondent No.2 and confirmed by the respondent No.1 suffers from the virus of excessiveness. The order of externment apart from making inroads on the personal liberty guaranteed under the Constitution of India, makes the said person live separate from his family members. Similarly, the externment order can deprive the said person of his livelihood. In the given case, depending upon the financial position of the person, it can make the dependents of the said person to starve. Therefore,

in order to justify the externment for a maximum period of two years, the Authority is required to consider the objective material to record subjective satisfaction on all points. In this case, I am constrained to observe that the order passed by the respondent No.2 is woefully silent on all these points. The respondent No.2 has not recorded the reasons to order the externment of the petitioner for a period of two years and that too from the entire Amravati District. It is seen on perusal of the notice and order that all the crimes committed by the petitioner were within the jurisdiction of Gadge Nagar Police Station in Amravati City. In view of this fact, the respondent No.2 was expected to record the reasons to warrant externment of the petitioner from entire Amravati District.

19 In my considered opinion, therefore, the order passed by the respondent No.2 and confirmed by the respondent No.1 suffers from the virus of excessiveness. The law laid down on the point in the cases of *Shaikh Mukhtyar S/o Mustafa Shaikh Vs. State of Maharashtra and Others*³ and *Bhagwat Dadasaheb Landge and*

3 2017 ALL.M.R. (cri.)268

*Another Vs. State of Maharashtra and Others*⁴, would, therefore, equally apply in this case. It is to be noted that the excessive nature of the order on both the counts is one of the factors, which would weigh in favour of the petitioner. The order of externment, making a direct inroads on the fundamental right of movement, must, therefore, pass all the legal tests. In this case, the order passed by the respondent No.2 and confirmed by the respondent No.1 do not pass the said test. It is to be noted that the respondent No.1 despite being confronted with the factual position confirmed the said order. Perusal of the order of the respondent No.1 would show that the respondent No.1 has recorded factual submissions, but failed to sufficiently deal with the same. Therefore, in my view, this order is not sustainable. Accordingly, the writ petition is **allowed**.

20 The order dated 03.03.2022 passed by the respondent No.2-Deputy Commissioner of Police, Zone-1 Amravati City externing the petitioner from Amravati District for a period of two years and the order dated 17.02.2023 passed by the respondent

4 2020 (5) Mh.L.J. (Cri.)546

No.1-Divisional Commissioner of Amravati confirming the said order of externment are quashed and set aside.

21 Rule is made absolute in above terms. The writ petition stands disposed of.

(G. A. SANAP, J.)

Namrata