
(2022) 03 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No.1428 Of 2021

Abasaheb Balasaheb Warkhede

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Maharashtra Police Act, 1951 — Section 55

Indian Penal Code, 1860 — Section 307, 324, 393, 395, 399

Citation : (2022) 03 BOM CK 0022

Hon'ble Judges : Dipankar Datta, CJ;Nitin B. Suryawanshi, J

Bench : Division Bench

Advocate : Satej Jadhav, R. V. Dasalkar

Final Decision : Allowed

Judgement

Nitin B. Suryawanshi, J

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

2. This petition, filed under Articles 226 and 227 of the Constitution of India, takes exception to order of externment dated 16th February, 2021 passed by the Superintendent of Police, Ahmednagar – respondent No. 2, externing the petitioner from Ahmednagar district for a period of eighteen months under section 55 of the Maharashtra Police Act, 1951 (hereafter “the said Act” for short) which is confirmed by the Divisional Commissioner, Nashik Division, Nashik – respondent No. 3 in Externment Appeal No. 22 of 2021 vide order dated 26th July, 2021.

3. Learned advocate for the petitioner assailed the impugned order on various grounds. He submits that there is no material on record to show that the five crimes registered against the petitioner are committed by the petitioner as a member of a gang or body of persons and those offences are committed by the

gang members in concert. He submits that though nine offences are registered against four gang members, the petitioner is shown to be involved in five offences. All the gang members are not accused in all the offences. Stale offences of the year 2015, 2016, 2018 and 2019 are taken into consideration while passing the impugned externment order. The petitioner is already acquitted in two crimes and this fact is ignored by respondent No.2 while passing the impugned order. The petitioner is on bail in all the other offences registered against him and conviction is not recorded in any of the offence. The in camera statements relied on by the authority against the petitioner are vague. There is nothing on record to show that the petitioner is a member of the gang and the activities of the gang were dangerous to the health and texture of the society.

4. In support of his submissions, learned advocate for the petitioner relied in "Deepak Laxman Dongre V/s State of Maharashtra" LAWS (SC)-202201-87; "Rajwardhan Babaso Patil V/s Vijaysinha Jadhav and Another" 2015 ALL MR (Cri) 2936 and an unreported judgment of this court in Criminal Writ Petition No. 3580 of 2012 (Praful Bhausahab Yadav V/s K. K. Pathak).

5. Per contra, learned Additional Public Prosecutor strenuously argued that the petitioner, with the gang leader and other members of the gang, is involved in serious crimes like offences punishable under sections 307, 324, 393, 395, 399 of the Indian Penal Code. Supporting the impugned order, he submits that respondent No. 2 has recorded subjective satisfaction while passing the impugned order. Respondent No.2 has rightly relied on two in camera statements of the witnesses. According to him, there is a live link between the commission of offence by the petitioner, the gang leader Manoj and the externment order. He submits that the impugned order is legal and rational and the same is preventive order for deterring the gang members from committing offences.

By relying in "State of NCT of Delhi V/s Sanjeev @ Bittoo" 2005 (5) SCC 181, he submits that unless it is shown that powers are manifestly arbitrarily exercised, the same cannot be interfered with. The scope of judicial review of the administrative order is limited. His further submission is that there exists material on the basis of which the impugned externment order is passed. He, therefore, submits that there is no substance in the petition and the same may be dismissed.

6. We have heard learned advocate for the petitioner and learned Additional Public Prosecutor at length.

Perused the record made available by the learned Additional Public Prosecutor.

7. As per section 55 of the said Act, whenever it appears to the competent authority that the movement or encampment of any gang member 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 or by its members, then directions can be issued to the members of such gang or body to conduct themselves in such a manner, in order to

prevent violence and alarm. The section also empowers to the competent authority to disperse each of the gang members, by removing them outside the area within the local limits of its jurisdiction or any district or districts.

8. In terms of section 55 of the said Act, the competent authority can initiate a preventive action to regulate conduct of gang / body of persons in prescribed manner to prevent violence and alarm. An order of externment of the members of the gang from the local jurisdiction of the competent authority is also contemplated by the said section. Since the order of externment imposes restrictions on the fundamental rights of the petitioner, the same has to be based on relevant material and must pass the test of reasonableness.

9. The externment order is passed against the gang of four members, namely, Manoj Dongare, being the gang leader, Ramesh Borude, Aadesh @ Adinadh Jadhav and the petitioner. The gang members are allegedly involved in nine offences tabulated in the show cause notice as well as in the impugned order. Out of the nine offences, the petitioner is shown to be involved in following five offences :

SR.

No.

CR No & Police Station

Court case No.

Present position

01

Rahuri Police Station C.R. No. 111/2015 u/s 307, 324, 323, 143, 147, 148, 149, 452, 504, 506 of the Indian Penal Code and u/s 3/25 of the Arms Act

RTC 88/2015

Pending

02

Rahuri Police Station CR No. 169/2016 u/s 395 of the Indian Penal Code
RTC 20/2020

Pending

03

Rahuri Police Station CR No. 145/2015 u/s 307, 141, 143, 147, 149 of the Indian Penal Code and u/s 3/25 of the Arms Act.

RTC393/2016

Pending

04

Rahuri Taluka Police Station CR No. 385/2018 u/s 394 of the Indian Penal Code
RCC12/2019

Pending

05

Shrirampur Taluka Police Station CR No. 77/2019 u/s 395, 143, 147, 149,
336, 379, 511 of the Indian Penal Code
RCC151/2019

Pending

10. All the gang members are accused in Rahuri police station CR No. 111/2015 in which they are acquitted in Sessions Trial No. 190/2015 on 11th February, 2019.

Similarly, all the gang members are accused in Rahuri Police Station CR No. 169 of 2016, which is pending before competent court. However, this is an old offence of the year 2016.

11. In Rahuri police station CR No. 145 of 2015, the petitioner was the only accused and no other alleged gang member is accused in the said crime. Even in this offence the petitioner is acquitted in Sessions Case No. 210 of 2015 on 4th May, 2019.

12. In Rahuri Taluka Police Station CR No. 385 of 2018, the petitioner is accused along with alleged gang member Swapnil Borude.

In Shrirampur Taluka Police Station CR No. 77 of 2019, the petitioner is co-accused along with Swapnil Borude and Aadesh @ Adinath Jadhav.

13. The first three offences relied upon in the impugned order are old offences of the year 2015 and 2016. The petitioner is already acquitted in offences at serial No. 1 and 3. Admittedly, the petitioner is on bail in all the offences and there is no allegation of misuse of liberty by the petitioner. So far the petitioner is not convicted in any of the offence registered against him. These aspects are ignored by the respondent No.2 while passing the impugned externment order.

14. No doubt, the petitioner is involved in criminal offences, but the material on record does not indicate shared participation of the gang in the offences committed by them. There is no material on record to demonstrate consistent pattern of criminal conduct of a gang of which the petitioner is alleged to be a member, which was continuously indulging in criminal activities as a gang.

Material on record is not sufficient to indicate that the petitioner is involved in criminal activities in concert with the other members as a gang or body of persons. The record does not reveal that the petitioner was a member of the gang, which was continuously indulging in criminal activities as a gang. Except criminal cases, there is no material to show that the petitioner has acted as a member of the gang.

15. The two in camera statements relied on by respondent No. 2, while passing the externment order, are vague. They fall short of showing that the petitioner and other gang members were acting in concert and were committing serious offences as a gang.

16. There is no material on record that unlawful designs were entertained by the gang or body of persons or members and, therefore, it was necessary, in order to prevent violence and alarm, to remove the petitioner outside the area within the local limits of jurisdiction of respondent No. 2. For absence of this material, the impugned order is unsustainable.

17. A show cause notice was issued to the petitioner on 26th September, 2020 and the externment order is passed on 16th February, 2021. Admittedly, the last offence alleged against the petitioner is of the year 2019. Thus, there is no live link between the said offence and the necessity of passing the impugned externment order in the year 2021. On this ground also, the impugned externment order cannot be sustained.

18. Had the action of externment been initiated against the petitioner under some other provision of the Bombay Police Act, then the case would have been different, however, to justify passing of the order of externment under section 55 of the said Act, there has to be material on record to show involvement in actions along with gang members or body of persons, which were continuous and collective offences by all the gang members. Such material is not available in the present case.

19. The externing authority / respondent No. 2 as well as the appellate authority / respondent No. 3 have failed to take into consideration the fact that there is no material on record to justify issuance of the externment order under section 55 of the said Act. The appellate authority, by taking into consideration offences committed by different members of the alleged gang between 2015 and 2020, has erroneously come to the conclusion that there is consistency and connectivity in the said crimes.

20. In "Rajwardhan Babaso Patil" (supra) a co-ordinate bench of this court observed thus -

"Disjunct or disparate actions, however criminal, do not justify action under Section 55. The gang's acts that form the basis of any such order must also be continuous and incessant, not ones going well back in time."

"From the externment order, it appears that some of the petitioners are co-

accused in some criminal cases, while others are not; and it is, therefore, difficult to ascertain consistent, continuous, collective offences by all the petitioners.

“But as soon as all the petitioners were joined together in a single externment order, one said to be under Section 55, it was incumbent on the authorities to show that their actions were that of a gang or body of persons acting as such; and that these actions bear a temporal proximity to the externment order”

The petitioner’s case is squarely covered by the above observations and in the light of these observations, the impugned externment order is unsustainable.

21. The ratio in “Deepak Laxman Dongre” and “Praful Bhausahab Yadav” (supra) also support the case of the petitioner.

22. There cannot be any dispute about the ratio laid down in “State of NCT of Delhi” (supra), relied on by the learned Additional Public Prosecutor, however, in the facts of the present case, since we have come to the conclusion that there is no sufficient material available on record to justify the externment of the petitioner under section 55 of the said Act, the same is not helpful to the case of the respondent – authorities.

23. For the aforestated reasons, we find that the order dated 26th July, 2021 passed by the Divisional Commissioner (Exhibit-D), which upholds the order of externment dated 16th February, 2021 (Exhibit-C) is unsustainable and the same is liable to be quashed and set aside.

24. In the result, criminal writ petition is allowed. Impugned order dated 26th July, 2021 (Exhibit-D) passed by the Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No. 22 of 2021 is hereby quashed and set aside. Rule is made absolute in terms of prayer clause “B”. No costs.