

(2022) 03 BOM CK 0096

In the Bombay High Court

Case No : Criminal Writ Petition No.1212 Of 2021

Vivek Madhusudan Sapkale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

Maharashtra Police Act, 1955 — Section 55, 59, 60
Code Of Criminal Procedure, 1973 — Section 107
Indian Penal Code, 1860 — Section 34, 379

Citation : (2022) 03 BOM CK 0096

Hon'ble Judges : V. K. Jadhav, J Sandipkumar C. More, J

Bench : Division Bench

Advocate : Satej S. Jadhav, R. V. Dasalkar

Final Decision : Allowed

Judgement

Sandipkumar C. More, J

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. The petitioner in this criminal writ petition has challenged the order dated 28/09/2020 passed by the Superintendent of Police, Jalgaon i.e. present respondent no.2 in externment proceeding under Section 55 of the Maharashtra Police Act, 1955 (hereinafter referred to as "the Act") vide outward No. 3702/LCB/Externment Order/2020, whereby the petitioner is externed from Jalgaon District for a period of one year. The petitioner has also challenged the order dated 07/01/2021 passed by the Divisional Commissioner, Nashik Division, Nashik i.e. present respondent no.3 in Externment Appeal No. 87 of 2020, whereby the aforesaid order of respondent no.2 has been confirmed.

3. The background facts are as under :

The petitioner claims himself to be a respectable citizen of India having permanent address as mentioned in the title clause. However, on 08/03/2019 the

petitioner received show cause notice under Section 59 of the Act, under which explanation was called from him towards proposal of his externment under Section 55 of the Act. In the said notice, it has been alleged that the petitioner along with other gang members and leader, have committed various offences of serious nature and consequently following crimes were registered against him and other gang members.

Sr. No

Police Station

Crime No. and Sections

Name of the accused persons

Present status

1

Jalgaon Taluka

Crime No.67/2011, under Section 379 r.w. 34 of IPC

1. Pravin Gokul Sapkale
2. Santosh Rajaram Patil
3. Vivek Madhusudan Sapkale
4. Soma Suklal More
5. Dipak Sudhakar Patil
6. Kailas Gautam Sapkale

Subjudice

2

Shanipath

Crime No. 54 of 2017, under Section 379 r.w. 34 IPC

1. Pravin Gokul Sapkale
2. Avinash Sopan Sapkale
3. Namdeo Dikan Koli
4. Pradeep Dagdu Sonwane

Subjudice

The petitioner then fled his explanation on the said notice on 29/03/2019 and stated that only one crime was registered against him and besides one preventive proceeding under Section 107 of Cr.P.C. no other crime was

registered, but still he was served with notice dated 08/03/2019. Despite the explanation from the petitioner, respondent no.2 on 28/09/2020 directed him and other eight persons including gang leader Pravin Gokul Sapkale to leave the jurisdiction of Jalgaon District for a period of one year. Being aggrieved with the said order, the petitioner had even filed Appeal No. 87 of 2020 before respondent no.3 under Section 60 of the Act but under the order dated 07/01/2021 respondent no.3 i.e. Divisional Commissioner, Nashik rejected the appeal and confirmed the earlier order of externment. Though the externment period has been over now, but the petitioner wants to assail both the impugned orders mainly because the same were passed without application of mind and there being no material against him for passing such order.

4. Learned counsel for the petitioner submits that both the authorities below have committed serious mistake in passing the order of externment against the petitioner despite there being registration of only one crime against him and that too of the year, 2012. He further submits that there is no subjective satisfaction and live link apparent in the impugned orders and the same are liable to be set aside and quashed immediately.

5. On the contrary, the learned APP under affidavit in reply dated 21/03/2022 strongly opposed the petition and submits that considering the status of the petitioner being the member of a gang involving in theft of sand, both the authorities below, have properly appreciated the material on record and rightly externed him from the entire Jalgaon District. As such, the learned APP prayed for dismissal of the writ petition.

6. We have carefully gone through the entire material on record along with the impugned orders and also the police papers submitted by the learned APP. On perusal of the show cause notice dated 08/03/2019, it is evident that there are only two crimes mentioned therein and out of those crimes, there is only one crime registered against the present petitioner and that too in the year 2012 for the offence punishable under Section 379 r.w. 34 of the Indian Penal Code. So far as second crime is concerned, it is of the year, 2017 and the petitioner is not even arrayed as an accused in the same. Besides, the preventive action mentioned in the notice itself, appears to be only in respect of gang leader Pravin Gokul Sapkale and not against the petitioner. Thus, it prima facie appears that the petitioner has been externed on the basis of only one crime and that too of the year, 2012. From the impugned order dated 28/09/2020, it appears that respondent no.2 has only mentioned that the petitioner and his gang members are involved in theft of sand in the rivers flowing from Jalgaon District. However, only on the basis of one crime registered against the petitioner in the year 2012, there is no scope to hold that the petitioner is active member of the said gang involving in such criminal activities as mentioned above. There is no material in support of the alleged continuous criminal activities of the petitioner. It is also apparent from the order that there is no activity of the petitioner being a gang member in the alleged crimes from 2012 till 2017. Though respondent no.2 in

the order dated 28/9/2020 has observed that due to serious criminal acts of the petitioner, no one from common public, is coming forward to make complaint against him, but there are no confidential statements of such persons on record. Moreover, respondent no.3 has also confirmed the earlier order of externment under order dated 07/01/2021 in Externment Appeal No. 87 of 2020 without considering the explanation of the petitioner. It appears that though respondent no.3 considered two crimes registered against the petitioner in Jalgaon Taluka Police station bearing Crime No. 67 of 2012 for the offence punishable under Section 379 r.w. 34 of IPC and Crime No. 146 of 2013 for the offence punishable under Section 379 r.w. 34 of IPC, but the Crime No. 146 of 2013 is not at all mentioned in the show cause notice. Moreover, the said crime is also of the year 2013 only and thereafter till today no fresh crime has been registered against the petitioner. There is no aspect of subjective satisfaction in both the impugned orders. Moreover, the live link which is required for the externment of a person between his last crime and order of externment is not at all there. Therefore, prima facie both the impugned orders appear to be passed by non-application of mind. It is highly unbelievable that a person can be externed from the area mentioned in the impugned orders on the basis of only one crime and that too is of year 2012.

7. Therefore, considering all these aspects, we find that though the period of externment has come to an end, both the impugned orders are prima facie erroneous in nature and passed without there being any sufficient material against the petitioner. Hence, we proceed to pass the following order.

ORDER

I) Criminal writ petition is hereby allowed in terms of prayer clause "B".

II) Rule made absolute in above terms.

III) Criminal writ petition is disposed of accordingly.