

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

CRIMINAL WRIT PETITION NO. 908 OF 2022

PETITIONER : Harikesh @ Guddu Madan Kattilwar,
aged 40 years, Occ. Labour, R/o.
Frezarpura, Amravati, Tq. Dist.
Amravati.

//VERSUS//

RESPONDENTS : 1. Deputy Police Commissioner,
Amravati, Tq. Dist. Amravati, Zone 1.
2. Police Station Officer, Frezarpura,
Dist. Amravati.
3. Divisional Commissioner, Amravati.

Mr. S.I. Ghatte, Advocate for the Petitioner.
Mr. S.A. Ashirgade, APP for the Respondents/State.

CORAM : G. A. SANAP, J.
DATED : 24th JANUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition, the petitioner has challenged the order passed by the respondent No.1-Deputy Commissioner of Police, Amravati Zone-1 dated 5th April, 2022,

whereby he was ordered to be externed from the Amravati City as well as Amravati District and also the order dated 28th September, 2022 passed by the Appellate Authority-Respondent No.3 confirming the order of externment passed by the respondent No.1 dated 5th April, 2022.

03] The facts leading to the filing of the petition can be summarized as follows:

The respondent No.1 initiated proceeding for externment of the petitioner from Amravati District by invoking the provisions of Section 56(1)(b) of the Maharashtra Police Act, 1951 (for short “the Act of 1951”). The respondent No.1 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. | Section | Dated | Case status |
|---------|----------------|-----------|---------------------------|------------|------------------|
| 1. | Frezarpara | 52/2010 | 307 of IPC | 08/02/2010 | Pending in court |
| 2. | Frezarpara | 243/2011 | 399 of IPC with 142 MPA | 30/08/2011 | Pending in court |
| 3. | Frezarpara | 156/2015 | 307, 324, 294, 506 of IPC | 27/04/2015 | Pending in court |
| 4. | Frezarpara | 68/2017 | 294, 506(B) of IPC | 29/01/2017 | Pending in court |
| 5. | Frezarpara | 156/2017 | 324, 504, 506, 34 of IPC | 28/02/2017 | Pending in court |

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|----|------------|-----------|--------------------------------------|------------|----------------------------|
| 6. | Frezarpura | 154/2020 | 65(E) of Maharashtra Prohibition Act | 07/02/2020 | Pending in court |
| 7. | Frezarpura | 475/2021 | 65(E) of Maharashtra Prohibition Act | 25/03/2021 | Pending in court |
| 8. | Frezarpura | 1582/2021 | 65(E) of Maharashtra Prohibition Act | 15/08/2021 | Under police investigation |
| 9. | Frezarpura | 1681/2021 | 65(E) of Maharashtra Prohibition Act | 25/09/2021 | Pending in court |

PREVENTIVE ACTIONS

| Sr. No. | Police Station | 1 st No. | Section | Dated |
|---------|----------------|---------------------|--------------|------------|
| 1. | Frezarpura | 04/2020 | 110 of Cr.PC | 20/02/2016 |
| 2. | Frezarpura | 54/2021 | 110 of Cr.PC | 09/08/2021 |

04] The respondent No.1 conducted necessary inquiry. He issued a notice to the petitioner on 4th March, 2022 to show cause as to why he should not be externed from the Amravati District. The respondent No.1, based on the material collected, passed the order of externment on 5th April, 2022. The petitioner challenged the said order by filing an appeal before the respondent No.3. The respondent No.3 *vide* order dated 28th September, 2022 though found certain deficiencies in the order of externment, dismissed the appeal and confirmed the said order.

05] The learned advocate for the petitioner submitted that out of five crimes registered at Frezarpura Police Station for the various offences committed under the provisions of the Indian Penal Code, 1860 (for short “IPC”), the petitioner was acquitted in four crimes before issuance of notice. The learned advocate submitted that while arriving at subjective satisfaction, four crimes at Serial Nos.1 to 4 in which he was acquitted were taken into consideration. The learned advocate further submitted that four crimes registered against the petitioner at Frezarpura Police Station were for commission of offences under Section 65(e) of the Maharashtra Prohibition Act, 1949 (for short “the Prohibition Act”). The learned advocate submitted that for the purpose of passing an externment order under Section 56(1)(b), the offences under the Prohibition Act cannot be taken into consideration. In order to substantiate this submission, he has placed reliance on the decision in the case of *Dhananjay Manohar Sapkal Vs. State of Maharashtra and Another [2005(2) Mh.L.J. 384]*. The learned advocate submitted that after excluding the crimes in which he was acquitted as well as the crimes under the Prohibition Act, only one crime at Serial No.5 registered at Frezarpura Police Station bearing Crime No.156/2017 was available to be considered by the respondent No.1. The learned advocate, therefore, submitted that

the respondent No.1 took into consideration the stale crimes in which he was acquitted. It is further submitted that apart from the crimes being stale, there is no live link in those crimes as well as the proposed action. The learned advocate submitted that a reference has been made to the in-camera statements of the confidential witnesses. By drawing my attention to the show cause notice dated 4th March, 2022, the learned advocate submitted that there was no mention of these statements in the show cause notice. The learned advocate further submitted that the statements of the confidential witnesses indicate that the same were recorded before issuance of notice. The learned advocate further submitted that the respondent No.1 did not record the reasons for externment of the petitioner from entire Amravati District and that too for a period of two years. The learned advocate submitted that in the absence of the reasons, the order passed by the respondent No.1 and confirmed by the respondent No.3 suffers from the virus of excessiveness.

06] The learned APP submitted that after passing the order of externment, the petitioner indulged in the commission of the similar crimes. The learned APP took me through the FIRs registered in those crimes. Based on these FIRs, the learned APP submitted that the same are sufficient to reflect upon the overall

conduct and behaviour of the petitioner. The learned APP further submitted that the petitioner did not file the reply to the show cause notice and, therefore, the respondent No.1 had no occasion to know that he was acquitted in four crimes. The learned APP further submitted that the remaining crimes registered against the petitioner are sufficient to justify the order. The learned APP submitted that the statements of the confidential witnesses are sufficient to reflect upon the dangerous nature of the petitioner and overall threat to the public peace and tranquility. As far as the offences under the Prohibition Act is concerned, the learned APP submitted that in addition to the crimes registered under the IPC, to consider the overall conduct of the petitioner in indulging the repetitive crimes, would give a fair idea of the activities of the petitioner and ultimately warranting his externment.

07] It is to be noted that in order to justify the order under Section 56(1)(b) of the Act of 1951, reliance was placed on four crimes under the Prohibition Act. It is true that the cases for commission of those offences are pending against the petitioner in the Court of Law. In the case of *Dhananjay Manohar Sapkal* (supra), the Coordinate Bench of this Court has held that the offences registered under the Prohibition Act or under the

Maharashtra Prevention of Gambling Act, 1887 (for short “the Gambling Act”) cannot be taken into consideration for the purpose of passing an externment order. In this case, the Coordinate Bench of this Court has considered the provisions of Section 56(1) Clauses (a) and (b) of the Act of 1951 and held that the offences under the Prohibition Act or the Gambling Act would fall outside the scope of the offences and activities contemplated under Clauses (a) and (b) of Section 56(1) of the Act of 1951. It is to be noted that the offences contemplated under Section 56(1)(b) of the Act of 1951 are relating to coin and government stamps, offences affecting the human body and the offences against the property. It is pertinent to note that the repetitive indulgence in the offences relating to the human body by and large have a tendency to affect the public peace and tranquility. The above offences apart from resulting in breach of peace and tranquility have a tendency to harm the society at large. In my view, therefore, this aspect needs to be borne in mind while appreciating the submissions made by the learned advocates.

08] Perusal of Section 56(1) Clauses (a) and (b) of the Act of 1951 would show that the subjective satisfaction for passing externment order cannot be recorded on the basis of the offences

registered under the Prohibition Act. Therefore, on this ground, the dent has been caused to the so-called subjective satisfaction, sought to be relied upon by the respondents to substantiate the order.

09] The next important point is with regard to the consideration of the crimes in which the petitioner was acquitted to record the subjective satisfaction. In order to justify the reliance on these crimes, the learned APP submitted that the petitioner did not file the reply to the show cause notice and, therefore, the respondent No.1 had no reason to know that he was acquitted in those crimes. In my view, this submission is self-contradictory to the subjective satisfaction, recorded in the externment order. This submission would indicate that the respondent No.1 was not supposed to make an inquiry whether the cases are pending or the cases have been disposed of. It is to be noted that in all the crimes, the petitioner was released on bail. The respondent No.1 was, therefore, required to make a thorough inquiry and that too by perusing the bail orders in those matters, to come to a definite conclusion that the activities of the petitioner are in all respect covered by Section 56(1)(b). The reliance upon the crimes in which the petitioner was acquitted would indicate that the inquiry

was flawed. It needs to be emphasized that the subjective satisfaction for passing such an order must be arrived at on the basis of the objective material. In the present case, the material, which could not have been taken into consideration at all, has been stated to be objective material to arrive at subjective satisfaction. On this ground also the satisfaction recorded is substantially dented.

10] After excluding the four crimes in which he was acquitted as well as the four crimes which are under the Prohibition Act, the only one crime at Serial No.5 registered at Frezarpura Police Station being Crime No.156/2017 was available for being considered by the respondent No.1 to form an opinion to proceed further against the petitioner under Section 56 of the Act of 1951. It is to be noted that this crime is also stale crime. The same could not have been taken into consideration at all. The show cause notice is dated 4th March, 2022. The crime at Serial No.5 was registered in the year 2017. It is, therefore, apparent that the respondent No.1 took into consideration a crime, which was registered five years prior to the issuance of notice. The sole crime apart from being a stale crime for this purpose, would also not be sufficient to establish the live link for passing the impugned order.

The live link in this case was, therefore, completely snapped. In my view, therefore, based on this crime alone, the order of externment was not at all justified.

11] Perusal of the show cause notice as well as the order passed by the respondent No.1 would indicate that the chapter cases under Section 110 of the Code of Criminal Procedure, 1971 were initiated against him. The first case is bearing No.04/2020 and the second case is bearing No.54/2021. At the conclusion of such proceeding, the party concerned is called upon by the Executive Magistrate to execute a bond for good behaviour. 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 behaviour. The show cause notice as well as the 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 3.

12] The next important aspect is with regard to the reliance placed on the statements of the confidential witnesses. The statement of the first confidential witness was recorded on 10th

February, 2022 and the statement of the second witness was recorded on 11th February, 2022. The statements were recorded by the Senior Police Inspector, Frezarpura, Amravati City. The statements were, therefore, admittedly not recorded by the respondent No.1. The respondent No.1 was, therefore, required to verify those statements. Perusal of the statements would show that at the bottom of the statements, there is endorsement “verified”. The stamp below the signature clearly spells out that those statements were not verified by the respondent No.1, but those statements were verified by the Assistant Commissioner of Police. Even if it is assumed that there was verification, the cryptic manner of the endorsement to indicate the verification, creates a doubt about actual verification. The statements were verified on 28th February, 2022. The notice in question was issued on 4th March, 2022. There is no reference of this in-camera statements of the confidential witnesses in the notice.

13] Perusal of the externment order would show that the reliance has been placed on these statements to form a subjective satisfaction. The respondent No.1, who has passed the externment order, has not stated in his order that he had personally verified those statements by securing the presence of the witnesses. In my

view, this exercise was required to be scrupulously conducted. The statements have been relied upon to form the subjective satisfaction. It, therefore, goes without saying that the statements of the confidential witnesses without verification by the respondent No.1 personally, were made a part of record to pass an externment order. In my view, this is one more ground to cause serious dent to the subjective satisfaction recorded in the impugned order.

14] It is to be noted that this order passed by the respondent No.1 and confirmed by the respondent No.3 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.1 is woefully silent on all these points. The respondent No.1 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 Frezarpura Police Station, Amravati City.

15] In my considered opinion, therefore, the order passed by the respondent No.1 and confirmed by the respondent No.3 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 [2017 ALL.M.R. (Cri.) 268* and *Bhagwat Dadasaheb Landge and Another Vs. State of Maharashtra and Others [2020(5) Mh.L.J. (Cri.) 546]*, 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.1 and confirmed by the respondent No.3 do not pass the said test. It is to be noted that the respondent No.3 despite being confronted with the factual position vis-a-vis the acquittal of the petitioner in four crimes and his involvement in

four crimes under the Prohibition Act, confirmed the said order. Perusal of the order of the respondent No.3 would show that the respondent No.3 has recorded factual submissions, but failed to sufficiently deal with the same. Therefore, in my view, this order is not sustainable.

16] Accordingly, the writ petition is **allowed**. The order dated 5th April, 2022 passed by the respondent No.1-Deputy Commissioner of Police, Zone-1 Amravati City externing the petitioner from Amravati District for a period of two years and the order dated 28th September, 2022 passed by the respondent No.3-Divisional Commissioner of Amravati confirming the said order of externment are quashed and set aside.

17] Rule is made absolute in above terms. The writ petition is disposed of.

(G. A. SANAP, J.)