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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2547 of 2021

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SAGARBHAI SADASHIV BHAMARE
Versus
STATE OF GUJARAT

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Appearance:

MR. KISHAN H DAIYA, ADVOCATE for the PETITIONER
MR HARDIK SONI, ADDITIONAL PUBLIC PROSECUTOR for the
Respondents – State Authorities

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CORAM:HONOURABLE MR. JUSTICE PARESH UPADHYAY

Date : 18/08/2021

CAV ORDER

1. Challenge in this petition is made to the order passed by the Sub-Divisional Magistrate, Navsari dated 11.12.2020 whereby the petitioner is extened for a period of two years from several Districts of Gujarat viz. Navsari, Dang, Surat and Tapi. Over and above that, by the impugned order, the petitioner has also been extened from the Union Territories of Daman and Dadra Nagar Haveli. The said order is stated to have been passed in exercise of powers under Section 56(b) of the Gujarat Police Act, 1951.

2. The execution of the impugned extenment orders was stayed by this Court vide order dated 01.03.2021 for the reasons recorded therein.

3. Heard learned advocate for the petitioner and learned Additional Public Prosecutor for the respondent Authorities. It is noted that, both the learned advocates have taken this Court

through the material on record, including the affidavit in reply.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under :

4.1 The basis of the impugned externment order is principally the FIRs starting from the year 2015. This Court has considered the same and finds that, on facts, externment order could not be passed. However, there is one more glaring aspect. It is as under.

4.2 The Sub-Divisional Magistrate, Navsari has passed the impugned order of externment of the petitioner from even the Union Territories of Daman and Dadra Nagar Haveli, over which, not only the concerned Sub-Division Magistrate can not have any jurisdiction, even the Act can not be made applicable. This is further aggravated by the stand taken before this Court, which is as under.

4.3 Affidavit in reply is filed by the concerned Sub-Divisional Magistrate dated 15.03.2021, which is on record. The relevant part thereof reads as under.

“7. The deponent humbly submits that deponent believes that if during the externment period, the petitioner stays in nearby Union Territories then the petitioner could supply illegal liquor and make stronger connections with local breweries and liquor seller, which could worsen the situation. Thus, it is essential that even the petitioner ought not to have stayed within the contentious Union Territories.

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8. The deponent humbly submits that the deponent had gone through various orders passed in last 10 years by Sub Divisional Magistrates of Navsari and in most of the order, bootleggers were extered from the contentious Districts including Union Territories. Thus, it becomes routine and even the proposal forwarded by the Superintendent of Police Office, Navsari was with the effect that the petitioner is required to be extered including Union Territory. A copy of proposal received from the Superintendent of Police Office, Navsari is annexed herewith and marked as Annexure-R1.

11. The deponent recently came to know the recent communication forwarded by the office of the Director General and Inspector General of Police on 26.02.2021, in which the Additional Director General of Police had clarified that provisions of Sections 56 and 57 of the Gujarat Police Act should be exercised for within the territory of Gujarat only and for other nearby States and Union Territories, concerned Superintendent of Police has to send the details of extering person to the concerned Superintendent of Police of neighbouring States or Union Territories about the criminal cases pending against him and geographical area in which the person is active, etc. The deponent will abide by above mentioned communicated dated 26.02.2021. Such kind of clarification was first time came to the knowledge of the petitioner."

4.4 The above shows, how casually and unauthorisedly the Police and the Revenue Authorities are encroaching upon the liberty of the citizen. It also shows that circulars are required to

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be issued by the State Authorities to educate the Officers working as Sub-Divisional Magistrates, where the territory of the State of Gujarat ends and further where the powers can not be exercised by the Sub-Divisional Magistrates. The freedom of the citizen is at stake because of such exercise of powers. This is the state of affairs and this is how the defences are taken before the Court. In totality this Court finds that, not only cost needs to be imposed against the State, the State Authorities also need to take corrective / punitive measures in this regard.

5. For the reasons recorded above, the following order is passed.

5.1 This petition is allowed.

5.2 The impugned extermnt order passed by the Sub-Divisional Magistrate, Navsari dated 11.12.2020 is quashed and set aside.

5.3 The respondent Authorities are directed to pay cost of Rs.10,000/- to the petitioner.

5.4 The State Authorities are further directed to take appropriate actions against the erring Officer(s), keeping in view the stand of the Authorities as mentioned in the affidavit in reply, relevant of which is quoted in this order.

5.5 Rule is made absolute in above terms.

(PARESH UPADHYAY, J)

M.H. DAVE/pc-6