



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1490 OF 2023

Ajay Ram Thorat ..Petitioner
Versus
State of Maharashtra & Ors. ..Respondents

Ms. Rashi Sheth a/w. Rahul S. Kadam for Petitioner.
Mr. A. R. Patil, APP for State/Respondent No.1.

**CORAM : SARANG V. KOTWAL, J.
DATE : 5 JUNE 2023**

PC :

1. Rule. Rule is made returnable forthwith by consent of both the parties.
2. Heard Ms. Rashi Sheth, learned counsel for the Petitioner and Shri. Patil, learned APP for the State/Respondent No.1.
3. The Petitioner has challenged the order dated 17/02/2022 passed by the Deputy Commissioner of Police, Zone-1, Pimpri Chinchwad; thereby externing the Petitioner from the limits of the Pimpri Chinchwad police Commissionerate, Pune City Police

Commissionerate and Pune Rural for a period of two years.

4. The Petitioner was served with a notice dated 28/10/2021 U/s.59 of the Maharashtra Police Act asking him to show cause as to why he should not be externed out of the aforesaid area. The show-cause notice mentioned six registered offences from the year 2009 up to 2021 registered at Pimpri Chinchwad police station. C.R.No.109 of 2015 registered with Ranjangaon police station had resulted in his acquittal. There was a reference to the statements of two witnesses 'A' and 'B' who were not willing to lodge the F.I.R. against the Petitioner. After this notice, another show-cause notice was served on him. That notice was dated 22/01/2022. The Petitioner was heard by the Enquiry officer. Considering the material produced before him, the Externing authority i.e. the Deputy Commissioner of Police, Zone-1, Pimpri Chinchwad i.e. the Respondent No.3 herein passed the impugned externment order dated 17/02/2022. The Petitioner preferred an Appeal U/s.60 of the Maharashtra Police Act which was also dismissed.

5. Learned counsel for the Petitioner submitted that the Externing Authority had taken into consideration the offences registered in the year 2009 and 2015 which were quite stale. The Petitioner was acquitted from the offence registered in the year 2015 i.e. C.R.No.109 of Ranjangaon police station. She submitted that the first notice U/s.59 of the said Act was issued on 28/10/2021 and thereafter the Externment order was passed on 17/02/2022. Thus, there was considerable delay in passing the order which showed that passing of the order itself was not necessary. She finally relied on the Judgment of the Hon'ble Supreme Court in the case of *Deepak Versus State of Maharashtra and others*¹ to contend that the externing authority has not recorded the subjective satisfaction regarding the necessity of passing the externment order for a maximum period of two years. She submitted that, because of these infirmities the externment order is not sustainable.

6. Learned APP relied on the reasons mentioned in the externment order. He submitted that the Respondent No.3 has

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recorded that the acts of the Petitioner had caused alarm in the mind of public and his acts amount to causing alarm, harm and danger to the public in general. On these grounds the Respondent No.3 was satisfied that the Petitioner needed to be externed. He submitted that, these reasons themselves show that the externing authority had applied it's mind for externing the Petitioner for a maximum period of two years.

7. I have considered these submissions carefully. In my opinion, this petition deserves to be allowed on the last submission made by learned counsel for the Petitioner that, the externing authority has not recorded the subjective satisfaction for externing the Petitioner for a maximum period of two years. In this context, paragraph-17 of the aforementioned Judgment of the Hon'ble Supreme Court is important; which reads thus:-

“17. On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order

under Section 56. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15th December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent no.2 on the basis of material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India.”

8. It is clearly observed by the Hon’ble Supreme Court that, when the competent authority passes an order of externment for a maximum period of two years, the order must disclose application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing the order of externment for a maximum period of two years which is based on the material on record.

In the entire externment order in the present petition, I do not see any reason or any indication regarding subjective satisfaction of the externing authority mentioning as to why the Petitioner was externed for a maximum period of two years. The Hon'ble Supreme Court has further observed that, if the order of externment for a maximum permissible period of two years is passed without recording subjective satisfaction regarding such necessity, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India. Thus, these observations are squarely applicable to the present case. The impugned externment order suffers from the vice of imposing unreasonable restrictions without recording any reasons or subjective satisfaction and, therefore, it is liable to be set aside.

9. Hence, the following order:

O R D E R

- i) Rule is made absolute in terms of prayer clause (A).
- ii) Consequently, the Externment order No.4/22

dated 17/02/2022 passed by the Respondent No.3 is quashed and set aside.

iii) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)