



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

WRIT PETITION NO.2646 OF 2026

Arif Yunus Shaikh @ Mohammad Arif Shaikh ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Anandmaya Dhorde, for the Petitioner.

Ms. S. M. Yadav, APP, for the Respondent-State.

API Solankar, Virar Police Station, present.

Coram: Madhav J. Jamdar, J.

Date: June 10, 2026

P.C.:

1. Heard Mr. Dhorde, learned Counsel appearing for the Petitioner and Ms. Yadav, learned APP for the Respondent-State.
2. By this Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Externment Order dated 25th December 2025 issued by Respondent No.3 - Deputy Commissioner of Police, Zone 3, Mira-Bhayandar, Vasai-Virar Police Commissionerate as confirmed by the Order dated 20th May 2026 passed by the Divisional Commissioner, Konkan Division, Konkan in Externment Appeal No.15 of 2026.
3. It is the main submission of Mr. Dhorde, learned Counsel for the Petitioner, that out of the four cases mentioned in the impugned Order,



the first case is of the year 2019 under the *Maharashtra Prevention of Gambling Act* ("**Gambling Act**"), wherein the Petitioner has been acquitted. He submits that the other cases taken into consideration are CR No.1071 of 2021 registered with Virar Police Station for the offences punishable under Sections 324, 323, 504 and 506 of the *Indian Penal Code, 1860* ("**IPC**"), CR No.1167 of 2023 registered with Virar Police Station for the offences punishable under Sections 385, 500, 509, 506 and 34 of IPC and CR No.619 of 2025 registered with Virar Police Station for the offences punishable under Sections 420, 406, 465, 468 and 471 of the *Bharatiya Nyaya Sanhita, 2023* ("**BNS**"). He further submits that notice under Section 56(1)(a) and (b) of the *Maharashtra Police Act* was issued on 1st December 2025 and, therefore, there is no live link between the offences of the year 2021 and 2023 alleged against the Petitioner and the externment action. He further submits that, insofar as CR No.619 of 2025 which has been taken into consideration, it is a settled legal position that offences which are still under investigation cannot be taken into consideration while taking action of externment. He relies on the decision of a learned Single Judge in *Imtiyaz Hussain Sayyad v. State of Maharashtra*¹. He further submits that no in-camera statements have been recorded and, therefore, there is no material before the Externment Authority. Consequently, the Externment

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Authority has failed to record the requisite subjective satisfaction.

4. On the other hand, Ms. Yadav, learned APP, submits that there are four cases registered against the Petitioner. She submits that the Externment Authority has duly followed the prescribed procedure. The externment order was challenged before the Appellate Authority and the Appellate Authority has recorded a finding that the order had been passed after following due procedure and, therefore, no interference in the impugned Orders is warranted.

5. Before considering the rival contentions, it is necessary to set out the cases lodged against the Petitioner, which are referred to in the notice dated 1st December 2025 issued under Section 56(1)(a) and (b) of the Maharashtra Police Act as well as in the impugned Externment Order dated 25th December 2025. The said cases are as follows:

Sr. No.	Name of Police Station	CR/Offence No.	Section/s	Status
1	Virar	484/2019	Section 12A of Gambling Act	Court pending
2	Virar	1071/2021	324, 323, 504 and 506 of IPC	Court pending
3	Virar	1167/2023	385, 500, 509, 506 and 34 of IPC	Court pending
4	Virar	619/2025	420, 406, 465, 468 and 471 of BNS	Under investigation

6. A perusal of the above cases clearly shows that, insofar as C.R. No.619 of 2025 is concerned, the said case was still under investigation when it was taken into consideration by the Externment Authority. As far as the other three cases taken into consideration, they pertain to the



years 2019, 2021 and 2023. The notice of externment is dated 1st December 2025. Thus, there is substance in the contention raised by the learned Counsel for the Petitioner that there is no live link between the cases registered against the Petitioner and the externment order.

7. Mr. Dhorde, learned Counsel for the Petitioner has relied upon Paragraph No.20 of the decision of a learned Single Judge in ***Imtiyaz Hussain Sayyad*** (supra). The said Paragraph No.20 reads as under:

"20. Secondly, the objection based on the absence of live link between the cases filed against the Petitioner and the externment order also carries some substance. The cases at Sr. Nos. 2 i.e. C.R. No. 568 of 2019, at Sr. No. 4 i.e. C.R. No. 2 of 2020, at Sr. No. 5 i.e. C.R. No. 187 of 2020 were registered in the years 2019 and 2020. Action for externment was initiated in the month of July 2022 and the order of externment came to be passed on 24 January 2023. Considerable period elapsed from the registration of the aforesaid crimes till the initiation of the action for externment. The purpose of externment is not punitive. Externment is with a view to disable a person by moving him away from surroundings which prove favourable for the commission of the offences and thereby disarm his influence in the said area. Thus, there ought to be a live link between the acts of the externee and the action of externment. Stale cases cannot be used to support the externment order. This also bears upon the subjective satisfaction arrived at by the externing authority."

(Emphasis added)

The reasons recorded by the learned Single Judge in Paragraph No.20 in the decision of ***Imtiyaz Hussain Sayyad*** (supra) are squarely applicable to the present case.

8. Insofar as CR No.619 of 2025 is concerned, the same has been



taken into consideration while passing the externment order. However, admittedly, the said case is still at the stage of investigation. Mr. Dhorde, learned Counsel for the Petitioner is right in contending that offences which are still under investigation cannot be taken into consideration, as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial. Mr. Dhorde, learned Counsel has relied on Paragraph No.19 of the said decision of *Imtiyaz Hussain Sayyad* (supra), which reads as under:

"19. The situation which thus obtains is that the externing authority had noted pendency of two cases which did not satisfy the requirement of class of cases stipulated by clause (b) and also considered the crimes which were under investigation and chargesheet had not been filed. **It is trite, the crimes which are still under investigation cannot be taken into consideration as depending upon the outcome of the investigation, the investigating agency may or may not send the accused for trial.** It is true, in one of the crimes, subsequently chargesheet came to be filed. However, a submission could be advanced that the chargesheet was filed with a view to justify and support the order of externment. Reliance placed by Mr. Gupta on the judgment of the learned Single Judge of this Court in the case of Ganesh Laxman Dhabale v. State of Maharashtra² appears to be well founded."

9. Thus, there is substance in the contention raised that offences which are still under investigation cannot be taken into consideration while passing an externment order.

10. A perusal of the show cause notice and the impugned Order shows that no in-camera statements have been recorded or relied upon.



The show causes notice does not make reference to any in-camera statements. Similarly, the impugned Order also does not refer to any in-camera statements.

11. Accordingly, the Writ Petition is disposed of by passing the following Order:

The Externment Order dated 25th December 2025 bearing Externment Order 25/4457/2025 issued by Respondent No.3 - Deputy Commissioner of Police, Zone 3, Mira-Bhayandar, Vasai-Virar Police Commissionerate as well as the Order dated 20th May 2026 passed by the Divisional Commissioner, Konkan Division, Konkan in Externment Appeal No.15 of 2026 are quashed and set aside.

[Madhav J. Jamdar, J.]