



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.6088 OF 2024**

Hussain Ilyas Sumbaniya ... Petitioner
versus
The State of Maharashtra and Ors. ... Respondents

Mr. Afak Mandaviya with Mr. Javed Ansari i/by Ramzanali Malik, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 7 MAY 2026

ORDER :

1. Rule. Rule made returnable forthwith and, with the consent of the parties, heard finally.
2. This Petition under Articles 226 and 227 of the Constitution of India calls in question the legality, propriety and correctness of the order dated 30 September 2024 passed by the Divisional Commissioner, Konkan Division in Externment Appeal No.120 of 2024, whereby the appeal preferred by the Petitioner against an order of externment dated 26 June 2024 passed by the Dy. Commissioner of Police, Zone – 2, Mra Bhayander Vasai Virar Police Commissionerate, under the provisions of Section 56(1)(a) and (b) of the Maharashtra Police Act, 1951 (the Act, 1951), came to be dismissed.
3. A Notice was served on the Petitioner under the provisions of Section 59 of the Act, 1951 calling upon the Petitioner to show cause as to why the



Petitioner be not externed from the limits of Palghar, Thane, Mumbai and Mumbai Suburban Districts for a term of two years. It was, inter alia, alleged that, seven crimes were registered against the Petitioner. There was no improvement in the behaviour of the Petitioner. Hence, it was proposed to initiate an action of externment. Eventually, by an order dated 26 June 2024, the Dy. Commissioner of Police, was persuaded to extern the Petitioner from the limits of Palghar, Thane, Mumbai City and Mumbai Suburban Districts for a term of two years.

4. The following crimes registered against the Petitioner were taken into account :

Sr. No.	Police Station	C.R.No.	Under Sections	Status
1	Naigaon	36 of 2023	354, 354-B, 341, 447, 143, 323, 504 and 506 of IPC.	Subjudice
2	Naigaon	67 of 2023	141, 143, 149, 150, 158, 511, of IPC	Subjudice
3	Manikpur	258 of 2023	8(c), 22(b), 20(b), 2(a) and 29 of NDPS Act.	Subjudice
4	Waliv	584 of 2017	324, 323, 452, 427, 504, 506 read with 34 of IPC	Subjudice
5	Waliv	838 of 2021	141, 143, 354, 504, 506 of IPC	Subjudice
6	Waliv	887 of 2021	394, 448, 451, 452, 323, 504, 506 read with 34 of IPC	Subjudice
7	Vasai Railway	2087 of 2018	395, 120-B of IPC	Subjudice
8	Naigaon	125 of 2024	420, 465, 471, 120-B, read with 34 of IPC	Under investigation

5. It was opined that the movements and acts of the Petitioner were



causing or were likely to cause alarm, danger or harm to person or property and that there were reasonable grounds for believing that the Petitioner was engaged or was about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapters XII, XVI or XVII of the Indian Penal Code and the witnesses were not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

6. Being aggrieved, the Petitioner preferred an appeal before the Divisional Commissioner. By the impugned order dated 30 September 2024, the Appellate Authority was persuaded to dismiss the appeal concurring with the view of the Competent Authority.

7. Mr. Mandaviya, learned Counsel for the Petitioner, submitted that the impugned order suffers from the vice of non-application of mind. Few of the aforesaid crimes which were taken into account do not fall within the purview of Section 56 of the Act, 1951. In the crime at Sr. No.3 of the table (extracted above), the Petitioner has been arraigned for the offences punishable under the NDPS Act. In C.R.No.584 of 2017 registered at Waliv Police Station (at Sr. No.4 of the Table), the Petitioner has already been acquitted by the learned Magistrate by a judgment and order dated 7 March 2024. Yet, those crimes were taken into account. It was further submitted that the order passed by the Competent Authority does not indicate the material on the



basis of which the Competent Authority arrived at the satisfaction that the Petitioner has created such a terror as to dissuade the witnesses from coming forward to give evidence in public against the Petitioner.

8. Thirdly, Mr. Mandaviya submitted that the Petitioner has been externed for a full term of two years without ascribing any reason whatsoever. Thus, the order of externment of the Petitioner from the expansive area of four districts, while the offences were committed in Naigaon and Waliv police Stations primarily, and that too for the full term of two years, suffers from the arbitrariness and puts unreasonable restrictions on the fundamental freedoms of the Petitioner.

9. Smt Tendulkar, learned APP, made an endeavour to support the impugned order. It was submitted that, since multiple crimes have been registered against the Petitioner, the measure of externment of the Petitioner was fully justified.

10. The Petitioner was ordered to be externed by invoking the provisions contained in Section 56(1)(a) and (b) of the Act, 1951. The measure of externment, by its very nature, is extra-ordinary. It has the effect of forced displacement from the home and surroundings. Often it affects the livelihood of the person ordered to be externed. Thus, there must exist justifiable ground to sustain an order of externment. The order of externment, therefore, must be strictly within the bounds of the statutory provisions. Under clause (a) of



sub-Section (1) of Section 56, the externing authority must be satisfied on the basis of the objective material that the movements or acts of the person to be externed are causing or calculated to cause alarm, danger or harm to person or property. Under clause (b), there must be an objective material on the strength of which the externing authority must record subjective satisfaction that there are reasonable grounds for believing that the externee is engaged or about to be engaged in the commission of offences involving force or violence.

11. Mere registration of a number of offences by itself does not sustain an order of externment under Section 56(1)(b) of the Act. The offences must either involve elements of force or violence or fall under Chapters XII, XVI and XVII of the Indian Penal Code. In addition, the externing authority must record satisfaction that the witnesses are not willing to come forward to give evidence in public against the externee by reason of apprehension on their part as regards the safety of their person or property.

12. In effect, to sustain an action of externment under sub-clause (b), the offences, the externee has engaged in, must be under one of the Chapters enumerated therein and that the acts or conduct of the externee are such that the witnesses are terrified and dissuaded from giving evidence against the externee in public fearing safety of their person or property.

13. On the aforesaid touchstone, reverting to the facts of the case, this



Court finds that the Competent Authority took into account few of the crimes which could not have been lawfully taken into account as the basis for the externment of the Petitioner. The crimes registered at Waliv and Vasai Railway Police Stations at Sr. Nos.4 to 7 of the Table extracted above, appeared to be stale cases. There was no reasonable nexus between the said crimes and the measure of externment. The element of proximity of time was clearly absent. Moreover, the judgment and order in Criminal Case No.306 of 2023 indicates that the Petitioner was acquitted of the offences registered vide C.R.No.584 of 2018. Thus, the inclusion of the said crime in the list of cases arrayed against the Petitioner vitiated the consideration by the Competent Authority.

14. Secondly, it is imperative to note that, C.R.No.258 of 2023 for the offences punishable under the NDPS Act, 1985, also could not have been lawfully taken into account, especially to sustain the order of externment under Section 56(1)(b) of the Police Act, 1951, as those offences are beyond the purview of the offences covered by Section 56(1)(b) of the Act,

15. Thirdly, this Court does not find that the Competent Authority has referred to the statements of the confidential witnesses and on the basis of those statements, arrived at a satisfaction that the witnesses were not coming forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.



16. Lastly, the externment of the Petitioner for the whole term of two years also appears to be in teeth of the provisions of the Act, 1951. Under the provisions of Section 58 of the Act, 1951, a person can be externed for the full term of two years. However, the Competent Authority must indicate reasons as to why it considered it appropriate to extern the externee for the full term of two years as the order of externment impinges upon the fundamental freedoms guaranteed under the Constitution.

17. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of **Deepak s/o Laxman Dongre V/s. State of Maharashtra and Ors.**¹, wherein the Supreme Court, after adverting to the provisions of Section 58 of the Act, 1951, underscored the necessity of arriving at the subjective satisfaction regarding the term of externment also on the basis of objective material. It was ruled that, where the externee is externed for a maximum permissible period of two years, without recording the subjective satisfaction regarding the necessity of the externment for a full term, it would amount to imposing unreasonable restrictions on the fundamental rights guaranteed under clause (d) of Article 19(1) of the Constitution of India. The observations in paragraph No.16 of the said judgment are instructive, and, hence, extracted below :

“16. On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent

1 (2023) 14 SCC 707



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 15 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. (emphasis supplied)



18. For the foregoing reasons, the order passed by the Competent Authority externing the Petitioner from the limits of Palghar, Thane, Mumbai City and Mumbai Suburban Districts for the term of two years, and the impugned order passed by the Appellate Authority, are required to be quashed and set aside.

19. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 30 September 2024 as well as the order dated 26 June 2024 passed by the Competent Authority externing the Petitioner stand quashed and set aside.

(iii) Rule made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)