

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

**CRIMINAL WRIT PETITION NO.821 OF 2023**

Imran Salim Khan ..... Petitioner  
Versus  
Principal Secretary (Home),  
and others .... Respondents

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Mr. Rumman Shaikh, Advocate i/b. Husen Shaikh for the Petitioner.

Mr. M.G. Patil, APP for the Respondent-State.

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**CORAM : SARANG V. KOTWAL, J.**

**DATE : 17<sup>th</sup> JULY, 2023**

**P.C. :**

1. The Petitioner has challenged the externment order dated 27.5.2022 passed by the Deputy Commissioner of Police, Zone-9, Mumbai extorting him along with others from the areas of Mumbai City, Mumbai Suburban District, New Mumbai and Thane District for a period of two years.

2. Heard Mr. Rumman Shaikh, learned counsel for the Petitioner and Mr. M.G. Patil, learned APP for the Respondent-State.

3. Rule. Rule is made returnable forthwith by consent of the parties.

4. The Petitioner along with twenty others were served with a show cause notice dated 24.12.2021 issued under Section 59 of the Maharashtra Police Act (for short, 'said Act') calling upon them to show cause as to why they should not be extened under Section 55 of the said Act.

5. Various offences and other material were mentioned in the show cause notice. After giving the proposed externees, including the present Petitioner sufficient opportunity, the impugned order of externment was passed against seven of them though the notice was issued to 21 persons. The order of externment was challenged by the Petitioner before the Divisional Commissioner, Konkan Division under Section 60 of the said Act. That Appeal was dismissed vide order dated 16.12.2022. Thereafter, this Petition is filed challenging the impugned order of externment.

6. Learned counsel for the Petitioner submitted that the notice was issued against 21 proposed exterees and the final order was passed only against seven persons without giving sufficient reasons for singling them out for this order. He submitted that the Petitioner should also have been treated on par with those against whom the externment proceedings were dropped. He submitted that the period of externment of two years is excessive and no reasons are given for exterring him for the maximum period of two years.

7. Learned counsel submitted that the show cause notice does not mention the minimum required details and hence the Petitioner was deprived of making proper representation.

8. Learned counsel relied on the judgment of a Division Bench of this Court in the case of **Vijay Lalso Jadhav Vs. State of Maharashtra and others** decided on 13.11.2013 in Criminal Writ Petition Nos.3510/2013 & 3513/2013, wherein it was held that out of four cases only two offences were committed by the Petitioner's therein

together and, therefore, it was observed that Section 55 of the said Act was not attracted against them.

9. Learned APP on the other hand, supported the impugned order. He submitted that sufficient material is provided to the Petitioner. His activity was causing alarm, harm and danger which was evident from the inquiries made with secrete witnesses.

10. I have considered these submissions. There is a reference to the inquiry made with some witnesses, whose details were not disclosed. It is mentioned in the externment order. However, no such material is mentioned in the show-cause notice issued under Section 59 of the said Act. Therefore, the Petitioner was not given sufficient opportunity to meet those allegations.

11. Perusal of the impugned order shows that various offences were registered against those proposed externees. As far as the present Petitioner is concerned, he was at Sr. No.8 and there are three offences mentioned against his name registered at Bandra Police Station. Those

offences are C.R. No.304/2011, C.R. No.537/2020 and 444/2021, out of which C.R. No.304/2011 is obviously stale and no connection of that offence is shown with the extermnt proceedings initiated in the year 2022. As far as C.R. No.537/2020 is concerned, out of those twenty-one proposed externees, only the other common accused was Rehabar Umar Qureshi. Thus it appears that this offence was not committed as a part of the gang. The only offence worth mentioning is C.R. No.444/2021 registered against all the accused. Therefore, the ratio of the judgment relied on by learned counsel for the Petitioner applies to this case.

12. Apart from these aspects, there is one more issue in the petitioner's favour. The extermnt authority has externed him for the maximum period of two years without recording any reasons or proper subjective satisfaction. The Hon'ble Supreme Court in the case of **Deepak Vs. The State of Maharashtra and others<sup>1</sup>** has taken a view that in such cases it would amount to imposing unreasonable restriction on the fundamental rights guaranteed under clause (d) of

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<sup>1</sup> 2022 SCC OnLine SC 99

Article 19(1) of the Constitution of India. The relevant paragraph-17 of the said judgment 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 15<sup>th</sup> 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.”

13. Thus, considering all these aspects it is clear that the externment order is unsustainable. Therefore, the Petition deserves to succeed.

14. Hence, the following order:

:: O R D E R ::

i. Rule is made absolute in terms of prayer clause (a), which reads thus :

“(a) To call for the record & proceedings in this case for perusal & after perusing to set aside and quash the Externment Order No.46/ C/ 43 / Zone-IX / 2022, dated 27.5.2022, passed by Respondent No.2;”

ii. The Petition is disposed of accordingly.

**(SARANG V. KOTWAL, J.)**