

# Vitthal Punjahari Jadhav vs The Divisional Commissioner Nashik ... on 5 March, 2025

2025:BHC-AUG:6291

(1)

913 cri wp 1697.24.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1697 OF 2024

Vitthal Punjahari Jadhav,  
Age : 28 years, Occ : Agriculture,  
R/o. Taklibhan, Tq. Shrirampur,  
Dist. Ahmednagar.

... PETITIONER

V/s.

1. The Divisional Commissioner,  
Nashik Division, Nashik.
2. The Sub-Divisional Magistrate,  
Shrirampur Division, Shrirampur,  
Tq. Shrirampur, Dist. Ahmednagar.
3. The Externing Authority i.e.  
The Superintendent of Police,  
Ahmednagar, Dist. Ahmednagar.
4. The Police Inspector,  
Taluka Police Station Shrirampur,  
Tq. Shrirampur, Dist. Ahmednagar.

... RESPONDENTS

.....  
Mr. Y.G. Birajdar h/f. Sachin S. Deshmukh & Majit S. Shaikh,  
Advocate for the Petitioner  
Mr. K.K. Naik, APP for the Respondent Nos.1 to 4  
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CORAM : Y.G. KHOBRAGADE, J.  
RESERVED ON : 12.02.2025  
PRONOUNCED ON : 05.03.2025

JUDGMENT :

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1. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally.

(2) 913 cri wp 1697.24.odt

2. The Petitioner, has invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India and takes exception to the order dated 29.07.2024, passed by the Respondent No.1 Divisional Commissioner, Nashik, in Externment Appeal No.68 of 2024 under Section 60 of the Maharashtra Police Act, thereby upholding the order of externment passed by the Respondent No.2 on 01.03.2024, whereby the Petitioner has been externed from the entire Taluka of Shrirampur, Rahuri, Newasa and Rahata of District Ahmednagar for a period of one year.

3. Facts giving rise to the present petition are that, the Petitioner was served with the notice dated 05.12.2022 under Section 59 of the Maharashtra Police Act, issued by the Respondent No.2 and thereby called upon him to submit the cause as to why he should not be externed from the entire Ahmednagar District for a period of two years because of registration of following crimes which are as under:

Sr. Police Station Crime Nos. & Date of Present position No. Sections registration of Crimes

1. Shrirampur I-315/2019 u/s. 307, 353, Investigation in Taluka Police 332, 323, 504, 506 of IPC & progress Station u/s. 4/25 of Arms Act & u/s.

37(1), 135 of the Maharashtra Police Act

2. Shrirampur 316/2019 u/s. 307, 327, 452, Trial pending / Taluka Police 323, 427, 504, 506 of IPC & sub-judice Station u/s. 4/25 of the Arms Act & u/s. 37(1), 135 of Maharashtra Police Act & (3) 913 cri wp 1697.24.odt u/s.3(2) (va) of SC & ST Prevention of Atrocities Act

3. Shrirampur 99/2020 u/s. 506, 188, 144, Trial pending / Taluka Police of IPC and u/s. 4/26 of the sub-judice Station Arms Act

4. Shrirampur 77/2022 u/s. 324, 323, 504, Trial pending / Taluka Police 506 of IPC sub-judice Station

5. Shrirampur 281/2023 u/s. 384, 427, 323, Trial pending / Taluka Police 506 r/w S.34 of IPC sub-judice Station Prohibitory action

1. Shrirampur Chapter Case No.05/2022 On 21.03.2022, the Petitioner had City Police u/s. 110 (a) (e) (g) of Cr.P.C. furnished a bond ensuring that he Station will maintain peace for a period of two years

4. On 27.03.2023, the Petitioner submitted his reply and claimed that he is a social worker and agitated for grievances of the general public. He helps the poor and needy people to protect their rights but due to political rivalry the opposite group out of jealousy of his popularity in the society, hence, false crimes registered against him. Therefore, the Police Authority falsely implicated him in

criminal cases. He is enlarged on bail in all the crimes described in the above tabular form. Therefore, proposed action of his externment from the entire Taluka of Shrirampur, Rahuri, Newasa and Rahata of District Ahmednagar is illegal and bad in law.

5. On 01.03.2024, the Respondent No.2 passed an order and thereby externed the Petitioner from entire Taluka of Shrirampur, Rahuri, Newasa and (4) 913 cri wp 1697.24.odt Rahata of District Ahmednagar for a period of one year though the externing authority did not assign satisfactory reasons about causing harm, alarm and danger to the life and property of the people in the said areas.

6. Being aggrieved by said order dated 01.03.2024, the Petitioner preferred the Appeal under Section 60 of the Maharashtra Police Act before the Respondent No.1, Divisional Commissioner, Nashik. On 29.07.2024, the Respondent No.1 passed the impugned order and affirmed the order of externment passed by the Respondent No.2 on 01.03.2024.

7. The learned counsel appearing for the Petitioner canvassed that, both the Respondent/Authorities have failed to appreciate material available on record in a proper perspective manner and arrived at an erroneous finding. The Petitioner is a social activist and is always helpful to the poor and needy people and agitates for their grievances. Therefore, the Petitioner's political rivals group made false allegations and implicated the Petitioner in false crimes.

8. The learned counsel appearing for the Petitioner further canvassed that, the order of Externing Authority is based upon such material as is not sufficient to record a satisfaction under Section 55 & 56 of the Maharashtra Police Act, 1951. It is submitted that the material relied upon by the Respondent/ Authorities is not sufficient to satisfy ingredients to invoke the provisions of Section 55 & 56 of the Maharashtra Police Act, 1951 because (5) 913 cri wp 1697.24.odt trials of four Crimes are sub-judice and investigation in one crime is under progress as per show cause notice. The offences in which the Petitioner is shown involved are not of serious nature and do not fall within the meaning of gangs and bodies of persons stated in the notice. Therefore, considering the registration of stale crimes and the fact that the Petitioner was released on bail in all these cases, there is no necessity to extern the Petitioner from entire Taluka of Shrirampur, Rahuri, Newasa and Rahata of District Ahmednagar for a period of one year without giving elaborate reasons. Therefore, prayed for quashing and setting aside the orders dated 01.03.2024 and 29.07.2024 passed by the Respondent Nos. 1 & 2-Authorities. In support of these submissions the learned counsel appearing for the Petitioner relied on Imtiyaz Hussain Sayyad Vs. State of Maharashtra; AIR Online 2024 Bom. 84.

9. Per contra, the learned APP canvassed that, there is no infirmity in the order of externment. The Respondent No.2- Sub-Divisional Magistrate, Shrirampur submitted a proposal for the externment of the Petitioner from the entire Ahmednagar District for a period of two years. The Respondent No.4 was appointed as an Inquiry Officer. The Respondent No.4 issued notices dated 16.09.2022, 27.09.2022, 07.10.2022 and 23.09.2023 to the Petitioner. Thereafter, the Respondent No.4 submitted his report dated 28.11.2022 with the Respondent No.2/SDM and Respondent No.2/SDM recommended externment of the Petitioner from entire Ahmednagar district for a period of (6) 913 cri wp 1697.24.odt two years. The Petitioner appeared before the Respondent No.2/Sub-Divisional

Magistrate, Shrirampur and submitted his written statement on 27.02.2023. The Respondent No.2 passed an order dated 01.02.2024 after providing opportunity of hearing to the Petitioner and externed the Petitioner from entire Taluka of Shrirampur, Rahuri, Newasa and Rahata of District Ahmednagar for a period of one year.

10. The learned APP further submitted that all five crimes registered against the Petitioner are of serious nature. The Petitioner has criminal antecedents as he has indulged in criminal activities and is a habitual offender for committing serious offences such as attempt to commit murder, giving threats to law abiding and peace loving citizens of the locality, extortion, causing grievous hurt and committing mischief against property.

11. The learned APP further canvassed that, on 13.08.2019 a Crime No.315/2019 registered against the Petitioner for the offences u/s 307, 353, 332, 143, 147, 149, 323, 504 and 506 of IPC and u/s. 4/25 of the Arms and u/s. 38(1)(3) of the Maharashtra Police Act. In the said crime, the petitioner was found while formation of unlawful assembly in village Taklibhan with wooden sticks & sword and the mob attempted to kill the police officer, when he was discharging his official duty. The Petitioner has played an active role in commission of said offence against a Police officer. The Petitioner has again committed the crime by forming an unlawful assembly by entering into the (7) 913 cri wp 1697.24.odt shop of one Avinash Kamble and forcibly snatched cash from the drawer of the table at the point of sword and caused hurt to the family members of the victim. So also, the Petitioner issued life threats to the victim and his family and abused them based on caste. Another Crime No. 99/2020 is registered against the Petitioner for issuance of threats to kill one villager in public place. Another Crime No.77/2022, is registered against the Petitioner and his associates for assaulting the Informant when he was sleeping and caused grievous hurt and issued life threat. Though preventive action was initiated against the Petitioner under Case No.05/2022 u/s. 110 of the Cr.P.C., but despite preventive action, the Petitioner did not desist from committing dangerous activities. The citizens residing within the jurisdiction of Shrirampur and adjoining areas remain under constant fear and terror of the Petitioner. The Petitioner's activities have become hazardous and prejudicial for maintaining law and order in and around Shrirampur.

12. The learned APP further canvassed that, the illegal activities of the Petitioner are showing ascending order and taking into consideration the objective materials produced on record, the Respondent No.2/SDM, Shrirampur recorded his subjective satisfaction and rightly passed the order of externment. The Petitioner is a weapon wielding gangster indulged in criminal activities which fall under Chapter XVI & XVII of IPC and SC & ST Act. Even during the pendency of the externment proceeding, the Petitioner has (8) 913 cri wp 1697.24.odt repeatedly committed the offences of extortion, causing hurt, committing mischief and by issuing life threats to the citizens in their locality for which Crime No.I-0281/2023 dated 07.06.2023 and Crime No.I-0486/2023 dated 24.09.2023 are registered. Not only this but recently even after the externment order dated 01.03.2024 is passed, the Petitioner has committed a cognizable offence by forming an unlawful assembly and committed crime of causing hurt and giving threats for which Crime No.I-0128/2024 has been registered at Shrirampur Taluka Police Station for the offence u/s. 143, 147, 149, 323, 504, 506 of the I.P.C. Even after passing of externment order dated 01.03.2024 three (3) non-cognizable offences are registered against the Petitioner viz I) NCR No. 0589/2024 U/s. 352, 351(2) and 351(3)

of the BNS, 2023 registered with Shrirampur Taluka Police Station on 26.08.2024. ii) NCR No.0656/2024 U/s. 352, 351(2) and 351(3) of the BNS, 2023 registered with Shrirampur Taluka Police Station on 21.09.2024. iii) NCR No.0678/2024 U/s. 115(2), 352, 351(2) and 351(3) of the BNS, 2023 registered with Shrirampur Taluka Police Station on 04.10.2024.

13. The learned APP further canvassed that, during confidential inquiry, the SDPO Shrirampur Division opined that, due to the Petitioner's fear nobody dares to give statement openly against him. On the assurance about not disclosing their names and identity and their names would be kept secret, the SDPO recorded in-camera statements of Witness-A and Witness-B and satisfied (9) 913 cri wp 1697.24.odt that, the Petitioner is a dangerous person and due to his fear, no one dare to file any complaint and no one deposed against him. So also, there is a live link between the registration of crimes and the proposal submitted to the office of the Respondent No.2 for externment of the Petitioner. Since, movement of the Petitioner in all Talukas of Ahmednagar district are dangerous to the life and properties of the citizens, therefore, the Respondent Authorities have rightly passed the order of externment, which is on administrative ground, hence, impugned order does not suffer from any illegality, hence, prayed for dismissal of the petition.

14. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the petition paper book. Since the Respondent Authorities have taken recourse of Sec. 56 of the Maharashtra Police Act, therefore, it is necessary to reproduce the same which reads as under:

"56. Removal of persons about to commit offence. Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub- Divisional Magistrate empowered by the State Government in that behalf-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are 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;

( 10 ) 913 cri wp 1697.24.odt (bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing

and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or other wise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or [notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of his jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as " the specified area or area") from which he was directed to remove himself.]"

15. On plain reading of Section 56 it appears that, if any person's movements or acts are causing or are calculated to cause alarm, danger or harm to person or property and there are reasonable grounds to believe that such person is engaged or is about to engage in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code, or in the abetment of any such offence, and if the concerned officer believes that act of such person is likely to disturb the peace in the society, the District Magistrate or Sub Divisional Magistrate are ( 11 ) 913 cri wp 1697.24.odt empowered to remove such person from any specified area or areas for the specific period.

16. In Deepak Laxman Dongre V/s. State of Maharashtra and Ors.;2022 LiveLaw (SC) 93, it is held that, to invoke the said provisions there must be objective material on record based on which the Competent Authority must record its subjective satisfaction. It is further observed in cited case that, even if multiple offences have been registered against an individual that by itself is not sufficient to pass an order of externment. Moreover, there must be satisfactory material on record to indicate the reasonable apprehension of the witnesses of their safety and for that reason they are not coming forward to give statement against the externee.

17. In Imtiyaz Hussain Sayyad-Vs-State of Maharashtra & Ors., cited supra, it is held that, the Externment Authority is required to satisfy the requirements of the class of cases stipulated by clause (b) and also to consider the crimes which were under investigation and charge-sheet 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.

18. No doubt, in the case of N.C.T. of Delhi and Anr. V/s. Sanjeev alias Bittoo; AIR 2005 SC 2080, the Hon'ble Apex Court has held that, the ( 12 ) 913 cri wp 1697.24.odt Courts should be slow while interfering in the matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Keeping in mind the guidelines laid down by the Hon'ble Apex Court, the impugned orders have been considered in the facts and circumstances of the case.

19. Reverting back to the case in hand, it prima facie appears that, the Respondent No.2-Sub-Divisional Magistrate submitted the proposal dated 27.02.2023 in respect of externment of the Petitioner from entire Ahmednagar District for a period of two years. The Petitioner appeared before the Respondent No.2-SDM and put-forth his grievances. After hearing the Petitioner at length and after following due procedure of law, the Respondent No.2 passed the order of externment on 01.03.2024 and externed the Petitioner from entire Talukas of Shrirampur, Rahuri, Newasa and Rahata of Ahmednagar District for a period of one year.

20. In a confidential inquiry conducted by SDPO Division, it was revealed that, due to the Petitioner's fear nobody dares to give a statement openly against the Petitioner. During confidential inquiry, the SDPO Shrirampur Division opined that, due to the Petitioner's fear nobody dares to give statement openly against the Petitioner but after giving assurance about not disclosing their names and identity,, the SDPO recorded in-camera statements of Witness- A and Witness-B and satisfied that, the Petitioner is a dangerous person and ( 13 ) 913 cri wp 1697.24.odt due to his fear, no one dares to file any complaint and no one deposed against him. The material placed on record appears about existence of live link between the registration of crimes and proposal of externment of the petitioner submitted with the Respondent No.2. As per the statements of witness A & activities of the Petitioner are dangerous to the citizens and their properties and due to the Petitioner's fear, no one could dare to file any complaint against him.

21. On perusal of record it appears that, in all five crimes and one chapter case is registered against the Petitioner. Crime No.315/2019 dated 13.08.2019 was registered against the Petitioner and his associates under Section 307, 353, 332, 143, 147, 149, 323, 504 and 506 of IPC and u/s. 4/25 of the Arms and u/s. 38(1)(3) of the Maharashtra Police Act for formation of unlawful assembly with wooden sticks and sword. So also, attempt was made to kill the Police officer while discharging official duty and the Petitioner played active role while committing said crime. In another instance again the Petitioner committed a crime by forming an unlawful assembly by entering into shop of one Avinash Kamble and forcibly taken cash from the table drawer by pointing sword and caused hurt to the family members of the victim. The Petitioner also issued life threats and abused based on the caste of the victim. Another Crime No.99/2020 is registered against the petitioner for issuing life to one villager in public place. Another Crime No.77/2022 is registered against ( 14 ) 913 cri wp 1697.24.odt the Petitioner and his associates for assaulting the Informant when he was sleeping and caused grievous hurt. Irrespective of the above crimes registered against the petitioner again preventive action was initiated against the Petitioner under chapter Case No.05/2022 u/s. 110 of the Cr.P.C.. Not only this but even after the externment order dated 01.03.2024 is passed again following non-cognizable offences are registered against the Petitioner viz. i) NCR No. 0589/2024 U/s. 352, 351(2) and 351(3) of the BNS, 2023 registered with Shrirampur Taluka Police Station on 26.08.2024. ii) NCR No.0656/2024 U/s. 352, 351(2) and 351(3) of the BNS, 2023 registered with Shrirampur Taluka Police Station on 21.09.2024. iii) NCR No.0678/2024 U/s. 115(2), 352, 351(2) and 351(3) of the BNS, 2023 registered with Shrirampur Taluka Police Station on 04.10.2024. Therefore, the conduct of the Petitioner appears to be hazardous to the people in the society, danger to the property, which amounts to disturbing the peace, hence, no leniency can be shown to Petitioner.

22. It is not out of place to mention here that, the externment order came to be passed by relying upon clauses (a) and (b) of Section 56 sub-section (1) of the Act of 1951, it mandatorily provides that the acts and movements of any person must be causing or calculated to cause alarm, danger or harm to person or property. As per clause (b) the ground requires that, the Competent Authority must satisfy that, the material must establish the existence of reasonable grounds for believing that person sought to be externed is engaged ( 15 ) 913 cri wp 1697.24.odt or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or abetment of any such offence. The second part of clause (b), which is required to be read with the first part, clearly provides that the competent authority empowered to pass an order should form an opinion that the witnesses are not willing to come forward to give evidence in public against such person, only because of an apprehension on their part as regards safety of their person or property. The conjoint reading of clauses (a) and (b) would, therefore, show that in arriving at subjective satisfaction as to the grounds, there must be objective material on record before the authority and the same must be considered in accordance with law.

23. Certainly, the people residing in the jurisdiction of Shrirampur and adjoining areas remain under constant fear and terror of the Petitioner and the Petitioner's activities have become hazardous. Indeed, in the case at hand, the Respondents/Authorities have rightly arrived at a subjective satisfaction as there is cogent objective material on record against the Petitioner and he has rightly been externed from entire Taluka of Shrirampur, Rahuri, Newasa and Rahata of Ahmednagar District for a period of one year.

24. In the light of the aforesaid reasons, I am satisfied that the Respondent/Authorities have rightly exercised their power within the parameters of Section 56 of the Act, and no interference by this Court is ( 16 ) 913 cri wp 1697.24.odt warranted. There is sufficient material to extern the Petitioner which is apparent in the orders of externment. Therefore, in my considered view, the present petition deserves to be dismissed and hence it is dismissed.

25. Accordingly, Rule is discharged.

[Y.G. KHOBRAGADE, J.] mub