

Sagar Vithoba Kardile vs The State Of Maharashtra And Others on 30 March, 2022

Author: V. K. Jadhav

Bench: V. K. Jadhav

{1}

crwp140921.odt

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

(1)CRIMINAL WRIT PETITION NO. 1409 OF 2021

Sachin @ Lakhan s/o Manjabapu Warule,
age: 28 years, Occ: Agril.;
R/o Warulwadi, Tq. Nagar,
District Ahmednagar.
At present C/o Prashant Fasale,
R/o Wadgaon, Tq. Ashti,
District Beed.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

02 The Superintendent of Police,
Ahmednagar.

03 The Sub Divisional Police Officer,
Nagar City Division, Ahmednagar,
Tq. & District Ahmednagar.

04 The Divisional Commissioner,
Nasik Division, Nasik.

Respondents

WITH

(2) CRIMINAL WRIT PETITION NO. 1410 OF 2021

Vishal s/o Shaharam Warule,
age: 26 years, Occ: Agril.;
R/o Warulwadi, Tq. Nagar,
District Ahmednagar.
At present C/o Sandip Dalvi,
R/o Kelpimpalgaon, Tq. Ashti,
District Beed.

Petitioner

Versus

01 The State of Maharashtra,

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through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

02 The Superintendent of Police,
Ahmednagar.

03 The Sub Divisional Police Officer,
Nagar City Division, Ahmednagar,
Tq. & District Ahmednagar.

04 The Divisional Commissioner,
Nasik Division, Nasik.

Respondents

WITH

(3) CRIMINAL WRIT PETITION NO. 1411 OF 2021

Ganesh s/o Gorakh Sathe,
age: 29 years, Occ: Agril.;
R/o Warulwadi, Tq. Nagar,
District Ahmednagar.
At present C/o Prashant Fasale,
R/o Wadgaon, Tq. Ashti,
District Beed.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

02 The Superintendent of Police,
Ahmednagar.

03 The Sub Divisional Police Officer,
Nagar City Division, Ahmednagar,
Tq. & District Ahmednagar.

04 The Divisional Commissioner,
Nasik Division, Nasik.

Respondents

WITH
(4) CRIMINAL WRIT PETITION NO. 1412 OF 2021

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Sagar s/o Vithoba Kardile,
age: 34 years, Occ: Agril. & Business,;
R/o Warulwadi, Tq. Nagar,
District Ahmednagar.
At present C/o Prashant Fasale,
R/o Wadgaon, Tq. Ashti,
District Beed.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

02 The Superintendent of Police,
Ahmednagar.

03 The Sub Divisional Police Officer,
Nagar City Division, Ahmednagar,
Tq. & District Ahmednagar.

04 The Divisional Commissioner,
Nasik Division, Nasik.

Respondents

Mr. N. B. Narwade, advocate for the petitioners
Mr. M. M. Nerlikar, APP for Respondents.

CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 14th March, 2022.
PRONOUNCED ON : 30th March, 2022.

JUDGMENT (Per Sandipkumar C. More, JJ.):

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

{4} crwp140921.odt 2 The petitioners in Criminal Writ Petitions No. 1409/2021, 1411/2021 and 1412/2021, have prayed for quashing and setting aside order dated 26.10.2021, passed by Respondent No.4 i.e. Divisional Commissioner, Nasik Division, Nasik, in their respective Externment Appeals No.78/2021, 80/2021 and 79/2021, confrming the common order dated 14.07.2021, passed by Respondent No.2 i. e. Superintendent of Police, Ahmednagar, in respect of all these three petitioners, whereby said petitioners are externed from the entire area of Ahmednagar district for the period of 15 months.

The petitioner in Criminal Writ Petition No. 1410/2021 has also challenged the order dated 26.10.2021, passed by Respondent No. 4 - Divisional Commissioner, Nasik Division, Nasik in Externment Appeal No. 103/2021, confrming the order dated 23.08.2021, passed by Respondent No. 2 - Superintendent of Police, Ahmednagar, whereby he is externed from the entire area of Ahmednagar district, for the period of 15 months. 3 Though the numbers of Externment Appeals fled by these petitioners before Respondent No. 4 - Divisional Commissioner, Nasik Division, Nasik, are different, but those appeals are arising out of the impugned orders dated 14.07.2021 {5} crwp140921.odt and 23.08.2021, respectively, passed by Respondent No.2 - Superintendent of Police, Ahmednagar. Vide order dated 14.07.2021, Respondent No.2 has externed three petitioners in Criminal Writ Petitions No. 1409/2021, 1411/2021 and 1412/2021, from the area of entire Ahmednagar district for the period of 15 months, whereas, the same authority has also externed petitioner

- Vishal Shaharam Warule, (petitioner in Criminal Writ Petition No. 1410/2021) vide separate order dated 23.08.2021, from the area of entire Ahmednagar district for the period of 15 months. 4 On perusal of all these petitions along with its annexures, it appears that both the authorities have jointly considered the allegations against all these petitioners, being members of a gang and they have been externed under the provisions of Section 55 of the Maharashtra Police Act, 1951 (herein after referred to as "the said Act"). We, therefore, fnd it proper to dispose of all these four petitions by a common judgment.

5 The background facts of this case are as under:

On 15.05.2021, Respondent No. 2 - Superintendent of {6} crwp140921.odt Police, Ahmednagar, had issued a notice under Section 59 of the said Act to the petitioners mentioning therein that they are members of the gang and involved in serious offences mentioned herein below:

(1) Petitioner: Sachin @ Lakhan Manjabapu Warule (Cr.W.P.No.1409/21) Sr. No. Crime No. & Sections Present status 01 Camp Police Station, Cr. No. 1610/2020, Pending before Sections 326, 324, 341, 323, 504, 506, the Court 143, 147, 148, 149, 269, 270, 290 IPC RCC and Section 37(1)(3) of the Maharashtra No.594/2020 Police Act.

02 Camp Police Station, Cr. No. 1611/2020, Pending before Sections 326, 341, 323, 504, 506, 269, the Court 270, 290 read with Section 34 IPC. RCC No. 03 Camp Police

Station Cr. No. 6855/2020, Under Sections 143, 144, 504, 506 IPC Investigation (2) Petitioner: Vishal Shaharam Warule (Cr.W.P.No.1410/21) Sr. No. Crime No. & Sections Present status 01 Camp Police Station, Cr. No. 1610/2020, Pending before Sections 326, 324, 341, 323, 504, 506, the Court 143, 147, 148, 149, 269, 270, 290 IPC RCC and Section 37(1)(3) of the Maharashtra No.594/2020 Police Act.

02 Camp Police Station, Cr. No. 1611/2020, Pending before Sections 326, 341, 323, 504, 506, 269, the Court 270, 290 read with Section 34 IPC. RCC No. 03 Camp Police Station 127/2014, Sections Pending before 143, 144, 323, 504 read with S.34 IPC the Court STC {7} crwp140921.odt (3) Petitioner: Ganesh Gorakh Sathe (Cr.W.P.No.1411/21) Sr. No. Crime No. & Sections Present status 01 Camp Police Station, Cr. No. 1610/2020, Pending before Sections 326, 324, 341, 323, 504, 506, the Court 143, 147, 148, 149, 269, 270, 290 IPC RCC and Section 37(1)(3) of the Maharashtra No.594/2020 Police Act.

02 Camp Police Station, Cr. No. 1611/2020, Pending before Sections 326, 341, 323, 504, 506, 269, the Court 270, 290 read with Section 34 IPC. RCC No. (4) Petitioner: Sagar Vithoba Kardile (Cr.W.P.No.1412/21) Sr. No. Crime No. & Sections Present status 01 Camp Police Station, Cr. No. 1610/2020, Pending before Sections 326, 324, 341, 323, 504, 506, the Court 143, 147, 148, 149, 269, 270, 290 IPC RCC and Section 37(1)(3) of the Maharashtra No.594/2020 Police Act.

02 Camp Police Station, Cr. No. 1611/2020, Pending before Sections 326, 341, 323, 504, 506, 269, the Court 270, 290 read with Section 34 IPC. RCC No. 03 Tofkhana Police Station Cr.No. 6855 of Under 2020, Sections 143, 144, 504, 506 IPC investigation

6 It was also mentioned in the notice that there were confidential statements of witnesses and, therefore, a proposal was forwarded to the Camp Police Station. It was further mentioned in the said notice that accordingly, the Sub Divisional Police Officer, Ahmednagar City Division i.e. Respondent No.3 conducted inquiry {8} crwp140921.odt and thereafter show cause notice was issued to the petitioners, asking them as to why they should not be extened from Ahmednagar district for the period of two years. Petitioners then appeared before Respondent No.2 and submitted their respective replies and thereby made a request not to proceed with the show cause notice dated 15.05.2021. However, after considering the defence replies of the petitioners, Respondent No.2, on the basis of material placed before him, extened three petitioners from the entire area of Ahmednagar district for the period of 15 months vide order dated 14.07.2021 and vide order dated 23.08.2021, extened petitioner Vishal Shaharam Warule from the entire area of Ahmednagar district for the period of 15 months. Aggrieved by the extened orders, the petitioners have fled respective appeals as mentioned herein above before Respondent No.4 - Divisional Commissioner, Nasik Division, Nasik, under Section 60 of the said Act. However, Respondent No.4 was pleased to reject the appeals of all the petitioners under separate orders, all dated 26.10.2021. Hence, these petitions.

7 Learned Counsel for the petitioners submits that the extermnt orders passed against these petitioners by Respondent No.2 as well as orders passed by Respondent No.4, confrming the {9} crwp140921.odt extermnt orders, are prima facie erroneous and against the guidelines issued in respect of extermnt proceedings. He further submits that fundamental right of the petitioners guaranteed by the Constitution of India, particularly, under Articles 19 (1) (d) and 21 has been violated. He further submits that there were no collective criminal activities of the petitioners but, still they were brought under the purview of Section 55 of the said Act. He submits that during pendency of extermnt proceedings against the petitioners, they were, in fact, acquitted on 01.07.2021 from the trial of Crime No. 1611/2020, but the said fact was not considered. Learned Counsel for the petitioners also submits that though the activities of the petitioners are restricted to the jurisdiction of Ahmednagar taluka only, but they have been wrongly extermned from the entire area of Ahmednagar district. Thus, he prayed for setting aside the impugned orders being excessive in nature. Ultimately, he submits that both the authorities below did not consider defence material placed before them by the petitioners. 8 Besides the oral submissions, learned Counsel for the petitioners, relied upon various judgments as mentioned below:

- (a) In the case of Nisar @ Nigro Bashir Ahmed Khan Vs. Deputy. Commissioner of Police & others, 2013 (3) Bom.C.R. (Cri.) {10} crwp140921.odt 566;
- (b) In the case of Umar Mohammed Malbari Vs. K. P. Gaikwad & another, 1988 (2) Bom. C. R. 724;
- (c) In the case of Balu Shivling Dombe Vs. The Divisional Magistrate, Pandharpur & another, AIR 1969 Bombay 351 (V. 56
57);
- (d) In the case of Ganpat @ Ganesh Tanaji Katare Vs. Assistant Commissioner of Police & others, 2006 (1) Mh.L.J. 510;
- (e) In the case of Namdeo Laxman Charde Vs. Sub-Divisional Magistrate, Katol, 1996 (1) Mh.L.J. 483;
- (f) In the case of Kashinath @ Kashya Sitaram Keluskar Vs. The Deputy Commissioner of Police & others, 2000 ALL MR (Cri.) 801;
- (g) In the case of Aakash Anil Tambe Vs. The State of Maharashtra & others (Criminal Writ Petition No. 500 of 2014, disposed of on 08.08.2014);
- (h) In the case of Sajid s/o Mahemood Shaikh Vs. The State of Maharashtra & others (Criminal Writ Petition No. 521 of 2014, disposed of on 25.08.2014);

- (i) In the case of Yeshwant Damodar Patil Vs. Hemant Karkare, Deputy Commissioner of Police & another; 1989 (3) Bom. C. R. 240;
- (j) In the case of Pandharinath Shridhar Rangnekar Vs. Deputy Commissioner of Police, the State of Maharashtra; 1972 DGLS (SC) 574;
- (k) In the case of Munaf Samshuddin Shaikh Vs. The Deputy Commissioner of Police; 2014 ALL MR (Cri.) 2412;
- (l) In the case of Kantibhai Bhagwanbhai Kahar Vs. B. J. Gadhvi, Deputy Commissioner of Police, Surat; 1987 (1) Crimes 613 (Guj.);
- (m) In the case of Ashraf Shamsher Ali Jagirdar Vs. State of Maharashtra & others; 2016 (1) Bom. C. R. (Cri.) 504;

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- (n) In the case of Vishwas Damduji Choudhari Vs. State of Maharashtra & another, 2010 (3) Bom. C. R. (Cri.) 431;
- (o) In the case of Vilas Siddharth Sirsat Vs. State of Maharashtra & another, 2010 (1) Bom. C. R. (Cri.) 37;
- (p) In the case of Sanket Balkrushna Jadhav Vs. State of Maharashtra & another, 2013 ALL MR (Cri.) 3843; 9 On the contrary, the learned A. P. P., by fling common affidavit-in-reply in Criminal Writ Petition No. 1412/2021, has strongly opposed the petitions on the ground that the petitioners are the members of a gang headed by one of the petitioners, namely Sagar Vithoba Kardile and the crimes registered against them are of serious nature for the offences punishable under Sections 326, 324, 341, 323, 504, 506, 143, 147, 148, 149, 269, 270, 290 IPC and Section 37(1)(3) of the Maharashtra Police Act. Moreover, preventive actions under Section 110 of the Code of Criminal Procedure are also taken against the petitioners. He further submits that all the material on record clearly indicates that the petitioners are in the habit of committing offences by forming unlawful assembly creating bad impact on the society, which is culminated into the disturbance of public peace and law and order. Not only this, but criminal activities of the petitioners are causing disturbance of public tranquility and due to the {12} crwp140921.odt deterrent behaviour of the petitioners, nobody is coming forward openly to lodge complaint against them. Thus, the learned A. P. P. supported the impugned orders whereby petitioners are exterted. 10 We have carefully gone through the impugned orders in all the petitions along with the material on record. Further, we have also considered the police papers. On going through the impugned orders, passed by Respondent No.2 - Superintendent of Police, Ahmednagar, it appears that the petitioners are exterted from entire Ahmednagar district for the period of 15 months mainly because they are found dangerous to the public at large as they are involved in various crimes against human body, formation of unlawful assembly, causing deterrence to the common public, attempting to murder and robbery, etc. Further, it is also found that all these crimes are committed by the petitioners, being the leader and

members of a gang. Section 55 of the Act provides for dispersal of such persons or body of persons who are found involved in serious crimes being a gang. As such, joint commission of crimes is required to be there to consider whether the persons need to be dispersed under the aforesaid Section. 11 On perusal of the orders of Respondent No.2, prima {13} crwp140921.odt facie, it appears that all the petitioners are involved in two crimes of Camp Police Station, Ahmednagar, registered for the offences punishable under Sections 326, 324, 341, 323, 504, 506, 143, 147, 148, 149, 269, 270 and 290 of Indian Penal Code and Section 37 (1) & (3) of the said Act. The charges levelled against them, by itself, suggest that the petitioners have committed these crimes jointly, which are of serious nature. Further, there are chapter cases also against all the petitioners, as mentioned in the impugned orders, initiated under Sections 110 (e) (g) of the Code of Criminal Procedure. Thus, it also appears that all the petitioners are habitual offenders. So far as crime at Sr. No. 3 is concerned, petitioners, namely Sagar Vithoba Kardile and Sachin @ Manjabapu Warule are only involved in the said crimes, whereas in the crime at Sr. No.4, only petitioner Vishal appears to have been involved. However, the first two crimes definitely indicate involvement of all the petitioners being a gang. Further, the impugned orders also indicate that there were statements of two confidential witnesses wherein those witnesses, by keeping their names secret, had stated that petitioner - Sagar Kardile heads the gang along with other petitioners as members of the gang and causes deterrence to common public. The first witness has specifically stated that he was robbed by the petitioners on the {14} crwp140921.odt point of knife. The second witness has also stated in similar terms and made it clear that all the petitioners have robbed him for the amount of Rs.1200/-. All this material, referred in the impugned orders, is specifically mentioned in the notice dated 15.05.2021 also. Moreover, it appears that Respondent No.2 has also considered all the defence material or issues raised by the present petitioners while coming to the conclusion that the petitioners are required to be exterted from the entire Ahmednagar district. 12 Learned Counsel for the petitioners has placed reliance on the judgments, as mentioned herein above. However, the judgments cited at Sr. Nos. (i), (j) and (k) are in respect of extertment of petitioners therein under Section 56 (1) (a) (b) of the said Act. The consideration for extertment under that Section is totally different than the extertment under Section 55 of the Act and, therefore, we do not find the aforesaid judgments helpful to the petitioners in the instant matter.

13 Learned Counsel for the petitioners, by referring the judgment at Sr. No. (c) Balu Shivling Dombe Vs. The Divisional Magistrate, Pandharpur & another, AIR 1969 Bombay 351 (V. 56

57); has vehemently argued that there is no proper interpretation {15} crwp140921.odt of "alarm", "danger" or "harm" to the persons or property, in the impugned orders, as observed by this Court in the said judgment. This Court, in the said judgment, has observed as follows:

"The expression "alarm, danger or harm to person or property", must if possible be so interpreted as to ensure that the provisions of that section are in conformity with the fundamental rights guaranteed by Art. 19(1)(d) and (e) of the Constitution. It must follow that the expression must be held to refer to the alarm, danger or harm to person or property of the public at large, and not one or two individuals among the public. Such an order cannot also be made on the ground that it was necessary for the preservation of peace or the maintenance of law and order in a particular

locality."

Though the Division Bench of this Court, in the aforesaid judgment, has held that the order of externment cannot be based merely on a finding that the movements or acts of a person are causing or are calculated to cause alarm, danger or harm to one or two individuals in the locality, but this observation has come on record mainly while considering the externment order under Section 56 of the Act. However, present petitions involve application of Section 55 of the Act and the requirement of said {16} crwp140921.odt Section is only to see whether the crimes are committed by persons or body of persons acting as a gang. As such, we do not find that the aforesaid judgment is helpful to the present petitioners.

14 The learned Counsel for the petitioners has also relied upon judgments at Sr. No. (d), (e), (f) and (l) wherein it is observed that no consideration of extraneous material must be there before passing the externment order. It is also held in those judgments that there must be mention of details of cases and particulars of offences registered against the persons against whom externment proceedings are initiated. It is also observed that non mentioning of details of offences, in the notice or externment orders, causes serious infirmity. However, on perusal of the impugned orders, it is revealed that all the details of offences committed by the petitioners are mentioned in the notice as well as impugned orders passed by Respondent No.2. As such, these judgments are also not helpful to the petitioners, in any manner. 15 Learned Counsel for the petitioners then submits that though the crimes, on the basis of which the authorities below have come to the conclusion that the petitioners are acting as a {17} crwp140921.odt gang, are registered in Camp Police Station, Ahmednagar, only, but the petitioners have been externed from entire Ahmednagar district, that too for the period of 15 months. On this ground, learned Counsel for the petitioners has heavily relied upon the judgments at Sr. Nos. (a), (b) (g) (h) (m) (n) (o) and (p). We have carefully gone through the aforesaid judgments and the sum and substance of these judgments is that the authority cannot extern a person from any larger area than the area wherein his criminal activities are going on. However, it is extremely important to note that the initial proposal for externment of the petitioners was from Ahmednagar district, Yeola taluka, Nasik, Vaiapur, Taluka, Aurangabad, Ashti taluka, District Beed, Shirur taluka, Pune district. However, ultimately, on the basis of inquiry, the Sub Divisional Police Officer, Ahmednagar City, only proposed externment of petitioners from Ahmednagar district by excluding other areas.

16 The Hon'ble Full Bench of this Court at Nagpur, in the judgment in the case of Sumit Ramkrushna Maraskolhe Vs. Deputy Commissioner of Police, Zone-I, Nagpur & another, 2019 (2) Mh.L.J. 745, has opined that the externment order directing externment of a person from much larger area than the one of his {18} crwp140921.odt illegal activities, can be made, but it should be based upon some material which provides an objective criteria to the authority for reaching a subjective satisfaction. It is held in the said judgment as under:

"The externment order directing externment of a person from a much larger area than the one of his illegal activities, must be based upon some material which provides an objective criteria to the authority for reaching a subjective satisfaction. The order of externment need not necessarily refer to the details of the material

considered by it so as to show independently that larger or additional area chosen by it is intimately connected with the actual area of the activities of the exterrne due to improved or common means of transport and communication. Application of mind to the material present on record by the authority passing the exterrment order is necessary, but any refection of application of mind in the exterrment order in a specifc manner, as if to pass a reasoned order, would not be necessary. It would be enough if the order discloses that the subjective satisfaction has been reached by considering the material available on record and it would and should be a matter of legitimate inference that the authority, while considering materials to satisfy itself about the need for and extent of exterrment to be ordered, also considered all the options available to it and selected in its wisdom the one which it though to be most appropriate. The {19} crwp140921.odt Detaining Authority can select a larger area for being covered under its exterrment order, as one of the options available to it, whether such larger area has within it contiguous or interconnected or intimately connected pockets of areas or not.

17 In the instant case, though the proposal of exterrment was for exterring the petitioners from larger area than the Ahmednagar district, but after making thorough inquiry, the petitioners are extered only from Ahmednagar district and that too on the basis of material on record. Even though the crimes considered for exterrment of the petitioners are registered only in the Camp Police Station, Ahmednagar, but considering the latest modes of transportation, it appears that the authorities below have rightly restricted the petitioners from entering into entire Ahmednagar district to prohibit their criminal activities. Even in the aforesaid Full Bench judgment, it has been observed in similar terms.

18 Learned Counsel for the petitioners also vehemently argued that the petitioners are acquitted from the trial in respect of Crime No. 1611/2020 at Sr. No.2. He produced copy of the judgment in the said case. However, on going through the copy of the said judgment, it appears that the petitioners are acquitted {20} crwp140921.odt from the said crime since the complainant and other witnesses did not support the prosecution story. Therefore, it cannot be said that acquittal of the petitioners, in the said case, was on merit. As such, we discard the submission of the learned Counsel for the petitioners that such acquittal would come to help the petitioners for quashing the impugned orders.

19 Further, on going through the impugned orders, it appears that the authorities below have rightly appreciated the entire material on record against the petitioners in proper perspective with their subjective satisfaction. Moreover, there is presence of live-link since the crimes chosen for exterrment of the persons are of the year 2020 and the exterrment proposal also appears to be initiated immediately in the year 2020 itself. 20 Thus, considering the entire material on record, we come to the conclusion that petitioners are involved in serious criminal activities and they have committed serious crimes jointly as a gang. Moreover, there appears application of mind by the exterring authority and Respondent No.4 has rightly confrmed the orders of exterrment against the petitioners with the intention to restrict their criminal activities. Thus, considering the aforesaid {21} crwp140921.odt discussion, we are of the opinion that there is no need to interfere with the

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impugned orders of externment passed against the petitioners.

21 In the result, we pass the following order:

(i) Criminal Writ Petitions No.1409/2021, 1410/2021, 1411/2021 and 1412/2021 are dismissed.

(ii) Rule stands discharged.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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