



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1211 OF 2025

Yogesh Motiram Tare
Age: 36 years, Occ. Business,
R/at Gopal Niwas, Near Shivaji
Maharaj Chowk, Kalher,
Tal. Bhiwandi, District Thane

..Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary (Appeal & Security)
Home Department, Second Floor,
Madam Cama Marg, Hutatma Rajguru
Chowk, Mantralaya, Mumbai – 32

2. Deputy Commissioner of Police,
Zone -2, Bhiwandi.

...Respondents

Mr. Rushikesh Kale, for the Petitioner.
Mr. P. P. Malshe, APP, for the Respondent-State.
Mr. Manik Holkar, API, Narpoli Police Station present.

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RAMCHANDRA
SANKPAL

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CORAM: N. J. JAMADAR, J.
DATED : 3rd OCTOBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for 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 an order passed by the Divisional Commissioner, Konkan Division, on 13th January 2025, whereby the Appeal preferred by the Petitioner against an externment order came to be dismissed by affirming the externment order dated 6th November 2024 passed by the Deputy Commissioner of Police, Bhiwandi, under Section 56(1) (a) and (b) of the Maharashtra Police Act 1951 (“the Act, 1951”).

3. Shorn of unnecessary details, the background facts can be stated as under:

3.1 Since June 2021, offences affecting human body and property were registered against the Petitioner at Narpoli Police Station. Alleging that the movements and acts of the Petitioner were causing or calculated to cause alarm, danger or harm to person or property and there were reasonable grounds for believing that the Petitioner was engaged in the commission of offences involving force or violence and against human body and property and the witnesses were not willing to come forward to give evidence in public against the Petitioner on account of the reign of terror created by the Petitioner, externment proceedings were initiated against the Petitioner. A show cause notice under Section 59 of the Act, 1951, was given, and an opportunity of hearing was provided to the Petitioner.

3.2 The Competent Authority, after considering the antecedents of the Petitioner, three crimes registered against the Petitioner at Narpoli Police Station and the confidential statements of two witnesses, recorded a satisfaction that on account of the terror created by the Petitioner, the witnesses were not coming forward to give evidence against the Petitioner in public and the acts of the Petitioner were causing or calculated to cause alarm, danger or harm to the persons or property, ordered the externment of the Petitioner from the limits of Thane District for a period of one year, under Section 56(1) (a) and (b) of the Act, 1951.

3.3 Being aggrieved, the Petitioner preferred an Appeal before the Divisional Commissioner, under Section 60 of the Act, 1951.

3.4 By the impugned judgment and order, the Divisional Commissioner dismissed the Appeal observing that, there was adequate material to justify the externment of the Petitioner.

4. The Petitioner has thus invoked the writ jurisdiction.

5. I have heard Mr. Rushikesh Kale, the learned Counsel for the Petitioner, and Mr. P.P. Malshe, the learned APP, for the Respondents-State, at some length. I have also perused the material on record.

6. At the outset, it is necessary to note that in order to ascertain the justifiability of the order of externment, this Court directed the Respondents-State to tender for the perusal of the Court, the in-camera

statements of the witnesses on the strength of which the externment order came to be passed.

7. An Affidavit has been filed by Mr. Shashikant Borate, the Deputy Commissioner of Police, Zone II, Bhiwandi, expressing the inability of the State to place on record the copies of the statements of the confidential witnesses. It is *inter alia* asserted that the statements of the witnesses could not be traced as the record came to be shifted from one place to another.

8. Mr. Kale submitted that, it is extremely doubtful whether the statements were placed before the Deputy Commissioner of Police who passed the order and the Appellate Authority. Inviting attention of the Court to the externment order, Mr Kale would urge that the three crimes registered against the Petitioners, even if taken at their face value, do not justify an inference that the acts and conduct of the Petitioner would fall within the dragnet of either Clauses (a) or (b) of Section 56(1) of the Act, 1951. Therefore, the impugned orders deserve to be quashed and set aside.

9. In opposition to this, Mr. Malshe, the learned APP, supported the impugned orders. It was submitted that the Competent Authority has referred to gist of the statements of the confidential witnesses and, therefore, the inability of the State to place on record those statements does not detract materially from the order of externment.

10. An order of externment impinges upon the personal liberty of a citizen guaranteed under the Constitution of India. An order of externment is an extraordinary measure. For invoking Clause (a), sub-Section (1) of Section 56 there must be objective material on record on the basis of which the Competent Authority must record its subjective satisfaction that the movements or acts of the person proposed to be externed are causing or calculated to cause alarm, danger or harm to persons or property. To justify an action under Clause (b), there must be an objective material on the basis of which the Competent Authority must record its subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of offences involving force or violence or offences punishable under Chapters XII, XVI or XVII of the Indian Penal Code.

11. The mere fact that few offences have been registered against the Externee which fall within the ambit of the Clause (b) of sub-Section (1) of Section 56 by itself is not sufficient to pass an externment order. It is incumbent upon the Competent Authority to record a satisfaction that the order of externment is passed invoking Clause (b) of sub-Section (1) of Section 56 of the Act, 1951, that witnesses are not willing to give evidence against the person proposed to be externed, as they apprehend threat to their safety and property. **(Deepak Laxman Dongre Vs State of Maharashtra & Ors¹)**

1 Special Leave Petition (Criminal) No. 9032 of 2021.

12. It appears that the following three crimes have been registered against the Petitioner.

Sr. No.	C.R. No.	Offences punishable under:
1	Narpoli Police Station CR No. 400/2021	Sections 353, 332, 201, 143, 174, 149, 427, 504, 506, 188, 269 read with Section 34 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Section 51(b) of the Disaster Management Act.
2	Narpoli Police Station CR No. 907/2023.	Sections 354, 323, 427, 504 read with Section 34 of the Indian Penal Code.
3	Narpoli Police Station CR No. 1036/2023.	Sections 325, 324, 323, 143, 144, 147 and 149 of the Indian Penal Code and Section 37(1) read with Section 135 of the Maharashtra Police Act.

13. Out of the aforesaid crimes, the first offence registered at CR No. 400 of 2021 arose out of the resistance of a mob of 400 to 500 persons to the demolition drive, which was being carried out by the MMRDA at Mouje Kasheli. Evidently, the alleged involvement of the Petitioner in the said resistance to the demolition drive, even if taken at par, would not justify the drastic action of externment.

14. In CR No. 1036 of 2023, *prima facie*, the Petitioner seems to have been implicated as a member of the unlawful assembly in prosecution of the common object of which first informant and witnesses therein were

assaulted. No specific overt act appears to have been attributed to the Petitioner.

15. That leaves CR No. 907 of 2023 as the only offence in which specific allegations have been made against the Petitioner. Such offences without the concomitant factor of the witnesses not coming forward to give evidence in public would not justify the extraordinary action of externment.

16. The aforesaid being the nature of the offences registered against the Petitioner, this Court considered it appropriate to peruse the statements of the witnesses, which were recorded in-camera. As noted above, the State expressed its inability to place on record the copies of the statements of the witnesses on the ground that those statements were not traceable. In the absence thereof, this Court finds it rather difficult to accede to the submission of the learned APP that the witnesses were not coming forward to give evidence against the Petitioner in public on account of the reign of terror created by the Petitioner.

17. The conspectus of the aforesaid consideration is that, the externment order cannot be sustained.

18. Hence the following order:

: O R D E R :

- (i) Petition stands allowed.

(ii) The impugned order dated 13th January 2025, as well as the externment order dated 16th November 2024, passed by the Deputy Commissioner of Police, Zone II, Bhiwandi, stand quashed and set aside.

(iii) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]