

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2703 OF 2026

Firoz Abdul Wahab Khan
Versus
The State of Maharashtra

...Petitioner
...Respondent

Mr. Ibraheem K. M., for the Petitioner.
Mr. Shishir Hiray, Chief Public Prosecutor a/w. Mr. Swapnil Walve,
APP, Mr. Ankit Patil, Mr. Shubham Joshi, Mr. Devavrat Hiray and
Mr. Krishna Jaiwar, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 28th JULY 2026

PC:-

1. Heard Mr. Ibraheem K. M., learned Counsel appearing for the Petitioner and Mr. Hiray, learned Chief Public Prosecutor a/w. Mr. Walve, learned APP appearing for the Respondent-State.

2. The challenge in this Writ Petition is to the legality and validity of the order dated 3rd December 2025 passed in Externment Case No.469/C/43 by the Deputy Commissioner of Police, Zone-6, Chembur, Mumbai as also the order dated 18th May 2026 passed by the Divisional Commissioner, Konkan Division, in Appeal No.194 of 2025. By the impugned order dated 3rd

December 2025, the Petitioner has been externed from Mumbai City and Mumbai Suburbs for a period of one year. The said order has been confirmed by the impugned order dated 18th May 2026 by Divisional Commissioner, Konkan Division in Appeal.

3. It is the submission of Mr. Ibraheem K.M., learned Counsel appearing for the Petitioner that the Petitioner is belonging to the Social Democratic Party of India (“SDPI”), which is registered with the Election Commission of India under Section 29A of the Representation of the People Act, 1951 as a political party. Although the SDPI is recognized party in India, however, in Maharashtra the said political party, although is registered with the Election Commission of India, it is not recognized. He submits that the only allegation against the Petitioner is that he participated in the agitation against certain decision of the Union of India.

4. Mr. Hiray, learned Chief Public Prosecutor submitted that earlier the Petitioner was a member of PFI which is a banned organization and as the said organization is banned the Petitioner joined SDPI. He submits that therefore action of externment is rightly taken. However, he fairly admits that the said aspect is not

mentioned in the show cause notice. He further submits that certain slogans given by the Petitioner can result in disturbing the peace and therefore no interference in the impugned order is warranted.

5. Perusal of the Show Cause Notice shows that the following three offences are relied on:

अ. क्र.	पोलीस स्टेशन	कलम	घटना तारीख	कोर्ट केस क्रमांक व तारीख	सध्यस्थिती
१.	आर. सी. एफ	गु.र.क्र. ६३६/२०२४ क.२२३, ३(५) बि.एन.एस.सह ३७(३), १३५ मपोका	०६/१२/२०२४	६११५/पीएस /२०२५	न्यायप्रविष्ट
२.	आर. सी. एफ	गु.र.क्र. १८०/२०२५ क.२२३ बि.एन.एस.सह ३७(३), १३५ मपोका	०२/०४/२०२५		तपास चालू
३.	आर. सी. एफ	गु.र.क्र. ४५७/२०२५ क.२२३, २८५ बि.एन.एस.सह ३७(३), १३५ मपोका	०१/०८/२०२५		तपास चालू

6. At the outset, it is required to be noted that as far as C.R. No.180 of 2025 and C.R. No.457 of 2025 are concerned when the

Show Causes Notice has been issued, the said offences were under investigation.

7. It is settled legal position that the offences which are under investigation, cannot be taken into consideration for taking action of externment. To support this submission, learned Counsel appearing for the Petitioner relied on a decision of a learned Single Judge dated 19th January 2024 in the case of ***Imtiyaz Hussain Sayyad vs. The State of Maharashtra & Ors.***¹ and more particularly, on paragraph No.19 of the same, which reads as under:

*“19. The situation which thus obtains is that the externing authority had noted pendency of two cases which did not satisfy the requirement of class of cases stipulated by clause (b) and also considered the crimes which were under investigation and chargesheet 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. It is true, in one of the crimes, subsequently chargesheet came to be filed. However, a submission could be advanced that the chargesheet was filed with a view to justify and support the order of externment. Reliance placed by Mr. Gupta on the judgment of the learned Single Judge of this Court in the case of **Ganesh Laxman Dhabale V/s. State of Maharashtra and Ors.**²”*

1 Criminal Writ Petition No.2805/2023

2 AIR Online 2023 Bom 231

(Emphasis added)

8. Perusal of the record shows that the action has been taken under Section 56(1)(a) of the Maharashtra Police Act, 1951. Section 56(1)(a) of the Maharashtra Police Act, 1951 provides that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or 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, such person can be directed to be removed from any specified area or areas in the State.

9. As already noted hereinabove, the reliance has been placed on three FIRs i.e. C.R. No.636 of 2024, C.R. No.180 of 2025 and C.R. No.457 of 2025. The prosecution case in the said FIRs is that various persons including the Petitioner has been agitating regarding certain decisions of the Union of India. As far as C.R. No.180 of 2025 is concerned, it is alleged that office bearers and political workers of the SDPI were agitating on 2nd April 2025. The said agitation is regarding Bill which was to be presented in the Parliament regarding Wakf Board. However, it is required to be

noted that the only allegation in the said FIR is that the accused has violated the Prohibitory Order and that the agitation was held in spite of rejection of the permission to hold agitation. Other FIR which is relied in the Show Cause Notice is C.R. No.457 of 2025 registered under Section 223, 285 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and under Sections 37(3), 135 of the Maharashtra Police Act, 1951. It is significant to note that the said FIR is concerning the said agitation which was held on 21st August 2025. The said agitation is conducted by the political parties i.e. by SDPI, Nationalist Congress Party (NCP), and Shiv Sena (Uddhav Balasaheb Thackeray) and also by the residents of the said locality. However, the only allegation is that the said agitation has been conducted although the permission was not granted. It is significant to note that externment action is not taken against the members of other political parties namely Nationalist Congress Party (NCP) and Shiv Sena (Uddhav Balasaheb Thackeray). The third FIR which has been relied on is C.R. No.636 of 2024. The agitation was conducted concerning Babri Masjid, where various slogans were given against the certain decisions of the Union of India. It is the submission of Mr. Hiray, learned Chief Public

Prosecutor that such type of slogans will create rift in the society.
There is no material produced to support the said contention.

10. Apart from that it is significant to note that similar action of externment was taken against one Akbar Hussain Sayyed on the basis of same three FIRs and a learned Single Judge by Order dated 12th March 2026 has set aside the order of externment. The observations of learned Single Judge in paragraph Nos.5 to 7 are relevant, which read as under:

“5. The following crimes registered against the Petitioner have been taken into account by the Competent Authority :

<i>Sr.No.</i>	<i>Police Station</i>	<i>Section</i>	<i>Date of incident</i>	<i>Court Case No. & Date</i>	<i>Present position</i>
1	R.C.F	C.R. No. 636/2024 S. 223, 3(5) BNS r/w. 37(3), 135 MPA	06/12/2024	6115/PS/2025	Sub-judice
2	R.C.F	C.R. No. 180/2025 S. 223 BNS r/w. 37(3), 135 MPA	02/04/2025	-----	Investigation ongoing
3	R.C.F	C.R. No. 457/2025 S. 223, 285 BNS r/w. 37(3), 135 MPA	21/08/2025	-----	Investigation ongoing

6. Evidently, none of the offences taken into account by the Competent Authority forms part of the offences punishable under Chapter XII, XVI or XVII of the Indian Penal Code. The Petitioner has been arraigned in the aforesaid crimes predominantly for disobedience of the order or direction duly promulgated by the public servant and causing danger, obstruction or injury to any person in a public way, by holding agitations. The aforesaid offences, even if taken at par, would not have the propensity to cause harm or danger to person or property. The measure of externment is extraordinary. Therefore, the order of externment which infringes upon the fundamental rights of the citizens guaranteed under Article 19 of the Constitution of India is required to be tested on the parameters of strict compliance with the statutory requirements.

7. In the case at hand, the Court finds that the Petitioner has been arraigned in even a single offence which falls within the ambit of Chapter XII, XVI or XVII of the Indian Penal Code. At best, the Petitioner has been taking part in the agitations for various causes. That cannot be a sustainable ground to invoke the power under the provisions of Section 56 of the Maharashtra Police Act, 1951. Thus, the impugned order, which infringes upon the fundamental rights of the Petitioner, cannot be sustained.”

The said observations of learned Single Judge squarely applies to the present case.

11. Thus, the learned Single by order dated 12th March 2026 in identical facts with respect to the same FIRs has observed that the Petitioner has been arraigned in the aforesaid crimes predominantly for disobedience of the order or direction duly

promulgated by the public servant and causing danger, obstruction or injury to any person in a public way, by holding agitations. It has been further observed by the learned Single Judge that the aforesaid offences, even if taken at par, would not have the propensity to cause harm or danger to person or property. The measure of externment is extraordinary. Therefore, the order of externment which infringes upon the fundamental rights of the citizens guaranteed under Article 19 of the Constitution of India is required to be tested on the parameters of strict compliance with the statutory requirements.

12. This Court by order dated 2nd July 2026 passed in Writ Petition No.1700 of 2026 while setting aside the order of externment, which action has also been taken by taking the same contention and on the basis of same FIR, has observed that as per the settled legal position, an order of externment is an extraordinary measure and effect of such order is of depriving a citizen of his fundamental right of free movement throughout the territory of India³. It has been further observed that Articles 19 and 21 of the Constitution of India *inter alia* contemplates that not only

3 Deepak s/o Laxman Dongre v. State of Maharashtra, 2022 SCC OnLine SC 99

the citizens have the freedom of speech and expression, but they also have the right to live with dignity. Paragraph Nos.12 to 15 of the said order are also relevant, which read as under:

“12. The action taken by the Respondent–State of Maharashtra of externing the Petitioner, merely for opposing certain decisions of the Government of India, affects the Petitioner's fundamental right of freedom of speech and expression and also right to live with dignity.

*13. Ms. Roy, learned Counsel for the Petitioner relied on the decision of the Supreme Court in **Anuradha Bhasin** (supra), as also the decision of the Gujarat High Court in **Mohammad Kaleem Taufiq Ahmed Siddiqui** (supra).*

*14. The Supreme Court in **Anuradha Bhasin** (supra), in the context of Section 144 of the Code of Criminal Procedure, 1973, has held that the power under said Section cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.*

*15. The Gujarat High Court in **Mohammad Kaleem Taufiq Ahmed Siddiqui** (supra) in a similar case, wherein an order of externment had been passed against the Petitioner in that case for protesting a decision of the Union of India, observed that a citizen cannot be subjected to externment merely for raising grievances against the Government and, therefore, the order of externment was liable to be set aside.”*

13. In this case, action has been taken under Section 56(a) of the Maharashtra Police Act, 1951, which contemplates that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property. All the FIRs which are relied on by the State of Maharashtra while taking drastic action of the externment has been taken for agitating against the decision of Union of India. In fact, in one case, agitation was by all political parties which are in opposition including Nationalist Congress Party and Shiv Sena (Uddhav Balasaheb Thackeray). Accordingly, the action taken is totally illegal.

14. The Writ Petition is allowed by setting aside the order dated 3rd December 2025 passed by the Deputy Commissioner of Police, Zone-6, Chembur, Mumbai in Externment Case No.469/C/43 and the order dated 18th May 2026 passed by the Divisional Commissioner, Konkan Division in Appeal No.194 of 2025.

[MADHAV J. JAMDAR, J.]

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