

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 247 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MUSTUFA YASUFKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner
MR KT DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. Assistant Police Commissioner, "J" Division,
Ahmedabad City, issued a notice under section 59 of the
Bombay Police Act ("the Act" for short) on the externee
Mustufa Yusufkhan Pathan, calling upon him to show cause
as to why he should not be externed from the area of

Police Commissionerate of Ahmedabad City, as well as from the contiguous districts in order to prevent him from pursuing his nefarious activities. The Assistant Police Commissioner also referred to 2 offences registered against the petitioner. After conducting an inquiry (externment proceedings) in light of the reply given by the petitioner and on the basis of the material produced, the Deputy Police Commissioner, Ahmedabad City, passed an order on December 9, 1999 in exercise of powers under section 56(b) of the Act, externing the petitioner for a period of two years from the areas of Police Commissionerate of Ahmedabad City, Ahmedabad (Rural) and contiguous districts of Gandhinagar, Kheda and Mehsana.

#. The said order was carried in appeal contemplated under section 60 of the Bombay Police Act and that also came to be rejected by an order dated February 23, 2000. The petitioner therefore, challenges the order of externment as well as the order of appellate authority on various grounds. Mr. Tirmizi, learned advocate appearing for the petitioner has restricted his arguments to the fact that the externing authority has not assigned any reasons for externing the externee from contiguous districts. He also submitted that none of the cases fall under Chapters XII, XVI and XVII of the Indian Penal Code. According to Mr. Tirmizi, therefore, there is non-application of mind on the part of the externing authority.

#. The petition is opposed to by Mr. K.T. Dave, learned APP.

#. Having regard to the rival side contentions, there is substance in the contention raised by Mr. Tirmizi on behalf of the petitioner. Plain reading of the order of externment indicates that the externing authority has not assigned any reasons for externing the petitioner from contiguous districts. Even in the notice under section 59 of the Act, what is stated is that it is proposed to extern the petitioner from contiguous districts as he may operate from those districts in these days of speedy transport. But there appears nothing to support this apprehension of the externing authority. In the absence of such material, externing the petitioner from the contiguous districts is bad and the order, therefore, cannot be sustained. In this regard, the decisions in the case of Mustafamiya Pirsahedmiya Saiyed v. State of Gujarat and anr., 1999 (1) GLH 913 and in the case of Sandhi Mamad Kala v. State of Gujarat, 14 GLR 384, may be taken into consideration.

#. In view of the above discussion, the petition deserves to be allowed. The same is allowed. The impugned orders of externment dated December 9, 1999 as also the appellate order dated February 23, 2000 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-