

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1961 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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IQBAL @ CHIKNO SHEKH CHAND SHEKH - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Applicant(s) : 1,
MR LR PUJARI PUBLIC PROSECUTOR for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/11/2007

ORAL JUDGMENT

1.0 Heard, Ms. Dutta, learned Advocate for
the petitioner-externee and Mr. Pujari, learned
APP on behalf of respondents.

2.0 The externee has challenged the order dated 02.12.2006 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.3 as well as order dated 18.08.2007 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2.

3.0 In the order dated 18.08.2007, the Appellate Authority-respondent No.2 in sub-Paras 3 to 5 of Para-3 has held as under,

"(3) No evidence have been produced with regard to the livelihood earned by the externee. He has no other source of income. On perusal of the secret and independent statements of the victims of the criminal activities of the externee, in the past, it doest not transpire that the externee is a headstrong and violent person and on account of that nobody is willing to depose against him.

(4) The witnesses who have been examined in defence of the externee, appear to have been intentionally chosen with an ulterior motive to damage the case of the externee.

(4) While passing the final order, written statement as well as the evidences with regard to good character of the

externee, produced by the police are not taken into consideration.

(5) Two cases pertaining to prohibition were registered against the externee in the year 1996 and one case of I.P.C. was registered in the year 2003. They are very old. In pursuance of that no offence is registered against the externee. The offences registered against the externee are pending in Court. There is a delay of about fourteen months between issuance of Notice and passing of order. Hence, the purpose of taking extreme actions such as externment is not justified. The letters of ten witnesses produced by the externee are not taken into consideration, which is not proper. The aspect of externment from the other districts also is not in accordance with law. The externee has already suffered externment of about seven months. The punishment of externment for two years, appears to be on higher side."

4.0 Thus, it can be seen that there is no sufficient material against the present petitioner to pass an order under Section 56(B) of the Bombay Police Act, 1950. It is also pertinent to note that no offence is registered with regard to the adjoining Districts for which also order is passed against the externee. Before passing order there should be subjective satisfaction with the authority that there is

sufficient, cogent and credible material which suggest that the externee is a headstrong person and if order is not passed against the externee, then he will continue his illegal activities. Hence, in view of the above discussion, the order of externment as well as the order confirming the same in appeal are deserve to be quashed and set aside.

5.0 In the result, the application is allowed. The order dated 02.12.2006 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.3 as well as order dated 18.08.2007 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2 are quashed and set aside. Rule is made absolute. Direct service is permitted.

(M.D. Shah, J.)

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