

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION NO. 6169 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.Y. KOGJE**

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 or any order made thereunder ?	

=====

**NAWAB @ NABU IMRANSHA KARIMSHA DIWAN**

Versus

**STATE OF GUJARAT**

=====

Appearance:

MS SUBHADRA G PATEL(656) for the Applicant(s) No. 1

MS.M.D.MEHTA, APP,(2) for the Respondent(s) No. 1

RULE SERVED BY DS(65) for the Respondent(s) No. 2,3

=====

**CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE**

**Date : 31/07/2019**

**ORAL JUDGMENT**

1. Challenge in the present petition preferred under Articles 21 and 226 of the Constitution of India is the order dated 11.04.2019 passed by the respondent No.3-Sub Divisional Magistrate, Bharuch in Externment Case No.2/2019/VASHI 1037 to 1040, whereby the petitioner has been extened from Bharuch, Vadodara, Surat and Narmada City for a period of six months. Against the aforesaid order, the petitioner preferred appeal being Hadpari Appeal No.53 of

2019, which has been partly allowed vide order dated 27.05.2019 by the respondent No.2-Additional Secretary Home Department, whereby the respondent No.2 has quashed and set aside the order of externment qua Vadodara (City and Rural), Surat, (City and Rural) and Narmada and confirmed the order qua Bharuch District only.

2. Heard the submissions of learned advocates appearing for the petitioner and learned APP for the respondent State.

3. The petitioner challenged the impugned order on various grounds that the externment order is passed without application of mind. According to the petitioner, the show cause notice issued to the petitioner dated 08.01.2019 is without application of mind, wherein the externing authorities has mentioned that the petitioner should be externed from city and rural limits of districts of Bharuch, Narmada, Surat and Vadodara for a period of two years. No reason has been given in the show cause notice why externment from this district was proposed, when the activities of the petitioner was confined only to the district of Bharuch

4. Another contention has been that no reason has been given either in the show cause notice or in the impugned order of the externing authority why the petitioner was externed from so many districts mentioned above whereas he is resident of district Bharuch only. On all such grounds, learned advocate appearing on behalf of the of the petitioner prays to quash the impugned orders.

5. This argument has substance and it discloses non-application of mind by the externing authority for externing the petitioner from the districts mentioned aforesaid. When even the externing authority chooses to direct externment from not only the district within which the person against whom the order is passed is seen to be active, but also from contiguous districts, the reason why such

externment order should operate even in regard to such contiguous districts should be shown in the notice preceding the orders as well as in the order. It must be so, for if a person confined his activities to a particular district there would be no justification to extern him not only from that district, but from the adjoining district also unless it is shown that circumstances warrant such a course. If there is such lacuna in the show cause notice as well as in the impugned orders, it is not for the court to fill up lacuna in the material noticed by the externing authority by assuming that there must be some reason for externing from contiguous district also. That must be indicated by the externing authority. For this full bench decision in **Sandhi Mamad Kala v. State of Gujarat**, reported in **14 G.L.R. 384** and **Saiyad Husen Saiyad Umar vs. State of Gujarat**, reported in **1985 (2) G.L.R. 1045** can be referred.

6. Per contra, learned APP submits that the competent authority has passed the impugned order after considering all the relevant materials and statement of witnesses as well as the fact that the petitioner is involved in other criminal offences, so as to demonstrate that there is likelihood of breach of peace in the area and therefore, the learned APP supported the impugned order and urged to dismiss the petition.

7. The externing authority under Section 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances

must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of **Vrajlal Mohanlal v. District Magistrate, Rajkot and another**, reported in **3 G.L.R. 807** can be referred on the point.

8. The subjection satisfaction stands vitiated in view of submission of learned advocate for the petitioner that the externment proceedings were initiated under Section 56(A), where Section 56(A) can be invoked in case of IPC offences, but in case of the petitioner, the only offence that is relied upon is three offences of prohibition and one offence under the IPC which also does not fall within the Chapter XII, XV, XVI and XVII. Moreover, even if the externment proceedings are considered under Section 57, still there is no conviction recorded against the externee under the provisions of Prohibition Act.

9. In view of the foregoing reasons, the petition is **allowed**. The order of externment dated 11.04.2019 passed by the respondent No.3-Sub Divisional Magistrate, Bharuch in Externment Case No.2/2019/VASHI 1037 to 1040 and order dated 27.05.2019 by the respondent No.2-Additional Secretary Home Department in Hadpari Appeal No.53 of 2019 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

**(A.Y. KOGJE, J)**

SIDDHARTH