IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 517 OF 2025.

Bharat Shatrughana Bhosale,
Aged 48 years, Occupation Labour,
resident of Pentakli, Tahsil Mehkar
District Buldhana. ... PETITIONER.

VERSUS

1.The Divisional Commissioner,
Amravati Division, Amravati.

2.Sub Divisional Officer,
Mehkar, District Buldhana.

3.District Superintendent of Police,
Buldhana, District Buldhana.

4.Sub Divisional Police Officer,
Mehkar, District Buldhana.

5.Police Station Officer,
Sakharkheda, Tahsil Mehkar,
District Buldhana. ... RESPONDENTS.

Ms P.N. Lakhani, Advocate for the Petitioner.
Ms S.V. Kolhe, A.P.P. for Respondents.

CORAM : M.M. NERLIKAR, J.
DATE : SEPTEMBER 15, 2025.

ORAL JUDGMENT.

Heard. Issue Rule, returnable forthwith. Learned A.P.P. waives notice for Respondents. By their consent, the matter is taken up for final disposal.

2. The petitioner is challenging the order dated 19.06.2025 passed by the respondent no.1 and order dated 29.04.2025 passed by the respondent no.2, whereby the petitioner was externed from two Districts for a period of six months.

3. The brief facts of the case are as under :

The petitioner was externed under Section 56[1][a][b] of the Maharashtra Police Act, 1951 (hereinafter referred to as "the Act" for short). The order of externment is based on 7 crime which are as under :

Sr.No.	Crime No.	Sections	Status
1.	06/2000	Section 302, 34 of IPC	Acquitted.
2.	10/2009	Sections 325, 323, 504, 34 of IPC	Pending.
3.	89/2009	Sections 324, 506, 504, 34 of IPC	Pending.
4.	227/2010	Sections 302, 34 of IPC	Pending.
5.	3011/2013	Sections 26 [a][b], 42, 52, 69 of the Indian Forest Act, 1927.	Pending.
6.	71/2024	Sections 447, 34 of IPC	Pending.
7.	73/2024	Section 447 of IPC	Pending.

4. The learned Counsel for the petitioner submits that in this case principles of natural justice have been grossly violated. She further submits that it is a matter of personal liberty wherein principles of natural justice ought to have been followed while conducting enquiry under Section 59 of the Act. It is submitted that though notice was issued to the petitioner, the same was not served on him. Section 59 of the Act reads as under :

> *"59. **Hearing to be given before order under sections 55, [56, 57 or 57A] is passed** -*
> *(1) Before an order under sections 55 [56, 57 or*

57A] is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorized by that officer shall inform that person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation of delay. Any written-statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witness produced by him.

(2) The authority or officer proceeded under sub-section [1] may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under sections 55, [56, 57 or 57A] require such person to appear before him and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was

proposed to be passed against him may be passed."

5. It seems from this Section that it is an important Section wherein the externee has been granted opportunity to put his case. Section 59 of the Act cannot be bye-passed. The order of externment depends on the enquiry conducted under said Section. If the enquiry under Section 59 of the Act is conducted without giving an opportunity to the externee, the entire proceeding stands vitiated.

6. The learned A.P.P. fairly conceded to the position that though notice under Section 59 is issued to the petitioner, but, the same could not be served and report was submitted to the Sub Divisional Police Officer.

7. Considering the fact that Section 59 of the Act is the heart and soul of the proceeding pertaining to externment, therefore, it cannot be bye-passed. It is the only proceeding wherein in detail the Sub Divisional Police Officer or the Assistant Commissioner of Police will have to consider the truthfulness of the allegations made in the proposal. Not only that, a duty has been cast upon them to consider the entire

material. Secondly, they have to verify the confidential statements. Further they have to call explanation from the externee, however, they will have to call explanation from the externee by issuing a notice under Section 59 of the Act, which contemplates a gist of allegations against the externee. Further, the general nature of material allegations against him.

It would be useful to refer to the judgment of this Court in case of **Aniuddin Shamsuddin Solanki .vrs. Superintendent of Police and others (2020 SCC OnLine Bom 945)**. (paragraph nos. 11 to 14 ()

> *"11. In Pandharinath Shridhar Rangnekar v. Commr. of Police, (1973) 1 SCC 372 the Hon'ble Apex Court while considering the provisions of Sections 56 and 59 of the Bombay Police Act, 1951, held as under :*
>
> > *"10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh v. State of Bombay [1952 SCR 737 : AIR 1952 SC 221 : 1952 SCJ 279] had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in Bhagubhai v. Dulldbhabhai Bhandari v. District Magistrate, Thana. We will only add that care must be taken to ensure that*

the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee."

(emphasis supplied)

12. The hon'ble Apex Court in the case of Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121 while considering Section 56 of the Bombay Police Act, 1951, has held as under :

"14. Where hearing is obligated by a statute which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. Maybe that in ordinary legislation or at common law a tribunal, having jurisdiction and failing to hear the parties, may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and ab initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is, in its inception, void except when performed in accordance with the conditions

laid down in regard to hearing. Maybe, this is a radical approach, but the alternative is a traversty of constitutional guarantees, which leads to the conclusion of post legitimated disobedience of initially unconstitutional orders. On the other hand law and order will be in jeopardy if the doctrine of discretion to disobey invalid orders were to prevail."

(emphasis supplied)

13. The position that the mandate of Section 59 of the Maharashtra Police Act, 1951 (earlier Bombay Police Act, 1951), has to be strictly followed and any violation thereof would vitiate the entire matter, is thus clear and explicit, from the above two judgments.

14. Considering the factual position, in light of the language of Section 59 of the Maharashtra Police Act 1951, and the law as laid down by the hon'ble Apex Court in Nawabkhan Abbaskhan and Pandharinath Shridhar Rangnekar it is clearly apparent, that the impugned order of externment passed by the respondent no.2, suffers from an abject violation of the mandate of Section 59 of the Maharashtra Police Act 1951."

8. Further in case of **Pandharinath Shridhar Rangnekar .vrs. Commissioner of Police – (1973) 1 SCC 372,** the scope and ambit of

Sections 56 to 59 are considered, the Supreme Court has observed therein that "*The relevant part of Section 59[1] provides that before an order under Section 56 is passed against any person, the officer shall inform that person in writing of the general nature of material allegations against him, and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externee is entitled to lead evidence unless the authority takes a view that the application for examination of witnesses is made for the purpose of vexation or delay. Section 59 also confers on the person concerned a right to file a written statement and to appear through an Advocate or Attorney.*" It is further observed in the same judgment that "*.. why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee 'of the general nature of the material allegations against him'. That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed to specific particulars relating to the material*

allegations."

9. The Supreme Court in the above case further observed that "*We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee."*

10. It would be again useful to consider the judgment in case of **Nawabkhan Abbaskhan .vrs. The State of Gujarat – (1974) 2 SCC 121**, wherein in paragraphs 4, 6 and 7 it has been held as under :

> *"4. The vital freedom guaranteed under Article 19 of the Constitution becomes a fleeting fragrance if a police or magisterial officer can whisk you away by a more executive- than-judicial fiat. This strange power, whose constitutionality is not challenged before us, is hopefully fettered in its exercise by Section 59 which runs thus :-*
> *"(1) Before an order under section 55, 56 or 57 is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of*

tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witness produced by him.

(2) The authority or officer Proceeding under subsection (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 55, 56 or 57, require such person to appear before him and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him may be passed."

5. …
6. The constitutional perspective must be clear in unlocking the mystique of 'void' and 'voidable' vis-a-vis orders under the Act. The Act is a constraint on a fundamental right and so the scheme of Article 19 must be vividly before our minds if extraordinary controls over

human rights statutorily vested in administrative tribunals are to be held in constitutional leash. Freedom of movement, of association, of profession and property, are founding commitments and severe restraints thereon must be strictly construed, not in the name of natural justice-an elusive phrase-nor in literal loyalty to Section 59 but in plenary allegiance to the paramount law. The restriction on the fundamental right must be reasonable and the harsher the restriction the heavier the onus to prove reasonableness. The High Court in Special Criminal Application 18 of 1969 held the basic condition clamped on the authority to hear and be satisfied According to the 'due process' prescriptions of Section 59 had been violated and the order was liable to be quashed. In short, the finding 'was that the deprivation of the petitioner's fundamental right having been effected in a mode which is not reasonable, as statutorily expressed in Section 59 of the Act, is illegal and unconstitutional. Once the jurisprudential underpinnings of Section 56 and 59 of the Act are seen, the invalidatory effect is plain. An unconstitutional order is void, consequential administrative inconveniences being out of place where an administrator abandons constitutional discipline and limits of power. What about the peril to the citizen if an official, in administrative absolutism, ignores the constitutional restrictions on his authority and condemns a person to flee his home ? A determination is no determination if it is contrary to the constitutional mandate of Art. 19. On this footing the externment order is of no effect and its violation is no offence.

> *7. Unfortunately, counsel overlooked the basic link-up between constitutionality and deviation from the audi alteram partem rule in this jurisdiction and chose to focus on the familiar subject of natural justice as an independent requirement and the illegality following upon its non-compliance. In Indian constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by courts into those great rights enshrined in Part III as the quintessence of reasonableness. We are not unmindful that from Seneca's Medea, the Magna Carta and Lord Coke, to the constitutional norms of modem nations and the Universal Declaration of Human Rights it is a deeply rooted principle that 'the body of no free man shall be taken, nor imprisoned, nor disseised, nor outlawed, nor banished nor destroyed in any way' without opportunity for defence and one of the first principles of this sense of justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side."*

11. Upon considering the above observations, it is crystal clear that the right to be heard is known as a right to fair hearing or audi alteram partem is considered as a fundamental principles of natural justice and is implicit recognized as a fundamental right. Though this right to be heard was not explicitly listed as a fundamental right, Constitutional Courts have consistently held that it must be conferred in

a proceeding that adversely affects the right or interest of an individual. The right to be heard is a core component of natural justice. Right to move freely granted under Article 19[d] of the Constitution can only be curtailed by following due process of law.

When the procedure is laid down under Section 59 of the Act, that the officer concerned shall inform a person in writing of the general nature of the material allegations against him, and can meet the reasonable opportunity of tendering an explanation regarding them. Therefore, the purport of Section 59 mandates the officer concern to mandatorily issue a notice in writing of the general nature of material allegations against the externee and call upon him to give explanation. Violation of such mandatory provision amounts to violation of Article 19[d] of the Constitution, as well as principles of audi alteram partem.

12. Needless to mention that so far as the present case is concerned, the entire procedure laid down under Section 59 of the Act has not been mandatorily followed, and it was conveniently bye-passed. The learned Counsel for the petitioner submits that even though the petitioner has raised this ground before the Appellate Authority, he has

conveniently ignored the same.

13. When there is a question of fundamental right guaranteed under Article 19 of the Constitution of India, it is the duty of all concern, who are dealing with the matters to be sensitive before passing of the order. It seems from the record, that when the enquiry was conducted under Section 59 of the Act, the Sub Divisional Police Officer, though has issued notice, but, failed to consider that whether the notice was served on the externee. Therefore, there is gross violation of the fundamental right of the petitioner. "To be heard" in the proceeding like externment is of paramount consideration and violation of such amounts to violation of Constitutional values enshrined in the Constitution of India.

14. It further appears from the record and upon perusal of the report under Section 59 forwarded by the Sub Divisional Police Officer to Sub Divisional Magistrate on 10.03.2025, there is reference of 4 in-camera statements. However, the impugned order dated 29.04.2025 does not even refer to those in-camera statements, and therefore, the

order was passed without application of mind and against the mandate of Section 56[1][a][b] of the Act. Though the Sub Divisional Magistrate has issued notice and called explanation of the petitioner, before issuance of order under Section 56 the petitioner appeared and filed his say. This is not sufficient for the reason that if the mandatory provision provided under Section 59 is not followed, then the entire proceeding would stand vitiated. As observed by the Apex Court in case of Nawab Khan and Pandharinath (supra), the position is crystal clear that the mandate of Section 59 of the Act has to be strictly followed and any violation thereof would vitiate the entire exercise.

15. So far as the present case is concerned, not only there is violation of principles of natural justice, but, by not following the mandate of Section 59 the same has resulted into violation of Article 19[d] of the Constitution of India. Secondly, the order lacks reasons and application of mind. Mere reference to the number of cases would not be sufficient, however, it is necessary to record reasons as to how those referred cases are sufficient to extern the petitioner. Needless to mention that on one hand the report under Section 59 indicates recording of 4 in-

camera statements, however, there is no whisper about the in-camera statements in the impugned order. It is further to be noted that though the petitioner participated in the proceedings before the Sub Divisional Magistrate and gave explanation about each and every case by submitting that except for 2 crimes of 2024 in all other crimes either he was acquitted or discharged. However, the Sub Divisional Magistrate failed to take into consideration this aspect.

16. I am surprised of the fact that the cases of 2000, 2009, 2010 and 2013 formed the basis of order and it seems from the order that all the cases are relied on by the Sub Divisional Magistrate. It is very sorry state of affairs that the liberty of petitioner is put to peril on such stale grounds. Before exercising the powers under Sections 55, 56 and 59 of the Act, the concerned officers should bear in mind that they are dealing with personal liberty guaranteed under Article 19 of the Constitution to a person. Failure on the part of the Sub Divisional Magistrate, so also the Divisional Commissioner is apparent, as none of the authorities considered the material placed before them and utterly failed to subjectively satisfy themselves before passing the impugned order.

17. It is to be noted that when the appeal was preferred against the order dated 29.04.2025 before the Divisional Commissioner, it was expected of the said authority, since the Divisional Commissioner is the higher appellate Authority to consider the matter in it's true perspective. However, the said authority has mechanically and casually dealt with the matter and order is being passed. It seems from the appellate order that the petitioner has specifically pleaded that he was acquitted or discharged in cases from Sr.No.1 to 5, however, the Divisional Commissioner has stated that except for one case the petitioner has not produced any cogent evidence in support of his contention. It is to be noted that when the cases are registered in the year 2009, 2010, 2013 that itself would be a sufficient ground to ignore those cases. It needs to be remembered that the very object of Section 60 is to prefer appeal would be of no use if such appeals are rejected or dismissed without going into their merits, and by not applying mind. It is painful to observe that since inception, as is observed earlier that cases of 2000, 2009, 2010 and 2013 are referred in the proposal and blindly the Sub Divisional Police Officer has given report without offering an opportunity of hearing, and the Sub Divisional

Magistrate has without application of mind and without recording reasons, passed the order dated 29.05.2025. Further the Divisional Commissioner has also done the same thing.

18. At this stage, the learned A.P.P. submits that the matter be remitted back to the concerned Authority and after giving opportunity to the petitioner, appropriate orders would be passed. This submission cannot be accepted for the aforesaid discussion and reasons.

19. Considering the above facts and circumstances, the impugned orders are required to be quashed and the Writ Petition deserves to be allowed. Hence, the following order.

ORDER

(i) Criminal Writ Petition is allowed and disposed of.

(ii) The order dated 29.04.2025 passed by the respondent no.2 Sub Divisional Magistrate, Mehkar, District Buldhana and subsequent order dated 19.06.2025 passed by the respondent no.1 Divisional Commissioner, Amravati Division, Amravati are hereby quashed and set aside.

(iii) Rule is made absolute in aforesaid terms.

JUDGE

Rgd.