

[d] not leave India without prior permission of the Sessions Judge concerned;

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[e] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

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7. The Authorities will release the appellant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the appellant on bail.

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8. Accordingly, this appeal is allowed to the aforesaid extent. Direct service is permitted.

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**Result:-** Bail granted.

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ABC 2019 (III) 283 GUJ  
ACQUITTAL & BAIL CASES  
HIGH COURT OF GUJARAT

(A.Y. Kogje, J.)

R/Special Criminal Application No 3249 of 2019

Decided on 29 August 2019

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***RUKHIBEN W/O RAJESHBHAI RAMJIBHAI KOLI- Applicant(s).***

*Versus*

***STATE OF GUJARAT***

***- Respondent(s).***

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***Law Covered:- (A) Constitution of India – Articles 21 & 226 – Bombay Police Act – Section 56 & 59 – Order of externment from many districts – No reason given either in the show cause notice or in the impugned order – Held, the order discloses nonapplication of mind by the externing authority – the reason should be shown in the notice preceding the order as well as in the order – Order quashed. (Para 5)***

October & November 2019

(B) *Bombay Police Act – Section 56 – Power of externing authority – to remove or extern a person from the districts contiguous to the district of its jurisdiction– Essential requirement – Held, there must be some indication in the order itself of the existence of circumstances – Such circumstances must be qua every area or region – there must be some material or indication of such material in the order. (Para 7)* a b

Law of relief:- While externing a person also from contiguous districts, the reason should be shown in the show cause notice as well as in the order.

Held:- This argument has substance and it discloses nonapplication 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 order 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 order, 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. (Para-5) c d e f g

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 h

a 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. (Para-7)

**Counsel:-** For Applicant(s): Mr Gajendra P Baghel, Adv.

b For Respondent(s): Ms. Shruti Pathak, Adv.

**Cases Referred:-**

1. *Sandhi Mamad Kala v. State of Gujarat*, 14 G.L.R. 384, (Para-5)
2. *Saiyad Husen Saiyad Umar vs. State of Gujarat*, 1985 (2) G.L.R. 1045, (Para-5)
3. *Vrajlal Mohanlal v. District Magistrate, Rajkot and another*, 3 G.L.R. 807, (Para-7)

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**JUDGMENT**

d **A.Y. KOGJE, J.:** - 1. Challenge in the present petition preferred under Articles 21 and 226 of the Constitution of India is the order dated 13.2.2019 passed by the respondent No.3 in Externment No.HADPARI/CASE/Registration No.4/2016.

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

e 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 25.05.2016 is without application of mind, wherein the externing authority has mentioned that the petitioner should be externed from districts of Morbi, Rajkot city, Rajkot Rural, f Surendranagar, Katchh (Bhuj) and Jamnagar. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner was confined only to the district of Morbi.

g 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 Morbi only. On all such grounds, learned advocate appearing on behalf of h the of the petitioner prays to quash the impugned order.

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 order 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 order, 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 show cause notice under Section-59 issued to the petitioner dated 25.05.2016, wherein the externing authority has mentioned that the petitioner should be externed from districts of

a Morbi, Rajkot city, Rajkot Rural, Surendranagar, Katchh (Bhuj) and Jamnagar. Thereafter, on 13.2.2019, order of externment passed by the respondent No.3, externing the petitioner from districts of Morbi, Rajkot city, Rajkot Rural, Surendranagar, Katchh (Bhuj) and Jamnagar for a period of one year.

b 9. In view of the foregoing reasons, the petition is allowed. The order of externment dated 13.2.2019 passed by the respondent No.3 in Externment No.HADPARI/ CASE/ Registration No.4/2016, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

c **Result:-** Order of externment quashed.

ABC 2019 (III) 287 GUJ  
ACQUITTAL & BAIL CASES  
d HIGH COURT OF GUJARAT

(Umesh A. Trivedi, J.)

R/Criminal Appeal No 1153 of 2019

Decided on 06 August 2019

e **DUSHYANTKUMAR BHIKHUBHAI VYAS** - Appellant(s).

Versus

**STATE OF GUJARAT** - Respondent(s).

f **Law Covered:-** (A) Code of Criminal Procedure, 1973 – Section 438 – Anticipatory Bail – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 14(a), 3(2)(v), 3(1)(r), 3(1)(w)(i) & 18 & 18(A) – Allegation of insulting the first informant about her caste – FIR – no allegation that appellants have ever met the first informant – No specific words with regard to caste stated in FIR – Anticipatory Bail granted. (Para 5)

g (B) Code of Criminal Procedure, 1973 – Section 438 – Anticipatory Bail – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 14(a), 3(2)(v), 3(1)(r), 3(1)(w)(i) & 18 & 18(A) – Allegation of insulting the first informant about her caste on telephone – Not alleged in FIR that appellant ever talked to her – improved version in the statement – only with a view to see the appellants be deprived of their statutory remedy u/s 438, CrPC stated by appellant – Held, it is doubtful whether any offence can be said to have been committed within public view so as