

## Vishal Shantaram Bebale And Ors.Vs State Of Maharashtra And Ors.

**Court:** Bombay High Court

**Date of Decision:** July 12, 2018

**Acts Referred:** Maharashtra Police Act, 1951 " Section 55, 56, 56(1)(a), 56(1)(b), 59, 60

Maharashtra Prevention of Gambling Act, 1887 " Section 7, 12A, 57, 57(a), 57(a)(v)

Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 " Section 3(1)

**Hon'ble Judges:** R. M. SAVANT, J; REVATI MOHITE DERE, J

**Bench:** Division Bench

**Advocate:** U R Mankapure, Satyavrat Joshi, Sumant Deshpande, Anita Wakchaure, V R Shinde, Manoj A Patil, D B Shinde, S A Kashid, V N Tripathi, Rahul Kadam, K U Nikam, Veerdhaval Kakade, A S Pai, Deepak Thakare, K V Saste

**Final Decision:** Allowed

### Judgement

R. M. Savant, J

1 Rule in all the above Writ Petitions, with the consent of the learned counsel for the Petitioners and the learned Additional Public Prosecutor made

returnable forthwith and heard.

2 The above group of 21 Writ Petitions challenge the orders passed by the Appellate Authority in the Appeals filed by the Petitioners under Section 60

of the Maharashtra Police Act (for short "the police act") by which orders the externment orders passed by the Externment Authority came to be

confirmed save and except to the extent mentioned in the operative part of the orders passed by the Appellate Authority in some cases. All the

Petitions involve identical facts and raise the same issues and are therefore heard together and disposed of.

3 The orders of externment passed against the Petitioners in each of the above Writ Petitions are under Section 55 of the police act. The Petitioners

in the above Writ Petitions were issued a show cause notice under Section 59 of the police act calling upon them to show cause as to why they should

not be externed under Section 55 of the police act for a period of 2 years from the Districts which are mentioned in each of the show cause notices

viz. Sangli, Satara, Kolhapur and Solapur. The said show cause notices referred to the offences registered against the Petitioners who are alleged to

be gang leaders and members only under Section 12A of "the gambling act". Hence

the premise for proceeding against the Petitioners is that they constitute a "gang" within the meaning of Section 55 of the police act. It seems

that most of the Petitioners showed cause pursuant to the show cause notices issued to them and questioned the issuance of the show cause notice

having regard to the fact that the offences mentioned in the show cause notices were offences registered under the gambling act. In the said

background it was the case of the Petitioners in their reply that the provisions of Section 55 of the police act could not be invoked.

4 The Externment Authority considered the material on record and passed the orders of externment in respect of the Petitioners amongst whom are the

persons who are alleged to be the gang leaders. In the process of externment the Petitioners, the Externment Authority reached a subjective

satisfaction that having regard to the activity of the Petitioners which was to lure the people towards gambling in the form of "Matka" thereby

having an adverse effect on the society as the said gambling activity has the potential to cause addiction amongst the people and thereby having an

effect on their financial wellbeing and since there was no chance of the Petitioners reforming themselves, the Externment Authority was of the view

that it was necessary to extern the Petitioners. The Externment Authority in some of the cases has also referred to the in-camera statements of the

witnesses whose statements have been referred to in the show cause notices in some of the cases.

5 The Petitioners aggrieved by the orders of the Externment Authority passed against them filed Appeals under Section 60 of the police act before the

Appellate Authority. The Appellate Authority has passed the impugned orders in each of the above Petitions dismissing the Appeals, however, in

some cases has reduced the period of externment from the one prescribed by the Externment Authority.

6 In the above Writ Petitions, especially in Writ Petition No.2454 of 2018 an issue which has been raised is, whether for the offences under the

gambling act the provisions of Section 55 of the police act could be invoked. However, one issue which is common in all the Writ Petitions is the issue

whether having regard to the offences registered against the persons purportedly to be the gang leader and other persons who are alleged to be the

members of the gang, they could qualify to be a gang or a body of persons as postulated in Section 55 of the police act so as to enable the authorities

to invoke the provision of Section 55 of the police act. The other issue raised was inter alia as regards the particulars in respect of when the in-camera

statements of the witnesses recorded etc. were absent and therefore no effective representation could be made by the Petitioners (In Writ

Petition No.4953 of 2018). However, the fundamental issue which has been raised by the Petitioners in the above Writ Petitions are impinging upon

the existence of the jurisdictional facts so as to entitle the authority to invoke Section 55 of the police act.

7 The issue as to whether the provisions of Section 55 could be invoked on the basis of the offences registered under the gambling act has been raised

by the learned counsel for the Petitioners Shri U R Mankapure appearing in Writ Petition No.2454 of 2018 as also the other Petitioners except the

Petitioners in Writ Petition No.4953 of 2018 who are represented by learned counsel Shri Satyavrat Joshi, who fairly conceded that even for the

offences registered under the gambling act, Section 55 of the police act could be invoked.

8 In respect of the said issue the learned counsel for the Petitioners Shri Umesh Mankapure made the following submissions :“

A] That the offences under the gambling act can be said to be petty offences and therefore the same could not be taken into consideration for

extending a person by invoking Section 55 of the police act.”

B] The second submission of the learned counsel Shri Umesh

Mankapure was that the first portion of Section 55 is *pari materia* to Section 56(1)(a) of the police act and if for invoking Section 56(1)(a) the

offences punishable under Chapter Nos.XII, XVI or XVII of the Indian Penal Code are necessary, then the logical corollary of the same would be

that for the invocation of the provisions of Section 55 the requirement would have to be the same viz. that Section 55 can be invoked only if there are

offences punishable under Chapters XII, XVI or XVII which are alleged against the noticee.

9 In so far as the said issue is concerned, the submissions of the learned Additional Public Prosecutor Mrs. A S Pai appearing on behalf of the

Respondent/State were as under :“

i] That there have to be cases registered for the offences punishable under Chapters XVI and XVII of the Indian Penal Code is not a requirement for

invocation of Section 55 of the police act.

ii] That the requirement as can be seen from a reading of Section 55 is that there is a movement or encampment of any gang or body of persons

which is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by

members thereof.

iii] That Section 55 stands in contradistinction to Section 56 both in its objects and contents, whereas Section 55 covers dispersal of gangs and bodies

of persons. Section 56 is directed towards removal of persons about to commit an offence. Whereas Section 55 can be invoked in respect of unlawful

designs. Section 56 can be invoked in respect of any person causing or calculated to cause alarm, danger or harm to person or property or that such

person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII,

XVI or XVII of the Indian Penal Code.

10 In view of the issue raised as regards whether Section 55 of the police act could be invoked in respect of the offences punishable under the

gambling act, it would be necessary to address the said issue at the outset.

11 In the said context it would be necessary to refer to Sections 55 and 56 of the police act which for the sake of ready reference are reproduced

herein under :Ã,â€

55. Dispersal of gangs and body of persons:Whenever it shall appear in Greater Bombay and in other areas in which a Commissioner is appointed

under Section 7 to the Commissioner and in a district to the District Magistrate, the SubÃ,Divisional Magistrate or the [Superintendent][\*\*\*\*]

empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is

causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members

thereof, such officer may, by notification addressed to the persons appearing to be the leaders of chief men of such gang or body and published by

beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in

order to prevent violence and alarm or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction [or such

area and any district or districts, or any part thereof, contiguous thereto] within such time as such officer shall prescribe, and not to enter to area [for

the areas and such contiguous districts, or part thereof as the case may be], or return to the place from which each of them was directed to remove

himself.

56. Removal of persons about to commit offence :[(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has

been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official

Gazette, extend the provisions of this section, to the District Magistrate, or the SubÃ,â€Divisional Magistrate [\*\*\*] empowered by the State Government

in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or (b) that

there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or

violence or an offence punishable under Chapter XII, XVI, or XVII of the Indian Penal Code (XLV of 1860), or in the abetment of any such offence

and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of

apprehension on their part as regards the safety of their person or property, or [(bb) that there are reasonable grounds for believing that such person is

acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal,

Antisocial and other Dangerous Activities Act, 1980, ( Mah. VII VII of 1981), or (2) in any manner prejudicial to the maintenance of supplies of

commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and

Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), or (c) that an outbreak of epidemic disease is likely to result from the

continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit,

direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act], or the

outbreak or spread of such disease or

[notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State

of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such

time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas")

from which he was directed to remove himself].

[(2) An officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such

person that during the period the order was made against him is in force, as and when he resides in any other areas in the State, he shall report his

place of residence to the officer incharge of the nearest police station once in every month, even if there be no change in his address. The said officer

may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the

State send a report in writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to the State

he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer incharge of the police station nearest to the

place where he may be staying] "the specified area or areas")

12 It is required to be noted that Sections 55 and 56 of the police act are contained in Chapter V whose title is "Special Measures for Maintenance

of Public Order and Safety of State. Section 55 provides for dispersal of gangs and bodies of persons. It contemplates that the Commissioner in a

Commissionerate area and in a district the District Magistrate, the SubDivisional Magistrate or the Superintendent empowered by the State

Government in that behalf can invoke the said provision if the movement or encampment of any gang or body of persons in the area in his charge is

causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members

thereof. Hence the overarching aspect is the danger or alarm or reasonable suspicion that unlawful designs are being entertained by such gang or

body of persons. The unlawful designs would include an act which is illegal that is against the provisions of any law, which makes it unlawful.

13 In the instant case, the allegation against the Petitioners is of carrying out the activity of "Matka" which is a form of gambling which is

prohibited and which falls foul of the gambling act. Hence the said activity of "Matka" being in violation of the gambling act, the same would

come within the sweep of an "unlawful design" which is contemplated in Section 55 of the police act. The words "alarm" or "danger"

in the said provision which precede the word "reasonable suspicion" have to be read together with "unlawful designs" meaning thereby the

danger is on account of unlawful designs as also the alarm would also be on account of unlawful designs of the gang or body of persons.

14 In our view, from a plain reading of Section 55 of the police act it can be concluded that any "unlawful design" of a gang or body of persons

would be covered by Section 55 of the police act.

15 Now coming to the contentions of the learned counsel for the Petitioner Shri Umesh Mankapure that having regard to the wording of Section 56(1)

(a) of the police act and the opening part of Section 55, the same being *pari materia*. It is only if an offence punishable under Chapters XII, XVI or

XVII of the Indian Penal Code is registered against the noticee, then only Section 55 can be invoked. In our view, the said submission is misconceived.

As indicated herein above, Sections 55 and 56 have different objects whereas Section 55 is for dispersal of gangs and bodies of persons who are

entertaining unlawful designs. Section 56 is for removal of persons about to commit an offence. Secondly Section 56(1)(a) is not identical to the

opening part of Section 55 though the words "alarm" or "danger" are appearing in both the provisions. Section 56(1)(a) contemplates the

movements or acts of any person causing or calculated to cause alarm, danger or harm to person or property. The offences against the person or

property are those covered by Chapters XVI or XVII which find a place in Section 56(1)(b), which contemplates a person engaged in or about to be

engaged in an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code. Since Sections

56(1)(a) and 56(1)(b) are part of the same Section 56, the requirement mentioned in Section 56(1)(b) would have to be read into Section 56(1)(a).<sup>16</sup>

Hence Section 56(1)(a) can be invoked if the allegation against the noticee is in respect of "alarm", "danger" or "harm" to a person or

property, meaning thereby the allegation against the person would have to be in respect of an offence which is punishable under Chapters XVI or

XVII of the Indian Penal Code. Hence it is not possible to accept the contention of the learned counsel for the Petitioners Shri Umesh Mankapure that

only if an offence punishable under Chapters XVI or XVII is registered, then the provisions of Section 55 of the police act can be invoked against a

gang or body of persons.

16 As regards the submission of the learned counsel for the Petitioners Shri Umesh Mankapure that the offence of gambling being a petty offence it

cannot attract Section 55 of the police act, it is required to be noted that in Section 55 there is no specific reference to any law under which the

offences are required to be registered and punishable.<sup>17</sup> In view thereof, reference could be made to Section 57 of the police act which is the

succeeding Section which can be said to be an indicia as what can be said to be covered by Section 55. Section 57 covers removal of persons

convicted of certain offences.

Section 57(b) covers a person convicted twice or more of an offence under the Bombay Prohibition Act and Section 57(a)(v) contemplates a person

convicted of an offence under the Bombay Prevention of gambling act now the Maharashtra Prevention of Gambling Act.<sup>18</sup> Hence reading of

Section 57 discloses that even the offences under the Bombay Prohibition Act and the Bombay Prevention of Gambling Act are viewed seriously and

the conviction under the said Acts can entail an externment under Section 57.<sup>19</sup> Hence Section 57 in a way fortifies that "unlawful designs" to

would include the offences under the gambling act. In our view, therefore even for the offences under the gambling act, the provisions of Section 55

can be invoked.<sup>20</sup> Hence we reject the said contention of the learned counsel Shri U R Mankapure.

17 In so far as the said issue is covered, the learned counsel Shri Umesh Mankapure initially sought to place reliance on the judgment of a Division

Bench of this Court sitting at Aurangabad (Coram : Prasanna B Varale & Smt. Vibha Kankanwadi, JJ) in Criminal Writ Petition No.0239 of 2018 in

the matter of Kamalkishor s/o. Pusaram Bang v/s. The Superintendent of Police, Jalna and ors dated 12/04/2018. However, having regard to the

judgment of the Division Bench of this Court sitting at Nagpur in Criminal Writ Petition No.355 of 2013 in the matter of Sagarsingh Kesharsingh

Bawari v/s Ministry of Home Department, through its Principal Secretary (Special), Mantralaya, Mumbai, 32 and ors. Dated 03/09/2013 on which

reliance was placed by the Division Bench at Aurangabad and the facts involved in the case before the Division Bench at Nagpur which was a case

involving an externment under Section 56 of the police act, the learned counsel gave up the said reliance.

18 The second issue which arises for our consideration and which is raised in all the above Writ Petitions is whether the Petitioners can be said to

constitute a "gang" within the meaning of Section 55 of the police act. The said issue therefore encompasses within itself the existence of the

jurisdictional fact enabling the authorities to exercise powers under Section 55 of the police act. 19 It was the submission of the learned counsel for the

Petitioners Shri Satyavrat Joshi that the word gang or body of person being collective in nature, the offences which are registered have to be against

the gang members collectively or at least a substantial number of gang members. Such is not the case in the instant Writ Petitions. It was also the

submission of the learned counsel for the Petitioners that to cause an apprehension as regards the danger or alarm or reasonable suspicion that

unlawful designs are being entertained by such gang or body of person, the offences registered against a gang leader and the members has to be in

close proximity to each other whereas in the instant case the offences registered are one in a year in respect of the gang leader and a member, in

some cases from the year 2012 dating up to the year 2017.

Reliance was sought to be placed, by the learned counsel Shri Satyavrat Joshi on the judgment of a Division Bench of this Court, (Coram :

S.C.Dharmadhikari and S B Shukre, JJ) in Criminal Writ Petition No.2385 of 2013 in the matter of Ahammad Mainuddin Shaikh v/s. The State of

Maharashtra and anr, dated 16/08/2013.

The said submission of Shri Satyavrat Joshi was reiterated by the learned counsel Shri Rahul Kadam who submitted that though there are offences

registered against the person who is alleged to be the gang leader and a member there is not a single offence registered against all the gang members

collectively, and therefore, the basic requirement of there being a gang or body of persons was not fulfilled.

The learned counsel Shri V. N. Tripathi for the Petitioners in Writ Petition No.1025 of 2018 would also contend that there has to be a collective

participation for the activities to come within the sweep of Section 55. Reliance was placed by him on the judgment of a Division Bench of this Court

reported in 2014 ALL MR (Cri) 1277 in the matter of Vijay Lalso Jadhav v/s. State of Maharashtra and ors.



20 Per contra it was the submission of the learned Additional Public Prosecutor Mrs. A S Pai for the Respondent/State that since the offences have

been registered against the gang leader and a member, the gang leader and the members qualify to be a gang, though there is no offence registered

collectively against the gang leader and the other members.

The learned Additional Public Prosecutor sought to place reliance on the dictionary meaning of the word "gang" as appearing in Law Lexicon

which reads thus :

"A number of people closely associated; a set of persons working together in a squad or shift; a company of persons working together for

antisocial purposes"

Relying on the said meaning the learned Additional Public Prosecutor would contend that a number of people closely associated would be covered so

as to constitute a gang.

The learned Additional Public Prosecutor would seek to place reliance on the judgment of a Division Bench of this Court sitting at Aurangabad

reported in 2017(2) Bom.C.R. (Cri) 653 in the matter of Balu @ Balasaheb Jagannath Jadhav v/s. Divisional Commissioner, Aurangabad & ors. in

support of her said contention.

21 In the context of the aforesaid issue, Section 55 would have to be revisited, the said provision has already been reproduced in the earlier part of this

Judgment. The said provision as can be seen can be invoked against the movement or encampment of any gang or body of persons in the area of a

Commissioner in the commissionerate area, in a district by the District Magistrate, the Sub-Divisional Magistrate or the Superintendent empowered

by the State Government in that behalf. Therefore the sine qua non for Section 55 to apply is the movement or encampment of any gang or body

of persons. Hence the Section contemplates that there has to be a collective action or concerted action on the part of the gang members. Only

when there is a collective or concerted action that the action of dispersal or removal of each of the gang members can be taken. The word

"gang" has not been defined in the police act. It would therefore be useful to refer to the dictionary meaning of the said word "gang".

Black's Law Dictionary "Gang" means :

"A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes".

Oxford Dictionary "Gang" means :

"an organized group of criminals or disorderly young people".

Hence going by the dictionary meaning of the word "gang" the same also indicates that a gang has to be a collection of persons or a body of

persons who are acting in concert towards a common unlawful object and, just because an offence is registered against a gang leader and one

member of a gang would not mean that they constitute a gang so as to come within the sweep of Section 55 of the police act.Ã, Even the meaning of

the word Ã¢,¬Ã“gangÃ¢,¬ in the Law Lexicon on which the learned Additional Public Prosecutor sought to place reliance cannot be said to be in deviation

to the meaning in the other dictionaries as above.Ã, In fact the learned Additional Public Prosecutor sought to rely upon a line from the meaning in the

Law Lexicon which in our view would be reading the said line out of context.

It is required to be noted that in all the above Petitions, the offence under the gambling act is registered against the gang leader Ã¢,¬Ã“AAÃ¢,¬ with the

alleged member of the gang being Ã¢,¬Ã“BÃ¢,¬, against Ã¢,¬Ã“AAÃ¢,¬ with Ã¢,¬Ã“CÃ¢,¬, Ã¢,¬Ã“AAÃ¢,¬ with Ã¢,¬Ã“DÃ¢,¬, Ã¢,¬Ã“AAÃ¢,¬ with Ã¢,¬Ã“EÃ¢,¬, but not against A, B, C, D,

or E collectively or even against a substantial number of gang members collectively.Ã, It is also required to be noted that in some cases the offence

registered against Ã¢,¬Ã“AAÃ¢,¬ and Ã¢,¬Ã“BÃ¢,¬ is much anterior in point of time to the offences registered against Ã¢,¬Ã“AAÃ¢,¬ and Ã¢,¬Ã“EÃ¢,¬ and therefore there

is no proximity between the offences and therefore the test of there being a collective participation is not satisfied as they are all individualistic cases

registered against the alleged gang leader and a member.

22 The learned Additional Public Prosecutor Mrs. A S Pai on the basis of the facts which are involved in each of the above Writ Petitions sought to

distinguish the facts in Writ Petition No.1546 of 2018 and Writ Petition No.5113 of 2017.Ã, It was the submission of the learned Additional Public

Prosecutor that in so far as the said two Writ Petitions are concerned, the cases registered against the gang leader and the gang members which are

adverted to in the show cause notices disclose that more than one offence is registered under the gambling act against the alleged gang leader Altaf

Rajekhan Pathan and the gang member Shahid Aslam Pathan and, the gang leader Altaf Rajekhan Pathan and the gang member Ramdas Rajaram

Keware in Writ Petition No.1546 of 2018.Ã, In so far as Writ Petition No.5113 of 2017 is concerned, more than one offence is registered against the

alleged gang leader Ajij Mehabub Shaikh and the gang member Taimur Liyakat Shaikh, gang leader Ajij Mehabub Shaikh and the gang member Tejas

Dattatray Ghalage and the gang leader Ajij Mehabub Shaikh and the gang member Dattatray Gunda Pawar. Reliance is sought to be placed on the

Division Bench judgment of this Court in Balu alias Balasaheb Jagannath Jadhav's case (supra).

23 We have gone through the FIRs which have been registered in the said two Writ Petitions. No doubt there are one or more cases registered

against the gang leaders and the gang members in the said two Writ Petitions, however, there is no case registered collectively against all the

members who allegedly constitute the gang or even a substantial number of them.Ã, In our view, therefore, the said cases also fall short of the

requirements of there being a collective participation by all the gang members in the unlawful activity. Hence in our view, the said cases cannot be

differentiated from the other cases which as indicated above are involving the singular cases only against the alleged gang leader and a member and

not collectively against all the members who constitute a gang or at least a substantial number of them.

The reliance placed on the judgment of the Division Bench in Balu alias Balasaheb Jagannath Jadhav's case (supra) is misplaced, as the said judgment

is turning on the facts of the said case where offences were registered not only under the gambling act but also under the Indian Penal Code against

the Petitioner who was the gang leader and the other five members of the case.Ã, In the facts and circumstances of the case, the Division Bench

held that the requirements of Section 55 of the police act were fulfilled. Pertinently the issue as to what would constitute a "gang" was not

required to be addressed by the Division Bench.

24 Now coming to the judgment of the Division Bench of this Court Ahammad Mainuddin Shaikh's case (supra).Ã, In the said case the facts were

that the offences were registered against the gang leader and one member of the gang and no offences were registered collectively against all the

gang members.Ã, It is in the said context that the Division Bench held that the Petitioner in the said Petition and the other members did not constitute

a gang as there is no collective participation by the gang leader and the alleged members.Ã, The said judgment is holding the field since the year 2013.

A similar note was sounded by the Division Bench in Vijay Lalso Jadhav's case (supra).

The facts in the case of Ahammad Mainuddin Shaikh (supra) can be said to be identical to the facts in the instant cases, as in the instant cases also

the offences under the gambling act have been individually registered against the gang leader and one member as can be seen from the show cause

notices which are issued to the Petitioners in all the above Writ Petitions. There is no offence registered against all the gang members collectively or

even against a substantial number of the members collectively so as to constitute a gang.Ã, In our view, therefore the Petitioners in all the above Writ

Petitions can hardly be said to constitute a gang so as to entitle the authorities to invoke the provisions of Section 55 of the police act.Ã, Hence it

would have to be held that there is an absence of the essential jurisdictional fact of there being a gang, so as to entitle the authorities to exercise

powers under Section 55 of the police act. In our view, since the externment order impinges upon the personal liberty of an individual, the provisions

have to be strictly construed and by a convoluted, process the provisions cannot be made applicable.

25 In so far as Writ Petition No.4953 of 2017 is concerned, a submission was also made that the in-camera statements which have been referred to

in the show cause do not contain the particulars for the Petitioner to make an effective representation against the show cause notice and therefore the

order of externment is vitiated on the said ground. In support of the said contention reliance is placed on the judgment of the Division Bench of this

Court (Coram A.S.Oka & S.C.Gupte, JJ) in Criminal Writ Petition No.3544 of 2013 in the matter of Imtiyaz Afzal Hussain Shaikh v/s. The Asst.

Commissioner of Police, Wanavadi Division, Pune and ors dated 04/12/2013. A contention was also raised that extraneous material has been taken

into consideration whilst passing the order of externment. In support of which contention reliance was placed on the judgment of the Division Bench

of this Court reported in 1980 Cri.LJ 1547 in the matter of Ganu v/s. M. V. Chitale and another. As also the contention that the in-camera

statements have been referred to in the externment order though they are not part of the show cause notice for which reliance is placed on the

judgment of a Division Bench of this Court in 2015 ALL MR (Cri.) 2936 in the matter of Rajwardhan Babaso Patil & ors. V/s. Vijaysinha Jadhav &

ors. Though such contentions have also been raised in some of the other Writ Petitions, it is not necessary for us to delve into the said contentions

as we are of the view that the basic requirement of there being a gang or a body of persons is not satisfied in the instant cases, the Petitioners would

therefore have to succeed on the said ground.

26 For the reasons aforestated the above Writ Petitions are required to be allowed and are accordingly allowed. The orders passed by the

Externment Authority as well as the Appellate Authority i.e. the Divisional Commissioners are quashed and set aside. Resultantly Rule is made absolute

in the above Writ Petitions as follows :

[1] Writ Petition No.2454 of 2018 in terms of prayer clause (a).

[2] Writ Petition No.275 of 2018 in terms of prayer clause (a).

[3] Writ Petition No.305 of 2018 in terms of prayer clause (a).

[4] Writ Petition No.1359 of 2018 in terms of prayer clause (a).

[5] Writ Petition No.1546 of 2018 in terms of prayer clause (a).

[6] Writ Petition No.4849 of 2017 in terms of prayer clause (a).

[7] Writ Petition No.4850 of 2017 in terms of prayer clause (a).

- [8] Writ Petition No.5113 of 2017 in terms of prayer clause (a).
- [9] Writ Petition No.5339 of 2017 in terms of prayer clause (a).
- [10] Writ Petition No.4953 of 2017 in terms of prayer clauses (a) & (b).
- [11] Writ Petition No.4820 of 2017 in terms of prayer clause (b).
- [12] Writ Petition No.5455 of 2017 in terms of prayer clause (b).
- [13] Writ Petition No.5116 of 2017 in terms of prayer clause (b).
- [14] Writ Petition No.5040 of 2017 in terms of prayer clauses (a) & (b).
- [15] Writ Petition No.1025 of 2018 in terms of prayer clauses (b) & (c).
- [16] Writ Petition No.2164 of 2018 in terms of prayer clause (A).
- [17] Writ Petition No.1625 of 2018 in terms of prayer clause (a).
- [18] Writ Petition No.4934 of 2017 in terms of prayer clause (a).
- [19] Writ Petition No.4945 of 2017 in terms of prayer clause (a).
- [20] Writ Petition No.5055 of 2017 in terms of prayer clause (a).
- [21] Writ Petition No.61 of 2018 in terms of prayer clause (a).

The parties are left to bear their respective costs.