**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 27th OF JUNE, 2022

WRIT PETITION NO.8003 OF 2022

Between:-

ANWAR KHAN JILANI S/O SHRI GULAM AHMED JILANI, AGED 50 YEARS, OCCUPATION- AGRICULTURIST, RESIDENT OF VILLAGE KHUDARAMPUR, POLICE STATION MURWAS, TEHSIL LATERI, DISTRICT VIDISHA (MADHYA PRADESH)

…....PETITIONER

(BY SHRI GAURAV MISHRA – ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH, THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF MADHYA PRADESH, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **COMMISSIONER, BHOPAL DIVISION (MADHYA PRADESH)**

3. **THE DISTRICT MAGISTRATE/ COLLECTOR, DISTRICT VIDISHA (MADHYA PRADESH)**

4. THE SUPERINTENDENT OF POLICE, DISTRICT VIDISHA (MADHYA PRADESH)

……..RESPONDENTS

(BY SHRI DEPPAK KHOT – GOVERNMENT ADVOCATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed against the order dated 02/02/2022 passed by Commissioner, Bhopal Division, Bhopal in Appeal No.169/Appeal/2021-22 and order dated 06/08/2021 passed by District Magistrate, Gwalior in Case No.4/Cr.P.C./2021, by which an order of externment has been passed against the petitioner.

2. It is submitted by the counsel for the petitioner that on 25/06/2021 a show cause notice was issued by the District Magistrate, Vidisha under Section 5 of Rajya Suraksha Adhiniyam calling upon the petitioner to explain as to why an order of externment may not be passed against him for a period of one year as the petitioner is involved in criminal activities, as a result, social atmosphere of the area is getting affected and the criminal cases registered against him and the preventive measures also could not control his criminal activities. Members of society are living under apprehension, which is adversely affecting the law and order situation as well as peace ad tranquility in the society. It appears that the petitioner did not respond to the show cause notice issued by the District

Magistrate, Vidisha. From the impugned order dated 06/08/2021 passed by District Magistrate, Vidisha, it is clear that on 06/07/2021 and 12/07/2021, the petitioner sought time to file reply, but no reply was filed and accordingly, final order dated 06/08/2021 was passed by the District Magistrate, Vidisha after considering the criminal antecedents of the petitioner. Being aggrieved by the order passed by District Magistrate, the petitioner filed an appeal before the Court of Commissioner, Bhopal Division, Bhopal, which too has been dismissed by order dated 02/02/2022 (Annexure P/1).

3. Challenging the order passed by the authorities below, it is submitted by the counsel for the petitioner that the respondents have considered the stale and old cases for passing an order of externment against the petitioner. It is well established principle of law that old and stale cases cannot be taken into consideration as the order of externment adversely affects the life and liberty of a person, which cannot be curtailed except in accordance with law. It is submitted that the impugned order was passed by District Magistrate without supplying the necessary documents.

4. *Per contra*, counsel for the respondents have supported the findings recorded by the authorities.

5. Heard the learned counsel for the parties.

6. In the case of **Arvind Singh @ Pappu Vs. State of Madhya Pradesh and Others** reported in **2017 (4) MPLJ 579,** the Co-ordinate Bench of this Court has held as under:-

> "**8.** A plain reading of section 5(b) of the Act of 1990 quoted above, would show that for passing an order of externment against a person,

two conditions must be satisfied :-

> (i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under section 506 or 509 of the Indian Penal Code, 1860 or in the abetment of any such offence; and
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> (ii) In the opinion of the District Magistrate, 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."

7. The order of externment is not an ordinary measure and it must be resorted to sparingly and in extraordinary circumstance. By passing an order of externment fundamental right of a person of free movement throughout the territorial of India is curtailed and, therefore, it must with stand the test of reasonableness. The order of externment should be sparingly used. The Supreme Court in the case of **Deepak S/o Laxman Dongre Vs. The State of Maharashtra & Ors.** by judgment dated **28/01/2022** passed in **CRA No.139/2022** has held as under:-

> **"4.** We have given careful consideration to the submissions. Under clause (d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the

restriction imposed by passing an order of externment must stand the test of reasonableness.

6. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police, State of Maharashtra1 in paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with.

7. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction 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 offences punishable under Chapter XII, XVI or XVII of the IPC. Offences

under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).

8. This Court in the case of **Rajjan Yadav Vs. State of M.P. and others (Principal Seat)** reported in **ILR (2021) MP 1512** held as under :-

> "**7.** It is well established principle of law that two conditions are required to be satisfied for passing an order of externment:
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> **9.** Secondly, there has to be some material to show that the witnesses were not coming forward to give statement against the proposed externee.
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> **13.** Thereafter, in para 13, the District Magistrate, Jabalpur, without considering the nature of criminal cases registered against the petitioner, its outcome, as well as without considering that whether the stale cases can be taken into consideration for passing the order of externment, directly jumped to the conclusion that since, one more criminal case was registered against the petitioner in the year 2020, therefore, his activities have made him liable for his

externment from the District Of Jabalpur and its neighboring Districts Mandla, Dindori, Narsinghpur, Seoni, Katni, Damoh and Umaria. In para 13, except by mentioning that he has gone through the various orders passed by the Courts, nothing has been discussed as to why the activities of the petitioner are detrimental to the law and order requiring him to remove him from the District of Jabalpur and its neighboring District. It is well established principle of law that reasons are heartbeat of an order. The Supreme Court in the case of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan,** reported in **(2010) 9 SCC 496** has held as under :

> **46.** The position in the United States has been indicated by this Court in *S.N. Mukherjee* in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee* this Court relied on the decisions of the US Court in *Securities and Exchange Commission* v. *Chenery Corpn.* and *Dunlop* v. *Bachowski* in support of its opinion discussed above.
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> **47.** Summarising the above discussion, this Court holds:
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> (*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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> (*b*) A quasi-judicial authority must record reasons in support of its conclusions.
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> (*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> (*d*) Recording of reasons also operates as a valid

restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

> (*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor.*)
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> (*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain* EHRR, at 562 para 29 and *Anya* v. *University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

9. Thus, it is clear that the competent authority must record its subjective satisfaction of the existence of the ground mentioned in Section 5 of Rajya Suraksha Adhiniyam, which reads as under:-

> **"5. Removal of persons about to commit offence.** - Whenever it appears to the District Magistrate-
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> (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or
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> (b) that there are reasonably 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 or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate 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

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

the District Magistrate may, by an order in writing duty served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or my part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself."

10. Therefore, a specific finding is to be given to the effect that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or there are reasonable grounds for believing that such person is engaged or is about to engage in the commission of offence involving force or violation or offence punishable under Chapter XII, XVI or XVII or under Sections 506 and 509 of IPC and the witnesses are not willing to come forward to give evidence in public against any such person by reason of apprehension on their part as regards the safety of their person or property. If the reasons assigned by the authorities are taken into consideration, then it is clear

that the order under challenge has been passed on the ground that 12 criminal cases were registered against the petitioner apart from preventive measures on three occasions.

11. List of criminal antecedents of the petitioner reads as under:-

क्र.	अपराध क्र.	धारा	थाना
1	52 / 99	343,347,387,34 भादवि	मुरवास
2	68 / 99	294,506,34 भादवि	मुरवास
3	93 / 08	294,323,506,34 भादवि	मुरवास
4	25 / 10	323,324,34 भादवि	मुरवास
5	350 / 20	505(1)(ब),505(2) भादवि	मुरवास
6	252 / 95	294,506 भादवि	मंगलवारा
7	202 / 1996	354,294,506 भादवि	मंगलवारा
8	203 / 1996	451,324,506 भादवि	मंगलवारा
9	225 / 1996	420,467,468,469 भादवि	मंगलवारा
10	168 / 09	294,506,323,34 भादवि	मंगलवारा
11	134 / 12	294,323,506,34 भादवि	मंगलवारा
12	13 / 20	110 जाफौ	मंगलवारा
13	01 / 21	110 जाफौ	मुरवास
14	21 / 21	रोजनामचा सान्हा 13.03.2021	मुरवास
15	124 / 21	452,294,323,506,34 भादवि	मुरवास

12. From the plain reading of this list, it is clear that one case was registered against the petitioner in the year 1995, three cases were registered in the year 1996, two cases were registered in the year 1999, one case was registered in the year 2008, one case was registered in the year 2009, one case was registered in the year 2010 and one case was registered in the year 2012. Thus, it is clear that 11 criminal cases were registered against the petitioner from the year 1995 to 2012. From the nature of offences disclosed in the impugned order, it is clear that most of

the cases were of Sections 294, 323, 506, 343, 347 of IPC etc. From 2012 onwards, first preventive measure was taken against the petitioner under Section 110 of Cr.P.C. in the year 2020. Another proceedings under Section 110 of Cr.P.C was initiated in the year 2021 and there is one more *rojnamcha* entry dated 13.03.2021. Thus, after the year 2012, there is nothing on record to suggest that the petitioner was involved in any criminal activity. Once in the year 2020 and twice in the year 2021, preventive measures were taken against him. Thereafter, according to the criminal antecedents, one offence under Sections 452, 294, 323, 506, 34 of IPC was registered against the petitioner in crime No.124/2021. The reasons assigned by the District Magistrate to pass an order of externment are contained in paragraph 5 of the impugned order dated 06.08.2021, which reads that after going through the recommendation made by the Superintendent of Police as well as after considering the documents and the statements of the witnesses of the department, it is clear that from the year 1995 till 2021, 12 criminal cases were registered against him and on three occasions preventive measures were taken against him. Thus, there is an apprehension of insecurity and in-spite of preventive measure, there is no improvement in his conduct and he is repeatedly committing the offence and in order to maintain the law and order, it is necessary to put a check on the activities of the petitioner, and accordingly, action under section 5(a)(b) of Rajya Suraksha Adhiniyam is warranted.

13. The respondents filed their reply to the writ petition. In their return, they annexed the copy of statement of SHO, Police Station Murwas, District Vidisha. In the statement, after referring to the fact that

several cases were registered against the petitioner, it was stated by the SHO that because of criminal activities of the petitioner, there is an uproar in the society, and accordingly general public is apprehensive of lodging report or giving evidence against the petitioner. However, there is nothing in the statement to substantiate such opinion formed by the concerning witnesses.

14. Be that whatever it may.

15. In order to pass the test of reasonableness, respondents must show that there is a live link between the activities of petitioner and necessity of passing an order of externment. Therefore, in order to fulfill this requirement, the State should not consider the stale and old cases which do not have live link with the necessity of passing an order of externment. As already pointed out, 11 criminal cases were registered against him from the year 1995 to 2012. Thereafter, there is a complete pause and no offence was registered against the petitioner. Thereafter in the year 2020, preventive measure was taken against him under Section 110 of Cr.P.C. and in the year 2021 also, one preventive measure under Section 110 of Cr.P.C was once again taken against him. The respondents have also relied upon some *rojnamcha* entry dated 13.03.2021, but the respondents have not filed the copy of *rojnamcha* entry to show that as to whether it has any live link with the necessity of passing an order of externment.

16. The only offence which was registered against the petitioner is crime No.124/2021 i.e. after nine years of the offence committed for the last time. Petitioner has filed copy of FIR lodged against petitioner in crime No. 124/2021 in which complainant is one Khalid Jilani and it is

clear from the FIR that father of the complainant had two wives and three children from the second wife, namely Asad, Arsad, Anwar (petitioner) and it was also alleged that in-spite of fact that father had specifically partitioned the property, but still they are creating nuisance. On the date of incident, i.e. 19.06.2021 at about 03:00 PM, when his driver was cultivating the land belonging to his elder brother Hamid Jilani, co-accused Arshad and his son Moshin and Yamin came on the spot and tried to assault the driver. The driver ran away after leaving the tractor and informed the complainant Khalid Jilani about the incident. Accordingly, complainant and his brother Raja Miya went near the tractor and found that Arshad, Yamin and Moshin were there and they started abusing the complainant and Raja Miya. It is alleged that when it was objected by the complainant and Raja Miya, then Arshad, Moshin and Yamin assaulted him by *lathi,* fists and blows. When his brother Raja Miya tried to intervene in the matter, then Arshad, Moshin and Yamin also assaulted Raja Miya by *lathi.* At that time, Asad Jilani, Anwar Jilani (Petitioner) and Zaid came on the spot and exhorted to kill them, and accordingly, complainant and his brother ran away. It was further alleged that Arshad, Yamin and Moshin also chased them which were followed by the petitioner Anwar, Asad and Zaid and assaulted them by *lathi.* Thus, it is clear that it was a family affair. This act of the petitioner may be detrimental to law and order because some property dispute was going on between the parties, but by no stretch of imagination, it can be said that this act of the petitioner will in any manner adversely affect the public law and order situation. At the most, it may be a case of violation of ordinary law and order situation, but it cannot be said that it would

create any fear or panic in the minds of general public.

17. The offence which was registered in the year 2021 cannot be said to be of such a nature which might have sent the wave of shivering and apprehension in the minds of general public thereby adversely affecting the public peace and tranquility. There is a vast difference between maintenance of public order and the violation of ordinary law and situation.

18. In the present case, by no stretch of imagination, it can be said that the offence committed by the petitioner in the year 2021 was in any manner prejudicial to the maintenance of public order. Furthermore, the District Magistrate did not give any finding that the act of the petitioner is causing or calculated to cause alarm, danger or harm to person or property. There is no finding that the witnesses are not willing to come forward to give evidence in public by reason of apprehension on their part as regards the safety of their person or property.

19. So far as the the old cases are concerned, this Court has already held that they do not have any live link with the necessity of passing order of externment. Since the order of externment does not satisfy the test of reasonableness and has been passed without coming to the conclusion as to whether the requirements of Section 5 of Rajya Suraksha Adhiniyam are applicable to the activities of the petitioner, this Court is of the considered opinion that the order of externment cannot be given the stamp of approval.

20. So far as the order passed by the Appellate Authority is concerned, this Court has again and again reiterated that filing of appeal is not a mere formality. The authorities must realize that there is a difference

between their administrative functions and quasi judicial functions. While discharging quasi judicial functions, they should consider as to whether the order passed by the original authority is in-conformity with law or not. In the present case, the Appellate Authority has dismissed the appeal in a most casual manner without considering the requirements of law as well as without considering that there should be a a live link between the activities of a person with the necessity of passing an order of externment and that unless and until there is a live link between the cases with the necessity of externment order, old and stale cases, cannot be taken into consideration.

21. Accordingly, this Court is of the considered opinion that the order dated 06.09.2021 passed by District Magistrate, Gwalior and order dated 02.02.2022 passed by Commissioner, Bhopal Division, Bhopal cannot be given the stamp of approval. Accordingly, both the orders are quashed.

22. Resultantly, the petition is **allowed**.

(G.S. AHLUWALIA)
JUDGE

Abhi