

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 23222 of 2024

AKHLESH SHARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Akram Khan - Advocate for the petitioner.

Shri Naval Kishore Gupta - Government Advocate for the respondents/State.

ORDER

(Passed on 18th day of September 2024)

The present Writ Petition is preferred by the petitioner under Article 226 of the Constitution of India seeking following reliefs :-

- (i) That, the impugned order dated 11.07.2024 (Annexure P/1) and the order dated 12.04.2024 (Annexure P/2) may kindly be set aside in the interest of justice.
- (ii) That, cost of the petition may kindly be awarded to the petitioner.

2. The petitioner is resident of village Kudajagir, Police Station, Tendua, District Shivpuri. Superintendent of Police, Shivpuri moved

a letter dated 01.11.2023 to the District Magistrate (D.M.) Shivpuri for initiating the proceeding of externment against the petitioner under Section 3 and 5 of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (hereinafter shall be referred as 'Adhiniyam'). D.M. Shivpuri issued a show cause notice dated 06.11.2023 purportedly under Section 8(1) of the Adhiniyam to the petitioner, which was served over the petitioner and in pursuance thereof, he caused his appearance before the D.M. Shivpuri and submitted reply.

3. According to him, he has been acquitted from three offences imputed against him out of total four offences and one case is pending before the police authority for filing the charge sheet. The petitioner submitted therein about his innocence and false implication. He took a stand that only on the basis of the letter issued by the Superintendent of Police, Shivpuri, it cannot be presumed that he was a cause of harassment and terror to the people at large.

4. D.M. Shivpuri passed order dated 12.04.2024 (Annexure P/2) and externed the petitioner for a period of three months from the nearby districts of Shivpuri while exercising power under Section 3(2) and 5(a) and (b) of the Adhiniyam.

5. Being aggrieved by the said order dated 12.04.2024 (Annexure P/2), the petitioner filed an appeal under Section 9 of the Adhiniyam with the pleading that the cases imputed against him are old and stale and he had never

been convicted even in a single criminal case. However, appellate Court passed the order dated 11.07.2024 (Annexure P/1) dismissing the appeal of the petitioner. Therefore, the petitioner is before this Court.

6. It is the submission of the counsel for the petitioner that the authorities below erred in passing the impugned order and ignoring the fact that petitioner faced old and stale cases and not the cases which are pending against him. No objective consideration was made by the authority before arriving to the conclusion that the petitioner is a threat/terror to the people at large in the society. Most of the cases registered against him are in the year 2002, 2012, 2015 and 2022, therefore, they are old and stale cases.

7. It is also submitted by the counsel for the petitioner that D.M. Shivpuri in its impugned order has not stated anything about the fact that witnesses are not coming forward for deposition of their statements, therefore, it was not a case where people were afraid of him and were not willing to come forward to give evidence. The notice, as issued by the competent authority, is contrary to the provisions of Section 5 (a) and (b) of the Adhinyam.

8. It is further submitted that the proceeding of externment restraining the accused from entering in particular area (Shivpuri and neighbouring districts herein) infringes the fundamental right of the petitioner enshrined under Article 19 (1)(d) of the Constitution of India. He relied upon the

judgment of this Court in the case of **Asad Khan Jeelany Vs. State of M.P. and others (Writ Petition No.5620 of 2022)** dated 07.08.2023, **Saurabh Singh Raghuvanshi Vs. State of M.P. and others (Writ Petition No.6083 of 2023)** and **Ashok Kumar Patel Vs. State of M.P. and others - (2009) 4 MPLJ 343.**

9. *Per contra*, learned Government counsel for the respondents/ State opposed the prayer. According to the learned counsel, three months' externment order was given to the petitioner. It is over by 12.07.2024 because it became effective on 12.04.2024. Therefore, discussion is more academic than real, however, he submitted the allegations on merits also.

10. According to him, there are four criminal cases against the petitioner in which one case was of 304 IPC (Crime No.103/2022) for the offence punishable under Section 147, 148, 149 and 304 of IPC read with Section 25, 27 and 30 of Arms Act. Therefore, allegations of first case appear to be serious. Twenty-two years' back petitioner must be around 19-20 years' old and at that point of time, he committed offence of murder. Although, thereafter he did not involve in allegations of Arms Act and offence under Section 304 of IPC but in another case after ten years, he committed offence under Section 279 of IPC. Thereafter, in the year 2015, he committed offence of Section 506-B of IPC and shared common intention. Another case was registered against him vide Crime No.63/2022 for the offence under Sections

392, 353, 294, 506, 34 of IPC, added Section 395 of IPC and Section 11/13 of M.P.D.V.P.K.Act. Looking to his conduct in the year 2013, he was bound over under Section 110 of CPC. People in the vicinity are afraid of him. Therefore, he faced severe allegations, therefore, rightly dealt with. Externment was given only for three months. Learned counsel prayed for dismissal of this petition.

11. Heard counsel for the parties at length and perused the record.

12. The case is in respect of externment of petitioner under the Adhiniyam. This Adhiniyam was enacted to provide for the security of the State, maintenance of public order and certain other matters connected therewith. Section 3 of the Adhiniyam gives power to the District Magistrate to make restriction order. Section 3 of the Adhiniyam is reproduced below for ready reference :-

3. Power to make restriction order. - (1) If a District Magistrate is satisfied with respect to any persons that he is acting or is likely to act in a manner prejudicial to the security of the State or the maintenance of public order and that, in order to prevent him from so acting it is necessary in the interest of the general public to make an order under this Section, the District Magistrate, may make an order,-

- (a) requiring him to notify movements or to report himself or both to notify his movements and report himself in such manner at such times and to such authority or persons as may be specified in the order;
- (b) imposing upon him such restrictions as may be specified in the order, in respect of his association or

communications with such persons as may be mentioned in the order;

- (c) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order.

(2) A restriction order made under sub-section (1) shall remain in operation for such period as may be specified therein and shall in no case exceed a period of one year from the date of the order.

13. Similarly, Section 5 of the Adhiniyam deals in respect of removal of person which according to the District Magistrate is about to commit offence. Section 5 of the Adhiniyam is reproduced below for ready reference:-

5. Removal of persons about to commit offence. – Whenever it appears to the District Magistrate –

- (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 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 duly 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 any 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.”

14. In the present case, externment order has been passed under Section 3 (2) and Section 5(a) and (b) of the Adhiniyam. Section 5 of the Adhiniyam, under which the order of externment has been passed, speaks out two eventualities for passing an order of externment against the petitioner. These eventualities are :-

- (i) There are reasonable grounds for believing that the 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 IPC or in the abatement of any such offence; and,
- (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.

15. In the present case, petitioner faced trial/investigation in four cases, as referred above, out of which in Crime No.103/2002 and in Crime No.139/2012 he has been acquitted, whereas in Crime No.19/2015, a fine of Rs.500/- has been imposed upon the petitioner. In Crime No.63/2022 police has not filed challan so far. A complaint at No.32/23 was also registered in relation to Section 110 of Cr.P.C. which has been closed.

16. In one case, the petitioner faced allegation for the offence under Section 304 of IPC and in on case he faced allegations of offence under Section 353 of IPC. If nature/motive of both these offences are considered in juxtaposition, then it appears that the petitioner was emboldened by his alleged act committed under Section 304 of IPC and the audacity increased to the extent where he tried to undermine the authority of the police officers. Offence under Section 353 of IPC is usually a challenge to the concept of Rule of Law and Administration of Justice. Therefore, its punishment may not be severe but it has wider ramification in the matters of externment. Reason is obvious. Petitioner challenges the Rule of Law and Administration of Justice. In such eventualities, the person like the petitioner start intimidating common people also and try to break public piece on one pretext or the other. Not only that, they may at times be a threat to National Interest also.

17. In the present case, from the record it appears that SHO Police Station Tendua, District Shivpuri sent a report dt.24.10.2023 to S.P. Shivpuri

in which activities and audacity of petitioner were referred. On the basis of the said report, S.P. Shivpuri made a request vide letter dt.02.11.2023 to District Magistrate Shivpuri about taking appropriate steps under the Adhinyam. Thereafter, on 06.11.2023, a show cause notice under Section 8 (1) of the Adhinyam was issued to the petitioner and he was show caused for externment for one year. Petitioner appeared and participated in proceedings.

18. Vide show cause notice dt.13.02.2024 issued by the District Magistrate to SHO Police Station Tendua, the evidence was called. Sub Inspector Vivek Yadav deposed on 20.02.2024. He referred the fact regarding conduct of the petitioner and its consequences regarding public peace. Thereafter final arguments were held and impugned order dt.12.04.2024 was passed. Therefore, due opportunity of hearing was given to the petitioner as required under the Adhinyam.

19. Section 10 of the Adhinyam deals regarding finality of the orders passed in certain cases. Section 10 of the Adhinyam defines the scope of orders passed in cases of externment. Section 10 is reproduced for ready reference :-

10. Finality of orders passed for in certain cases.- Any order passed under Section 3, 4 5 and 6 shall not be called in question in any Court except on the grounds-

- (i) that the District Magistrate had not followed the procedure laid down in sub-section (1) of Section 8;
or

- (ii) that there was no material before the District Magistrate upon which he could have based his order;
or
- (iii) that the District Magistrate was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under Section 5.

20. Perusal of Section reveals that exteree can only raise the grounds that due procedure has not been followed or that material before the District Magistrate was not made available or that witnesses were unwilling to come forward. In other words, scope is quite restricted. In present case, those grounds were not available to the petitioner.

21. Even otherwise, one has to see from the vantage point of society also, because in the hands of exteree usually the common member of the society, who faces the wrath of aggression. Public peace, tranquility and security of State including National/Social Interest.

22. At times, it is also seen that the criminal antecedents of a person like petitioner are being used to run Business of Fear. Many a times, his tryst with crime embolden the person and he involves in land grabbing and other property related matters. At times, he is used as muscleman by the vested interest.

23. In the present case, three months' period of externment has been given, therefore, it appears that District Magistrate has rightly passed the impugned order duly affirmed by the Commissioner, Gwalior Division,

Gwalior. Judgments referred by the petitioner move in different factual realm, therefore, they are not applicable in the present set of facts. However, observation is made in these judgments that the competent authority passing an order of externment must record its subjective satisfaction of the existence of the ground mentioned in Section 5 of the Adhiniyam, 1990 and thereafter a specific finding is to be given to the effect that the movements or acts of any person are causing or likely to cause danger or harm to person or property or there are a reasonable grounds for believing that such person would engage himself in commission of offence as mentioned under Section 5 of the Adhiniyam, 1990 and that the witnesses of the offences registered against him 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.

24. In the present case, due procedure has been followed and subjective satisfaction of the grounds mentioned in Section 5 of the Adhiniyam have also been recorded as well as conduct of the petitioner and its consequences regarding public peace have also been mentioned. Hence, these judgments also support the cause of respondents/State as well. This is such exceptional circumstance, which does not require reconsideration in wider National/Social interest/public tranquility. Witnesses feared to appear before him in proceedings conducted before trial Court. In cumulative analysis, both the

authorities below have rightly considered the fact situation and passed orders. In fact, only three months' externment given. This fact itself indicates that authorities did not pass order mechanically, but passed objectively. Thus, petition stands **dismissed**.

(Anand Pathak)
Judge

SP