

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 19th OF JULY, 2022

WRIT PETITION No. 10435 of 2022

Between:-

**ANNU @ ANURAG S/O LAXMINARAYAN
RAIKWAR , AGED ABOUT 35 YEARS,
OCCUPATION: BUSINESS R/O 24/1 AMBAR
COLONY P.S. NEELGANGA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI HARSHWARDHAN PATHAK, ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH
SUPERINTENDENT OF POLICE UJJAIN
(MADHYA PRADESH)**

**2. DISTRICT MAGISTRATE UJJAIN (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI AKASH SHARMA, GOVT. ADVOCATE)

.....
*This petition coming on for order this day, the court passed the
following:*

ORDER

The writ petition has been filed by the petitioner under
Article 226 of the Constitution of India against the order dated

07.12.2021, passed by the respondent No.2/District Magistrate, Ujjain whereby, the petitioner has been externed from the District Ujjain and its adjoining Districts for the period of one year under Section 5 of the M.P. *Rajya Suraksha Adhiniyam*, 1990 (hereinafter, the *Adhiniyam*).

02. The aforesaid order has been challenged by the petitioner on the ground that much prior to the said order, an order of detention dated 19.8.2020 was also passed against the petitioner under the provisions of National Security Act, 1980 (hereinafter, the National Security Act) for a period of three months and now the order of externment has also been passed on the same set of criminal cases which have also been considered in the order of detention. Thus, it is submitted by the counsel for the petitioner that there is no application of mind by the respondents in passing the aforesaid order, and also that the order of externment runs contrary to the provisions of Article 20(2) of the Constitution of India and amounts to double jeopardy.

03. A Reply to the petition has also filed by the respondent contending that the petition is not maintainable as it has been filed directly against the order of District Magistrate, Ujjain dated 07.12.2021, whereas under Section 9 of *Adhiniyam*, a remedy of appeal is also available before the Commissioner. Thus, it is submitted that without availing the statutory efficacious alternative

remedy of appeal, this petition has been filed and thus, it deserves to be dismissed on this ground only. It is further submitted that there are 32 criminal cases registered against the petitioner, most of them were of serious nature which has led to passing of the order of externment. However, there is no traversing of the averments made in the petition regarding the petitioner's detention under the provisions of National Security Act on the same set of facts. It is further submitted that there was no violation of the principles of natural justice and the petitioner was given ample opportunity to rebut the show cause notice. In such circumstances, the petition is liable to be dismissed.

04. In rebuttal, Shri Pathak, counsel appearing for the petitioner has submitted that considering the legal grounds raised by the petitioner regarding double jeopardy, the appeal under Section 9 of the Adhiniyam, cannot be said to be an efficacious alternative remedy and since the petitioner's fundamental rights have been violated, the petition under Article 226 of the Constitution of India is the only remedy available to the petitioner under the circumstances.

05. Heard, the counsel for the parties and also perused the record.

06. From the record, it is apparent that while passing the impugned order of externment dated **07.12.2021**, the District

Magistrate, Ujjain has relied upon the 32 criminal cases registered against the petitioner till 11.7.2020; whereas the order of detention was passed on **19.8.2020** and in which also the same cases were referred to Thus, it is apparent that when the aforesaid order of detention was passed by the Collector under the National Security Act on 19.8.2020, all the cases registered against the petitioner were already taken into consideration. Whereas, the show cause notice in the present case was issued to the petitioner on 15.7.2021, i.e. prior to the issuance of the order of detention. In such circumstances, when the Collector had already passed a harsher order of detention for a period of three months against the petitioner on 19.8.2020, in the considered opinion of this Court, on the same set of facts, there was no occasion for the District Magistrate, Ujjain to again pass the impugned order of externment. It is also found that the order of detention was passed only for a period of three months which has already expired and the petitioner has also not challenged the same, and thereafter, no other case has been registered against the petitioner. In such circumstances, after the period of detention was over, the respondents had no right to passing the order of externment against the petitioner, as the object of both the Acts viz; the National Security Act and the Act of 1990 is to prevent an accused from committing further offence and which purpose, in the considered

opinion of this Court was already served while passing the order of detention which is apparently a harsher measure than an order of externment, and there was no fresh reason/criminal case registered against the petitioner which may give rise to a fresh apprehension in the minds of the District Magistrate that the petitioner would continue his criminal activities after around one year of coming out of the jail and would disturb the public peace. In such circumstances, this court is of the considered opinion that the availability of alternative remedy would be no bar in entertaining this petition under Article 226 of the Constitution and the principle of *double jeopardy* as enshrined under Article 20(2) would be applicable in the facts and circumstances of the case as the petitioner cannot be made to suffer twice under two different Acts for the same set of offences.

07. Thus, the petition stands **allowed** and the impugned order dated 07.12.2021 passed by the respondent No.2/District Magistrate, Ujjain is hereby quashed.

Certified copy, as per rules.

(SUBODH ABHYANKAR)
JUDGE