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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 27th OF JUNE, 2023

WRIT PETITION No. 11125 of 2023

BETWEEN:-

**YASIR IBRAHIM S/O KALLU @ IBRAHIM,
AGED ABOUT 37 YEARS, OCCUPATION:
JOURNALIST R/O ANJUMAN NAGAR
KHARGONE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ABHINAV DHANODKAR, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY VALLABH
BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. THE COLLECTOR KHARGONE, DIST.
KHARGONE (MADHYA PRADESH)**
- 3. THE COMMISSIONER INDORE
DIVISION, M.G. ROAD, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI ANAND BHATT, GOVT.ADVOCATE APPEARING ON
BEHALF OF ADVOCATE GENERAL).***

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

ORDER

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India, against the order of externment dated 13.3.2023, passed by the respondent No.2/the Collector, Khargone under the provisions of Section 5(a) of M.P. Rajya Suraksha Adhiniyam, 1990, (hereinafter referred as 'the Act of 1990') which has been affirmed by the respondent No.3 Commissioner, Indore Division, Indore vide order dated 21.4.2023 whereby, the petitioner has been externed from the limits of District Khargone as well as the adjoining Districts viz; Dhar, Indore, Dewas, Khandwa, Barwani, Burhanpur for a period of one year.

2] In brief, the facts of the case are that the petitioner was initially served a show cause notice dated 21.6.2022 regarding his criminal activities, asking him as to why an order of externment be not passed against him. A reply to the aforesaid show cause notice was filed by the petitioner on 13.09.2022. On the said reply, the respondent No.2 has passed the order of externment on the ground that against the petitioner as many as seven cases under IPC have been registered and three prohibitory proceedings have also been initiated. The aforesaid order has been affirmed by the respondent No.3 Commissioner vide order dated 21.4.2023.

3] Counsel for the petitioner has submitted that out of the seven criminal cases registered against the petitioner, he has

already been acquitted from the five cases and the cases are also minor in nature under Sections 147,148,149, 3294, 323, 336, 353 & 427 of the IPC. However, only in the last case at Crime No.314/2022 dated 10.4.2022, Section 326 of the IPC is also mentioned. Thus, it is submitted that only because two cases are pending against the petitioner, the order of externment should not have been passed by the District Magistrate. It is also submitted that the petitioner was not allowed to cross examine or no evidence was taken by the respondents before proceeding further in the matter.

4] In support of his submissions, counsel for the petitioner has relied upon the decisions rendered by the Division Bench of this Court at Jabalpur in the case of *Ajju @ Azam vs. The State of Madhya Pradesh and others*{*Writ Petition No.659 of 2023 decided on 22.5.2023*} and the decision rendered by the Single Bench of this Court in the case of *Amjad s/o Yusuf Mansuri* {*Writ Petition No.7646 of 2023 decided on 15.6.2023*}.

5] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that even though the petitioner has been acquitted from the five cases out of the seven cases registered against him, for the purpose of externment, the factum of registration of offence can certainly be taken into account against him and this point has also been affirmed by the Division Bench of this Court at Jabalpur in the case of *Poonam Gupta vs. The State of Madhya Pradesh and others* {Writ

Petition No.1243 of 2023 vide order dated 31.3.2023}, in which, while relying upon the decision rendered by the Hon'ble Supreme Court in the case of *Haradhan Saha and another vs. State of West Bengal and others*, reported as (1975) 3 SCC 198, it has been held that even if a person is acquitted from the offence, an order of preventive detention is also not a bar to prosecution. Thus, it is submitted that as the present case is of externment, the acquittal of the petitioner in earlier cases can certainly be taken into consideration to look into his antecedents.

6] Counsel for the respondent has also drawn attention of this Court that the petitioner has been involved in disrupting the peace of the society as he has regularly indulged in communal riots and has been involved in the offence of assault. It is submitted that in the year 2022 he was involved in the cases at the time of *Dussehra* and *Ramnavami*, wherein he along with the other accused persons had pelted stones at the procession during the aforesaid festivals. Counsel has further drawn attention of this Court to Section 8(2) of the Act wherein, it is stated that if the petitioner desires cross-examine to any person, he is required to make a proper application in this behalf. However, in the present case, no such application has been made by the petitioner.

7] Heard the counsel for the parties and perused the record.

8] From the record, this Court finds that so far as the

criminal cases are concerned, seven criminal cases have been registered against the petitioner, out of which, he has already been acquitted in five such cases, and the last two cases, which were registered against the petitioner in the year 2022, at Crime Nos.184/2022 and 314/2022, are still pending. It is also found that the prohibitory action has also been taken against the petitioner on three occasions.

9] A bare perusal of the order passed by the District Magistrate, Khargone reveals that the District Magistrate has taken note of the anti-social activities of the petitioner, as he was also involved in spreading the communal violence and in the year 2022, on 10.4.2022, he had also pelted stones in the Ram Navami procession, which lead to wide spread communal violence in the city of Khargone, and law and order situation had arisen. The same observation has also been made in respect of a procession carried out on the occasion of *Dussehra* in the year 2015.

10] The petitioner has also placed on record the judgment dated 14.8.2018, passed in Criminal Case No.2920/2015 in which, the allegation against him and the other accused persons are of assaulting the complainant and the other persons who had gone for burning Ravan's effigy and had put on the make up as Ram, Lakshman and Hanuman but, while coming back from the place, they were assaulted by the petitioner and the other named persons along with 100-150 persons and who had pelted stones

on them. In the said case, the petitioner has been acquitted by the trial court by giving him the benefit of doubt.

11] In the other judgment dated 22.1.2022, in the criminal case arising out of Crime No.511/2015 also, the allegation against the petitioner was that he caused disruption in the crowd gathered to celebrate the burning of Ravan's effigy by pelting stones and the petitioner and the other persons were also armed with various weapons, including swords, iron rods, sticks etc. In that case also, the petitioner was acquitted by giving him benefit of doubt.

12] In yet another decision dated 16.3.2022, passed in Criminal Case No.2964/2015 arising out of Crime No. 512/2025 he has been acquitted, in which also, it is alleged against him that he pelted stones on the people, who had gathered to celebrate *Dussehra* on 22.10.2015. In the judgment dated 5.2.2022, passed in Criminal Case No.1101156/2016, arising out of the Crime No.280/2016, the allegations against the petitioner was of assault on the police party. In the said case also, the petitioner has been given the benefit of doubt.

13] Thus, more or less, the allegation against the petitioner is of causing disruption in the social fabric of society, specially, during the festivals. And in the recent case, which was registered against the petitioner at Crime No. 314/2022 for offence under Sections 147,149, 294, 323, 336, 353 & 427 of

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the IPC, it is alleged that he had pelted stones along with the other accused persons on the people who had gathered to celebrate Ram Navami and were part of Shree Ram Yatra.

14] In view of the specific overt acts of the petitioner, this Court is of the considered opinion that no illegality or jurisdictional error has been committed by the District Magistrate, Khargone while passing the impugned order dated 13.3.2023 and by the Commissioner, Indore Division, Indore in affirming the aforesaid order vide impugned order dated 21.4.2023.

15] So far as the decisions relied upon by the counsel for the petitioner are concerned, the same are distinguishable. The Division Bench of this Court at Jabalpur in the case of ***Poonam Gupta (supra)*** has also relied upon the decision rendered by the Hon'ble Supreme Court in the case of ***Haradhan Saha and another (supra)***. Relevant paras 28 & 29 of the order of the Division Bench of this Court read as follows :-

"28. An order of preventive detention is passed by the Executive in order to prevent the detenu from committing future crimes. It is the apprehension of the Executrix that the detenu is likely to commit the future crime. On the other hand, lodging of an FIR is after a particular crime has been committed by the detenu. The same would lead to the investigation, prosecution and a trial of an offence which has been committed by the detenu. Therefore, it cannot be said that based on an offence committed by the

detenu, the Executive is debarred from issuing an order of preventive detention in view of the fact that an FIR has been lodged and prosecution has been initiated. Therefore, an order of preventive detention will still lie along with the prosecution for the offence. The Hon'ble Supreme Court in the case of *Haradhan Saha and another vs. State of West Bengal and others*, reported in (1975) 3 SCC 198 have held in para 19 as follows:-

“19. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent.”

29. It was further held by the Hon'ble Supreme Court in the case of *Haradhan Saha (supra)* with reference to paras 32 and 33, which reads as follows:-

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.

*An order of preventive detention, may be made before or during prosecution. **An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal.** The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.*

33. Article 14 is inapplicable because preventive detention and prosecution are no synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.”

The same has also been quoted with approval by the Hon'ble Supreme Court in para-15 of its judgment in the case of Nabila (supra).”

(emphasis supplied)

16] This court is of the considered opinion that although the aforesaid case of ***Poonam Gupta*** (supra) was in respect of the order of detention under National Security Act, 1980, however, so far as the observations, which have been made by the Hon'ble Supreme Court in the case of ***Haradhan Sahan and another*** (supra) are concerned, the same can also be applied in a case of externment and the reliance can be placed on the cases in which the petitioner has been acquitted. And, considering the nature of the petitioner's activities, this Court finds that the order of externment dated 13.3.2023 and its confirmation by the

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Commissioner vide order dated 21.4.2023 need no interference.

17. Accordingly, the writ petition being devoid of merit is hereby **dismissed**.

(**SUBHODH ABHYANKAR**)
JUDGE

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