IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 3rd OF OCTOBER, 2024

WRIT PETITION No. 26959 of 2024

BHAYA ALIIAS HIRLA

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Nimesh Pathak, Advocate for the petitioner.

Shri Vishal Singh Panwar- G.A. for the State.

ORDER

Heard.

2. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

> "8.1 A writ be issued and the order dated 12.08.2024 passed by the Respondent no.1 and order dated 27.04.2024 passed by Respondent no.2 be set aside.
>
> 8.2 Pass any other writ or order or direction that this Hon'ble Court may deem fit in the interest of justice.
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> 8.3. Costs of the petition be awarded to the petitioner from the respondents and;"

3. The petitioner is aggrieved by the order of externment dated 12.08.2024, passed in an appeal by the Commissioner, Indore, affirming the order of externment dated 27.04.2024, passed by the Collector, Alirajpur.

4. In brief, the facts of the case are that the petitioner is a resident of Village Baidiya, District – Alirajpur and has a criminal history, which led the respondents to issue a notice to the petitioner under the provisions of M.P.

Rajya Surksha Adhiniyam, 1990 (hereinafter referred to as 'the Adhiniyam of 1990') on 19.04.2024. The reply to which was also filed by the petitioner on 22.04.2024, stating that out of 18 cases, he has already been acquitted in 15 cases, whereas three other cases are pending.

5. It is submitted that the last offence alleged to have been committed by the petitioner was on 26.03.2023, under Sections 294, 323 & 506 of IPC, registered as Crime No.498 of 2023, and prior to that the offence was under Section 341, 294, 323, 506 & 34 of IPC, and thus, it is submitted that the petitioner may have a history of criminal cases, but he had not indulged in any criminal activities one year prior to the issuance of the notice dated 19.04.2024 to him by the S.P. under Section 5 of the Adhiniyam of 1990. It is also submitted that, although as many as 13 prohibitory proceedings have also been initiated against the petitioner, but they were also up to 29.04.2023 only, and thus, it is submitted that the impugned order is liable to be quashed on this ground only as the respondents have relied upon old and stale cases against the petitioner and there were no such circumstances existed, which may be said to be prejudicial to the public peace. Thus, it is submitted that the impugned order be quashed, and the petition be allowed.

6. Counsel for the respondents/State has opposed the prayer and it is submitted that looking to the criminal antecedents of the petitioner, no case for interference is made out.

7. Heard. Having considered the rival submissions and on perusal of the record, it is found that till 26.03.2023 the petitioner was involved in as many as 18 cases, out of which he has already been acquitted in 15 cases and the three cases which were pending, were registered at Crime No.1196 of 2022; Crime No.2013 of 2022 and Crime No.498 of 2023. The last case, Crime No.498 of 2023 was under Sections 294, 323 and 506 of IPC and admittedly, out of 13 prohibitory

proceedings, the last proceeding was initiated against the petitioner on 29.04.2023. Thus, it is apparent that it was already more than one year after committing of the last offence, that too u/s. 294, 323 and 506 of IPC by the petitioner, that the notice under Section 5 of Adhiniyam of 1990 was issued to him. This Court in the case of ***Gangaram S/o Shri Kanha Ji vs. Commissioner, Indore Division & anotyher (W.P. 3213 of 2021 decided on 30.12.2021).*** The relevant para 10 the same read as under:-

> **"10.** It is also not disputed that in the show cause notice, reference of only one case was made, which was registered on 24.09.2018; and the show cause notice was issued on 11.09.2020 i.e. after almost two years of the registration of the offence, whereas the impugned order has been passed by the District Magistrate, Burhanpur on 07.12.2020. Thus, it is apparent that not only that the impugned order has been passed after two years of the case registered against the petitioner, but it also contained reference of one more case registered against the petitioner on 14.10.2020. This Court in the case of **Sudeep Patel vs. The State of M. P.** passed in **M. P. No.904/2017** on **09.01.2018** has already held that thepurpose of initiation of externment proceedings is to restrain a person from committing another offence in the near future and in such circumstances the order of externment must be passed within the close proximity of the offences committed by the petitioner. The relevant paras of the same are reads as under:-
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> "8. In the considered opinion of this Court, the learned District Magistrate while passing the impugned order was oblivious of the statement of object and reasons of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 which provides as under :
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> **"STATEMENT OF OBJECT AND REASONS**
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> For want of adequate enabling provisions in existing laws for taking effective preventive action to counteract activities of anti-social elements Government have been handicapped to maintain law and order. In order to take timely and effective preventive action it is felt that the Government should be armed with adequate power to nip the trouble in the bud so that peace, tranquility and orderly Government may not be endangered.
>
> (2) xxx xxx xxx
> (3) xxx xxx xxx
> (4) xxx xxx xxx"
>
> (*emphasis supplied*)
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> 9. Even according to section 3 of the Adhiniyam of 1990 which is in respect of power to make restriction order, it is for preventing any person from acting prejudicial to the maintenance of the public order. Thus the sole purpose of the Adhiniyam of 1990 is to act timely and effectively to initiate preventive action against a wrongdoer, which object, in the considered opinion of this Court has been totally lost sight of while passing the impugned order. As is already observed that the show cause notice was issued on 11.6.2015, the reply was filed by the petitioner on 14.7.2015 and thereafter the final order was passed by the District Magistrate after recording the statements of various police personnel on 23.5.2017, whereas the District Magistrate ought to have proceeded with the matter expeditiously without affording any undue adjournments to either of the

parties and passed the order within a reasonable time but the matter was kept pending for almost two years. In such circumstances, although no period of limitation is provided in the Adhiniyam, but still, the order should have been passed by the District Magistrate within a reasonable time frame. The order in itself was passed by the District Magistrate within a period of around two years and during this entire period the petitioner was roaming around freely and there is no allegation that during this period also he committed any offense, thus the application of the provisions of Adhiniyam appears to be totally redundant.

10. The District Magistrates, exercising their powers under the Adhiniyam must understand that it is not a mere formality which they have to perform before passing the order of externment under the Adhiniyam which directly affects a person's life and liberty guaranteed under Article 19(1)(d) of the Constitution of India. This court is of the opinion that in a way, the preventive detention is akin to the provisions of externment under the Adhiniyam for both these measures are preventive in nature and are enacted with a view to provide safe environment to the public at large. The only difference being that in case of preventive detention, the threat is imminent and serious whereas in case of externment, its degree is somewhat obtuse and mollified and is not as serious as it is in the case of preventive detention. The necessity to pass an order of preventive detention has been emphasized by the Apex Court in the case of **State of Maharashtra and others v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613** which is equally applicable to the cases of externment**.** The relevant paras of the same read as under:-

> ***"Preventive detention: Meaning and concept***
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> **32.** There is no authoritative definition of "preventive detention" either in the Constitution or in any other statute. The expression, however, is used in contradistinction to the word "punitive".
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> It is not a punitive or penal provision but is in the nature of preventive action or precautionary measure. The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future.
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> **33.** In *Haradhan Saha* v. *State of W.B.* explaining the concept of preventive detention, the Constitution Bench of this Court, speaking through Ray, C.J. stated: (SCC p. 205, para 19)
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> "*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.
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> 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."
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> **34.** In another leading decision in *Khudiram Das* v. *State of W.B.* this Court stated: (SCC pp. 90-91, para 8)
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> > "*8.* … The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.
> >
> > Patanjali Sastri, C.J. pointed out in *State of Madras* v. *V.G. Row* that preventive detention is 'largely precautionary and based on suspicion' and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to

> the observations of Lord Finlay in *R.* v. *Halliday*, namely, that 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'.
> This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (*i*), (*ii*) and (*iii*) of Clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting.
> …....."
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> **35.** Recently, in *Naresh Kumar Goyal* v. *Union of India* the Court said: (SCC p. 280, para 8)
> "*8*. It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society.
> The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.
> **Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped.** (See *P.U. Iqbal* v. *Union of India*, *Ashok Kumar* v. *Delhi Admn*. And *Bhawarlal Ganeshmalji* v. *State of T.N.*)""

> 11. Thus, testing the validity of the impugned order on the anvil of the principles so laid down by the Apex Court, it becomes manifestly clear that the order is flawed and cannot be sustained as there is an inordinate delay in passing the impugned order, which has led to loose (*sic*.) its effectiveness."
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> *(emphasis supplied)*

Thus, it has already been held by this Court that such proceedings of externment must be initiated without wasting any further time, as the very purpose of the externment proceedings is to ensure that no further crime is committed by the offender in the immediate future. In such circumstances, this Court has no hesitation to hold that the impugned orders cannot be sustained in law, in the light

of the fact that the proceedings were initiated after more than one year from the date of last offence committed by him, which was also a petty offence .

8. Accordingly, the petition stands allowed, and the impugned orders dated 12.08.2024 and 27.04.2024 are hereby quashed.

9. With the aforesaid, the petition stands ***allowed*** and ***disposed of***.

(SUBODH ABHYANKAR)
JUDGE

Bahar