HIGH COURT OF MADHYA PRADESH: JABALPUR

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

MISCELLANEOUS PETITION NO.904 OF 2017

Sudeep Patel

Vs.

State of M.P. and others

Present :-
Shri Manish Datt, learned Senior Advocate with Shri Manish Tiwari, Advocate for the petitioner.
Shri Shivendra Pandey, Government Advocate for the respondents/State.

Whether Approved for Reporting : Yes

Law Laid Down: Parity between the preventive detention and the externment proceedings. Reliance is placed on the case of **State of Maharashtra and others v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613.**

Significant Paragraph Nos.8, 9, 10 & 11

ORDER

(Passed on this the 09th day of January, 2018)

The present petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 14.9.2017 (Annexure P/3) passed in an appeal by the Commissioner, Narmadapuram Division, District Hoshangabad whereby the order of externment dated 23.5.2017 (Annexure P/2) passed by the District Magistrate, Harda has been affirmed. Vide impugned order dated 23.5.2017, the

petitioner has been externed from the district Harda and its contiguous districts viz. Hoshangabad, Khandwa, Dewas, Sehore and Betul and their revenue limits for a period of one year.

2. In brief the facts of the case are that the petitioner is a resident of village Baranga, Tehsil Khirkiya District Harda having certain criminal antecedents. On 9.6.2015 the Superintendent of Police, Harda submitted a report against the petitioner before the District Magistrate, Harda proposing initiation of action against him under the provisions of M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as '**the Adhiniyam of 1990**'). On such report a show cause notice was also issued to the petitioner on 11.6.2015, the petitioner filed his reply on 14.7.2015 refuting the allegations levelled against him in the show cause notice and the District Magistrate Harda after considering the petitioner's reply and evidence on record has passed the order on 23.5.2017. Against the aforesaid order, the appeal preferred by the petitioner has also been dismissed vide order dated 14.9.2017 by the Commissioner, Narmadapuram Division, Hoshangabad.

3. Learned senior counsel for the petitioner has submitted

that in the show cause notice, it is mentioned that the petitioner is involved inasmany as 15 cases and in most of the cases the petitioner has already been acquitted by the competent court of jurisdiction although some cases are pending but in those cases also the petitioner has also been bailed out by the Court.

4. Counsel for the petitioner has further submitted that before passing the impugned order the District Magistrate has not formed the opinion regarding the efficacy to invoke the jurisdiction under the provisions of the Adhiniyam of 1990 to extern the petitioner for a period of one year. It is further submitted that no witnesses have come out to corroborate the report submitted by the Superintendent of Police and there was no occasion for the District Magistrate to invoke the provisions of Section 5(b) of the Adhiniyam of 1990.

5. On the other hand, counsel for the respondents has opposed the prayer made by the petitioner and submitted that an appropriate order has been passed by the authorities looking to the serious nature of the offences in which the petitioner was found to be involved and has submitted that no illegality has been committed by the District Magistrate in passing the impugned order. He has also placed on record the original

record relating with the case.

6. Heard learned counsel for the parties and perused the original record produced by the respondents/State.

7. In the present case, a notice under Section 8 of the Adhiniyam of 1990 was issued to the petitioner on 11.6.2015. The reply to the aforesaid notice was submitted by the petitioner on 14.7.2015 i.e. within a period of one month only. Thereafter the petitioner has also sought time to bring on record certain documents and even those documents were submitted by him on 30.11.2015. Thereafter the matter was adjourned from time to time from 15.12.2015 to 25.4.2017 and during this period the statements of witnesses were also recorded. The persons whose statements have been recorded, all of them are the officers of the Police Department itself and no efforts have been made to examine any person from the area of activities of the present petitioner. The petitioner's contention is that he has already been acquitted in most of the cases in which he was tried and in other cases he has been released on bail.

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 :

"STATEMENT OF OBJECT AND REASONS

> 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)

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 relevent 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". 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)

> "*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."

34. In another leading decision in *Khudiram Das* v. *State of W.B.* this Court stated: (SCC pp. 90-91, para 8)

> "*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. ….."

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.*)""
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> (emphasis supplied)

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 its effectiveness.

12. In the result, the writ petition is **allowed** and the impugned order dated 23.5.2017 (Annexure P/2) passed by the respondent No.3/District Magistrate, District Harda as also the order dated 14.9.2017 passed by the respondent No.2/Commissioner, Narmadapuram Division Hoshangabad are hereby quashed.

(Subodh Abhyankar)
Judge
09/01/2018

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