HIGH COURT OF MADHYA PRADESH: JABALPUR

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

WRIT PETITION NO.15324 OF 2017

Parvez Khan

Vs.

The State of M.P. and others

Present :-
Shri Sankalp Kochar, Advocate for the petitioner.
Shri Ankit Agrawal, Government Advocate for the respondents/State.

O R D E R

(Passed on this the 06th day of March, 2018)

The present petition has been filed by the petitioner under Article 226 of the Constitution of India against the order of externment dated 23.5.2017 (Annexure P/1) passed by the respondent No.3/District Magistrate Raisen as also the order passed in appeal dated 21.8.2017 (Annexure P/2) passed by the respondent No.2/Commissioner, Bhopal Division, Bhopal.

2. In brief the facts of the case are that a complaint/*Ishtagasa* was made by the respondent No.4, the Superintendent of Police, Raisen on 3.8.2013 to the District Magistrate, the respondent No.3 under the provisions of M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as '**the Adhiniyam of 1990**') against the petitioner – Parvez Khan aged about 25 years for his externment from the local

limits of District Raisen and its adjoining districts on the ground of his criminal activities and also on the ground that on account of the petitioner's terror the people are not coming forward to lodge any complaint against him and no sooner the petitioner gets the bail in any criminal case, he again indulges himself in criminal activities. In the aforesaid *Ishtagasa* it was alleged that the petitioner has been involved in criminal cases under Sections 147, 148, 149, 307, 323, 341, 324, 336, 383, 294, 452, 506, 34, 427, 451 and 452 of IPC and apart from that he was also involved in cases relating to Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 as also under Sections 41 (2), 110, 151, 107, 116(3) of Cr.P.C. and every now and then the petitioner is found to be involved in criminal activities of threatening and assault. In the proceedings of externment, as many as 7 witnesses were examined by the District Magistrate to substantiate the case of externment against the petitioner**.** A show cause notice in this behalf was issued to the petitioner and the petitioner was asked to mark his presence on 13.2.2017 and on which date he sought time to file reply and despite taking three adjournments he did not file any reply and lastly on 17.4.2017 also the petitioner failed to mark his presence and his counsel also pleaded no instructions, hence ex parte proceedings were initiated against him. Hence, the District Magistrate, vide the impugned order dated

23.5.2017, by invoking the provisions of Section 5(a) & (b) of the Adhiniyam ordered that the petitioner be externed from the local limits of Raisen and the other adjoining districts for a period of one year.

3. In the appeal against the aforesaid order preferred by the petitioner, the Commissioner Bhopal Division has also confirmed the order passed by the District Magistrate, Raisen. It is contended in the appeal that the Ishtagasa/complaint submitted by the Superintendent of Police, Raisen for the petitioner's externment in the year 2013 was not processed expeditiously and after a period of three years ex-parte proceedings were initiated against the petitioner. It is further submitted that on 3.1.2016 the statement of the then Town Inspector was recorded and the notice to the petitioner was issued only on 13.2.2017. It is further contended that before the District Magistrate, the counsel appearing for the petitioner did not appear and no intimation regarding this was also given to the petitioner which has led to passing of the ex-parte order against him.

4. Counsel for the petitioner has contended that there was no occasion for the District Magistrate to pass the order of externment after a period of three years on the basis of the complaint/Ishtagasa made by the Superintendent of Police. It is further submitted by the counsel for the petitioner that since 2013 no case has been registered

against him. Counsel has also relied upon the decision of this Court in Writ Petition No.20429/2016 (**Meera Sonkar Vs. The State of M.P.**) decided on 7.4.2017 as also the Division Bench judgment of this Court in the case of **Ashok Kumar Patel vs State of M.P. and others, 2009(4) MPLJ 434.**

5. On the other hand, counsel for the State has submitted that regardless of the fact that the proceedings were initiated against the petitioner after a period of three years from 3.8.2013 i.e. the date of submitting the Ishtagasa, still he was granted sufficient time to represent his case but despite many opportunities provided to him by the District Magistrate, the petitioner failed to file any reply to the show cause notice hence now he cannot challenge the same on any grounds whatsoever specially when there are concurrent findings of facts by two competent authorities. It is further submitted that the order of externment has been passed after due consideration of material on record and as such no interference is called for.

6. Heard learned counsel for the parties and perused the record.

7. From the perusal of the record, it is apparent that the Ishtagasa/complaint was submitted by the Superintendent of Police, Raisen only on 3.8.2013 proposing petitioner's externment whereas the notice to the petitioner under the provisions of the Adhiniyam of 1990 was issued on 13.2.2017 i.e. after a period of around 3 ½ years.

It is true that during this period as many as six witnesses were examined by the District Magistrate and after being satisfied that the case against the petitioner is made out, a notice was issued to the petitioner in the year 2017, but in this process, it is apparent that the learned District Magistrate has lost sight of the very purpose and object of initiation of externment proceeding against any person under the provisions of Adhiniyam, 1990. In this context, it would be apt to refer to 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)

8. This Court in the case of **Sudeep Patel vs State of M.P. and others** (M.P. No.904/2017) has already held that the object of the Adhiniyam should never be lost sight of while passing any order under the Adhiniyam but in the present case also it is demonstrably clear that the very object of the Adhiniyam has been given a

complete go-bye.

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.

10. The petitioner has also placed on record the order of acquittal dated 17.12.2015 wherein the petitioner has been acquitted along with 13 other accused persons under Section 452, 148, 323, 325,427, 294, 506 PART-II read with Section 149 of IPC. The petitioner has also placed on record the order dated 23.4.2014 passed by this Court in M.Cr.C. No. 2874/2014 wherein the FIR lodged against the petitioner under Section 307, 294, 341, 506/34 of IPC has been quashed and it is also averred in the petition that in most of the cases either the proceedings have been dropped or the petitioner has been acquitted but in the considered opinion of this court none of the such grounds which were raised by the petitioner before the District Magistrate hence the petitioner cannot be allowed to raise all these grounds for the first time before this court. Counsel for the petitioner has further submitted that since 2013 no other case has been registered against

the petitioner.

11. Be that as it may, since the externment proceedings were not completed by the respondent within a reasonable period of time as the Ishtagasa was submitted by the Superintendent of Police on 3.8.2013, the statement of SHO were recorded on 3.1.2016, the show cause notice was issued to the petitioner on 13.2.2017 and the final order was passed on 23.5.2017 this is a fit case to invoke writ jurisdiction of this court under Article 226 of the Constitution and for quashing the order of externment.

12. The District Magistrates, exercising the powers under the Adhiniyam must understand that it is not merely a 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 under the National Security Act, 1980 is akin to the provisions of externment under the Adhiniyam, for both these enactments are preventive in nature and have been enacted with a view to provide safe environment to the public at large. The only difference being that in the 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". 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 *HaradhanSaha* 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. 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. PatanjaliSastri, 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
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> > '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 *BhawarlalGaneshmalji* v. *State of T.N.*)""
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> (emphasis supplied)

13. 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 of externment is flawed and cannot be sustained as there is an inordinate delay in passing the impugned order without any explanation at all which only shows lack of due application of mind. The judgments relied upon by the counsel for the petitioner in the case of **Meera Sonkar** (supra) and also in the case of **Ashok Kumar Patel** (supra) are not applicable in the facts of the present case.

14. As a result, the order dated 23.5.2017 (Annexure P/1) passed by the respondent No.3/District Magistrate/Collector, Raisen as well as the order dated 21.8.2017 (Annexure P/2) passed by the respondent No.2/Commissioner, Bhopal Division, Bhopal are hereby quashed.

15. The petition stands **allowed.**

(Subodh Abhyankar)
Judge
06/03/2018

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