



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI

AND

HON'BLE SMT. JUSTICE ANURADHA SHUKLA
WRIT APPEAL No. 1775 OF 2024
SANJEEV KUMAR MISHRA

Versus

THE STATE OF MADHYA PRADESH & ORS.

Appearance :

Shri Satyendra Prasad Dubey – Advocate for the appellant.

*Shri Praveen Namdeo – Government Advocate for the
respondents/State.*

Reserved on:- 31.08.2024

Pronounced on:- 02.12.2024

ORDER

Per Justice Sushrut Arvind Dharmadhikari :

Heard finally with the consent of both the parties.

This appeal under Section 2(1) of the Madhya Pradesh Uchha Nyayalay (Khandpeeth Ko Appeal) Adhinyam, 2005 has been filed assailing the order dated 15/07/2024 passed in W.P. No.12371/2024, whereby the writ petition filed by the petitioner stands dismissed.



2. The brief facts of the case are that the appellant had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ in the nature of *certiorari* for setting aside of the impugned order of externment dated 06/10/2023 passed by the respondent No.3/District Magistrate, District-Anuppur under the provisions of Sub-Section 1 of Section 3, Sub-Section (a) and (b) of Section 5 r/w Section 7 of the M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred as 'the Act of 1990'), as also the order dated 08/04/2024 passed by the respondent No.2/Commissioner, Shahdol Division, Anuppur, against which the appeal preferred by the appellant has also got dismissed. The appellant has been externed from the limits of District-Anuppur as well as the adjoining Districts i.e. Shahdol, Umaria and Dindori for a period of one year commencing from 06/10/2023.
3. Though the externment period imposed against appellant has already come to an end but considering the future prospect the instant writ appeal is being decided academically.
4. The appellant was initially served with a show-cause notice dated 14/11/2022 regarding his criminal activities, asking him as to why an order of externment be not passed against him. Appellant filed the reply to the show-cause notice on 29/11/2022. The



respondent No.3 vide order dated 06/10/2023 passed the order of externment on the ground that the appellant has 4 criminal cases under the Indian Penal Code registered against him and criminal act of the petitioner is dangerous to the society and public at large. Therefore, the appellant preferred an appeal before the respondent No. 2, which was also met with dismissal vide order dated 08/04/2024

5. Learned counsel for the appellant submitted that a plain reading of Section 5(b) of the Act would show that for passing an order of externment two conditions must be satisfied, which are not satisfied in the present case. The two conditions are reproduced below:-

“i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under section 506 or 509 of the Indian Penal Code, 1860 or in the abetment of any such offences; and

ii) In the opinion of the District Magistrate, witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.”

6. In support of his contention, learned counsel for the appellant has placed reliance on the judgment delivered in the matter of **Ashok**

**Kumar Patel vs. State of M.P. and others 2009 (4) MPLJ 434**

wherein it is held as under :-

“(7) In State of **N. C. T. of Delhi and another Vs. Sanjeev alias Bittoo (supra)**, the Supreme Court had the occasion to interpret Section 47 of the Bombay Police Act, 1978, which contains provisions similar to Section 5 of the act of 1990 and has referred to these essential conditions for passing an order under Section 47 of the Delhi Police Act in Para 10 of the judgment as reported in the AIR thus :-"section 47 consists of two parts. First part relates to that satisfaction of the Commissioner of Police or any Authorised officer reaching a conclusion that movement or act of any person are causing alarm and danger to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in commission of enumerated offences or in the abetment of any such offence or is so desperate and dangerous as to render his being at large hazardous to the community. Opinion of the Concerned Officer has to be formed that witnesses are not willing to come forward in public to give evidence against such person by reason of apprehension on their part as regards safety of person or property. After these opinions are formed on the basis of materials forming foundation therefore the Commissioner can pass an order adopting any of the available options as provided in the provision itself. The three options are- (1) to direct such person to so conduct himself as deemed necessary in order to prevent violence and alarm or (2) to direct him to remove



himself outside any part of Delhi or (3) to remove himself outside whole of Delhi. "

(10) The second condition which must be satisfied for passing of an order of externment against a person is that in the opinion of the District magistrate, witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of person or property. Construing a pari materia provision in Section 27 of the city of Bombay Police Act, 1902 in Gurbachan Singh Vs. The State of Bombay and another, AIR 1952 SC 221, the Supreme Court observed:-"the law is certainly an extra-ordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety or the public residing therein.

(11) In the instant case, the District Magistrate has in the impugned order only baldly stated that the list of offences registered against the petitioner reflects that he is a daring habitual criminal and because of this there is fear and terror in the public and has not recorded any clear opinion on the basis of materials, that in his opinion witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of their person or property. In most of the cases, Challans have been filed by the Police in Court obviously after examination of the witnesses under Section 161 of Cr. PC and the cases are pending in the Court. There is no reference in the order of District Magistrate



that witnesses named in the challans filed by the Police are not coming forward to give evidence against the petitioner in Court. Hence, in the absence of any existence of material to show that witnesses are not coming forward by a reason of apprehension to danger to their person or property to give evidence against the petitioner in respect of the alleged offences, an order under Section 5 (b) of the Act of 1990 cannot be passed by the District Magistrate by merely repeating the language of Section 5 (b) of the Act of 1990.

(12) In State of N. C. T. of Delhi and another Vs. Sanjeev alias Bittu (supra), the Supreme Court interpreting Section 47 of the Bombay Police Act, 1978, which is similarly worded as Section 5 of the Act of 1990, has held in Para 25 :-

"it is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary, the order directing externment should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non."

7. Learned Government Advocate of the respondents/State submitted that the only question which would arise for consideration is that the appellant was given due opportunity of hearing before passing the order impugned or not and that Sub Section 1 of Section



8 of the Act, 1990 and Section 5(b) of the Act, 1990 have been complied with or not. He submitted that an ample opportunity of hearing had been given in the case to the appellant. The respondent No. 1 duly complied with all the provisions before passing the orders and the respondent No. 2 did not make any error while dismissing the appeal. There is reasonable apprehension that the criminal act of the appellant is dangerous to the society and public at large.

8. Heard learned counsel for the parties and perused the record.
9. The learned Single Judge while dismissing the writ petition came to the conclusion that on the basis of specific overt act of the appellant, the Court was of the considered opinion that no illegality or jurisdictional error has been committed by the District Magistrate, Anuppur while passing the impugned order dated 06/10/2023 and by the Commissioner, Shahdol Division, Anuppur in affirming the aforesaid order vide order dated 08/04/2024.
10. Sub-Section 1 of section 8 of the Act, 1990 requires hearing to be given before passing an order under section 3 to 6 of the Act, 1990 is passed against any person. The District Magistrate shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding allegation. If such person makes an application



for the examination of any witness produced by him, the District Magistrate shall allow such application and examine such witnesses unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay. The person may appear through legal practitioner under sub section 3 of section 8 of the Act, 1990 and may also file reply.

11. The requirement of law is that there must be danger to the safety of the persons or their property based on the material available on record which makes the authority to come to the conclusion that there is reasonable apprehension regarding danger or violence being caused by the accused to the general public.

12. In the case of **Wasiuddin Ahmed vs. District Magistrate, Aligarh reported in AIR 1981 SC 2166** the Apex Court has observed thus:-

“24. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should



have a rational connection with the conclusion that the detention of the person is necessary.”

- 13.** In the case of **State of Maharashtra & Anr vs Salem Hasan Khan reported in AIR 1989 SC 1304**, it has been held by the Apex Court as under:-

“On behalf of the appellant reliance has been placed on the decision of this Court in Pandarinath Sridhar Rangnekar vs. Deputy Commissioner of Police, [1973] 3 SCR 63 where- in a similar plea was taken by the appellant before this Court. It was contended that the failure on the part of the State Government indicated non-application of mind. The appellant had also urged that the allegations contained in the show cause notice were too vague in absence of details to afford him reasonable opportunity to defend himself. Rejecting the argument, this Court held that a full and complete disclosure of particulars, as is requisite in an open prosecution, will frustrate the very purpose of an externment proceeding. There is a brand of lawless elements in society which it is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisal witnesses are unwilling to depose in public. While dealing with the contention that the State Government was under a duty to give reasons in support of its order dismissing the appeal, the point was rejected in the following terms:--



"Precisely for the reason for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment."

As observed, if the authorities were to discuss the evidence in the case, it would be easy to fix the identity of the witnesses who were unwilling to depose in public against the proposed externee.

A reasoned order containing a discussion would probably spark off another round of harassment. We are, therefore, of the view that the High Court was in error in quashing the order as confirmed by the State Government in appeal.”

14. The contention that the District Magistrate as well as appellate authority were under obligation to give reasons in support of the dismissal of the appeal, the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment.

15. In the case of **Manoj vs. State of M.P. and others 2017(2) MPLJ 294**, it has been held as under :-

“11. The requirement of law is that there must be clear and present danger based upon credible material which makes the movements and acts of person in question alarming of dangerous or fraught with violence and that for removing a



person from a District there must exist a reasonable ground for believing that the person is engaged or is about to be engaged in commission of offence involving force or violence or in the abetment of any such offence. It is the reach effect and potentiality of overt commission of an offence which lend support to cause reasonable apprehension would be the basis for valid exercise of power by the Authority under these provisions. The antecedents of a person also plays an important role in forming an opinion. It is indeed usually prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely to act in a manner prejudicial to the maintenance as would cause alarm, danger or harm to person or property.”

- 16.** In the case at hand, when the test as laid down under Section 3 and Section 5 of the 1990 Adhiniyam is made applicable, there is no iota of doubt that the apprehension raised by the District Magistrate is not without a substance or basis as would warrant any interference. The Appellate Authority also after re-appreciating the entire facts and findings arrived by the District Magistrate, dismissed the appeal.
- 17.** The learned Single Judge after appreciating the orders passed by District Magistrate as well as the Appellate Authority has rejected the writ petition.
- 18.** In view of the above, this Court finds no infirmity or perversity in the orders impugned passed by the respondents as well as by the



learned Single Judge, and therefore, the instant writ appeal deserves to be and is hereby dismissed.

No order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI) (ANURADHA SHUKLA)
JUDGE JUDGE

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