



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE**

**&
HON'BLE SHRI JUSTICE VINAY SARAF**

WRIT APPEAL NO.1035 OF 2025

TUSHAR @ NANDI @ ANAND

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sunil Kumar Pandey - Advocate for the appellant.

Shri Ritwik Parashar – Government Advocate for the respondents/State.

Reserved on – 04.11.2025

Pronounced on – 13.11.2025

ORDER

Per: Justice Vinay Saraf:

1. By the present intra-court appeal, the appellant has assailed the order dated 02.04.2025 passed by the learned Single Judge in Writ Petition No.8689/2025; whereby the petition preferred by the appellant was dismissed and the order passed by the District Magistrate, Betul on 21.11.2024, affirmed by the Divisional Commissioner, Narsinghpur on 18.02.2025 was upheld.



2. With the consent of the parties, arguments were heard for the purpose of final disposal of the case as the period of impugned order is expiring on 20.11.2025.

3. The short facts of the case are that Superintendent of Police, District Betul by application dated 22.03.2024 made a recommendation to the District Magistrate, District Betul for externment of the appellant under the provisions of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as "Act, 1990") on the ground that as many as 12 cases were registered against the appellant in the past and due to the danger or fear in the mind of the public, the witnesses were not willing to come forward to give evidence against the appellant. The prayer was made to pass an order of externment against the appellant under section 5(a) & (b) of the Act, 1990. After receipt of the recommendation from the Superintendent of Police, Betul, on 22.03.2024 District Magistrate issued show cause notice under section 8(1) of the Act, 1990 to the appellant and after affording the opportunity of hearing and recording the statement of the witnesses, passed the impugned order of externment on 21.11.2024, whereby the appellant was directed to remove himself outside the District of Betul and nearby Districts Chhindwara, Narmadapuram, Khandwa and Harda for a period of one year from the date of order and not to enter or return to the said districts or such area within the said period and to provide sufficient information regarding his presence outside of such areas.

4. Said order was challenged by the appellant in appeal under section 9 of the Act, 1990 before Divisional Commissioner, Narmadapuram, which was dismissed by order dated 18.02.2025. Order passed by the District



Magistrate, Betul dated 21.11.2024 and Divisional Commissioner, Narmadapuram dated 18.02.2025 were challenged by the appellant in Writ Petition No.8689/2025, which was dismissed by the learned Single Judge by order dated 02.04.2024 and assailing the same, the present writ appeal has been preferred.

5. Learned counsel for the appellant submits that the order impugned was passed by the District Magistrate, Betul without application of mind. In most of the cases, the appellant was already acquitted and the criminal cases registered against the appellant after 2021 were of trivial nature and are not considerable for the purpose of passing the order of externment. He further submits that in the recommendation letter issued by the Superintendent of Police, Betul dated 22.03.2024 in the last para, the request was made to pass an order against one Golu S/o Prabhakar Solanki and without considering the same, order has been passed against the present appellant. He further submits that there was no apprehension of causing any danger to the public life or property, which reflects from the fact that the Superintendent of Police, Betul recommended to the District Magistrate on 22.03.2024 but the order was passed after a period of 8 months on 21.11.2024; meaning thereby there was no such urgency to pass any prohibitory order and during this period no criminal case was registered or no criminal incident was reported. He further submits that the appellant is not indulging in any criminal activity and the report submitted by the Superintendent of Police was on the basis of old cases. He prays for quashing the order of externment.

6. Learned counsel relied upon the judgment delivered by the Division Bench of this Court in the matter of *Ashok Kumar Patel Vs. State of M.P.*,



reported in 2009 (4) MPLJ 263; whereby the order of externment was challenged before the Division Bench and the same was quashed on the ground that two conditions essential for an order of externment, stated in section 5(a) & (b) of the Act, 1990, did not exist in the said case. He also relied upon the judgment delivered by the learned Single Judge in the matter of *Sudeep Patel Vs. State of M.P. and others, reported in (2018) 3 MPLJ 413*; whereby it was held that until and unless sufficient material was available on record, no order could be passed for preventive detention or restriction until and unless it was proved that the preventive action was being taken against a wrongdoer for maintenance of public order and peace. He further relied upon a judgment delivered by the learned Single Judge in the matter of *ShyamsunderSen Vs. State of Madhya Pradesh and others, reported in 2024SCC Online MP 7426* wherein the order passed under section 5(b) of Act, 1990 was quashed after recording the finding that there was no material on record to pass such an order.

7. Learned Government Advocate appearing on behalf of the respondents/State supported the order passed by the Divisional Magistrate and submits that the appellant was having past criminal record and there were several grounds available to pass the order of externment considering the fact that appellant is a habitual offender and indulged continuously in the commission of offences and as many as 12 cases were registered against the appellant in the past. He further submits that before passing the order of externment show cause notice was issued under section 8(1) of Act, 1990 and the appellant was granted sufficient opportunity to submit the reply and after recording the evidence of witnesses, the order was passed by the



District Magistrate and there is no infirmity in the order passed by the District Magistrate.

8. Heard the counsel for the parties and perused the record.
9. District Magistrate has exercised the power under section 5 of the Act, 1990, which reads as under:-

"5. Whenever it appears to the District Magistrate-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offender 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 (45 of 1860) or in the abetment of any such offence, and when 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; or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant; the District Magistrate, may by an order in writing duty served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or any part thereof or such area and any district or districts, or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous



districts, or part thereof, as the case may be, from which he was directed to remove himself."

10. From bare reading of provision of section 5 of Act, 1990 it appears that action can be taken against any person to remove him from the district or districts or any part thereof for the purpose of preventing violence, danger of life to other persons or property under sub-section (a) and under sub-section (b) if the authority is satisfied on the basis of material placed before him that for the purpose of preventing someone from causing any offence punishable under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abetment of any such offence, the power can be exercised for externment of the offender.

11. The impugned order was passed by the District Magistrate, Betul exercising the powers conferred under sections 3(1), 5(a) and (b) as well as section 7 of Act, 1990, However, no incident of causing any danger to any person or property in close proximity of order was mentioned in the impugned order. Sufficient material was not available on record to show that there was any immediate engagement of the offender in commission of offence and, therefore, no order could be passed against the appellant. Passing of the order in mechanical manner is condemnable as the externment order casts serious restrictions on the fundamental rights and personal liberty of any person.

12. In the list of the offences committed by the appellant except Crime No.272/2016 and 754/2021 no other case was registered for commission of an offence of heinous nature so as to attract the provisions of Act, 1990. Witnesses examined by the State in their favour in the proceedings did not



support the police case and nothing was deposed against the appellant. There is no material on record to hold that the presence of the appellant was undesirable and for the purpose of maintenance of law and order within the district or that the externment of the appellant was essential. It is trite law that for passing an order of externment, the alleged offence should have close proximity to the order of externment and there should be specific finding that witnesses are not coming forward to give evidence against proposed externee in the criminal trials. However, in the present case, the above grounds are not made out. There is no close proximity of any heinous offence allegedly committed by the appellant and only one offence, Crime No.117/2024 under sections 294, 323, 506, 34 of IPC was registered against the appellant in the provisions of Indian Penal Code after 2021. Other offences were registered under the provisions of section 13 of Gambling Act read with section 109 of IPC in the year 2023 and one *Istagasa* was submitted in the year 2024, which cannot be considered as relevant material for the purpose of passing an order of externment.

13. The Division Bench of this Court has laid down in the matter of *Ashok Kumar Patel (supra)* as under :-

"(6.) A plain reading of Section 5 (b) of the Act of 1990 quoted above, would show that for passing an order of externment against a person, two conditions must be satisfied:-

(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 offence; 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.



(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.

(13.) THE Act of 1990 certain serious restrictions on the fundamental right to freedom under Article 19 (1) of the Constitution and the fundamental right to personal liberty under Article 21 of the Constitution and unless the conditions mentioned under Section 5 (b) of the Act of 1990 are strictly satisfied, an order of externment, will have to be quashed by the Court. While considering a case under Section 56 of the Bombay Police Act, which also empowered the police to pass an order of externment, the Supreme Court observed in Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra (supra), as under:- "it is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh Vs. The State of Bombay, 1952 SCR 737 = (AIR 1952 SC 221) had upheld the validity of Section 27 (1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in 1956 SCR 533 = (AIR 1956 SC 585). We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externnee."



(14.) WE are thus of the considered opinion that the two conditions for an order of externment stated in Section 5 (b) of the Act of 1990 do not exist in this case and the order passed by the District Magistrate and appellate order of the Commissioner are liable to be quashed. Since the impugned order of externment passed by the District Magistrate and the appellate order passed by the Divisional Commissioner are liable to be quashed on this ground alone, it is not necessary for us to deal with the other grounds raised by the petitioner in this writ petition. In the result, we quash the impugned order dated 18-11-2008 passed by the District Magistrate Rewa in Cr. Case No. 227/08 as well as the appellate order dated 13-1-2009 passed by the Commissioner, Rewa Division. No costs."

14. The learned Writ Court has dismissed the petition on the ground that before passing the order a show cause notice was issued and if in the show cause notice name has been wrongly typed, no prejudice was caused to the appellant as the appellant has taken part in the proceedings. The learned Writ Court has held that as the procedure has been followed by the District Magistrate and there is a restriction in section 10 of the Act, 1990 from interference in the order passed under sections 3, 4, 5 or 6, the petition cannot be allowed. We are not in agreement with the finding recorded by the learned writ court. The Writ Court has jurisdiction under Article 226 of Constitution of India to examine the legality and validity of the order passed under the provisions of the Act, 1990 as the same adversely affected the fundamental rights of the personal liberty of the externnee. Time and again Courts have examined the law and validity of the orders and interfered in the orders as and when the sufficient grounds are made out. Upon examination of the case in hand, it appears that sufficient material was not available to satisfy that the externment of the appellant was essential for the purpose of maintaining peace and for preventing him from commission of any offence.



The order impugned has been passed without considering the fact that even in the application, forwarded by the Superintendent of Police, the prayer was made to pass an order of externment against one Golu s/o Prabhakar Solanki and the show cause notice was issued on 19.04.2024 whereas the externment order was passed on 21.11.2024 and this fact was not considered by the Writ Court that during this long period of 7-8 months no offence was registered against the appellant; meaning thereby the appellant was not involved in any activity, which was prejudicial to the society and for preventing harm or danger to any person or property, it was essential to restrict the appellant from entering in the boundaries of Betul and other adjacent districts.

15. After considering the facts and material available on record, we are of the view that the conclusion drawn by the District Magistrate was not based on cogent material and, therefore, no order for restraining could be passed under the provisions of Act, 1990 as the exercise of such power casts serious restrictions on the fundamental rights granted under Articles 19 and 21 of the Constitution of India. The conditions mentioned in section 5 of the Act, 1990 were not strictly satisfied therefore, no order of externment could be passed. In the instant case, sufficient material was not available on the record. The Superintendent of Police forwarded an application without applying his mind and the District Magistrate has also passed the order without application of mind, which does not satisfy the requirement of section 5 of Act, 1990.

16. Consequently, the appeal is allowed. Order passed by the District Magistrate, Betul on 21.11.2024, Divisional Commissioner, Narmadapuram on 18.02.2025 and learned Single Judge in Writ Petition No.8689/2025 on



02.04.2025 are hereby set aside. In the result, the appellant is free to enter the boundaries of District Betul and other adjoining districts.

17. With the aforesaid, appeal is allowed. No order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAYSARAF)
JUDGE

TG/-