

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

BEFORE

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 24th OF FEBRUARY, 2022

WRIT PETITION No. 25822 of 2021

Between:-

**DEEPAK @ LALLU S/O VIJAY KEWAT,
OCCUPATION: LABOUR, AGED ABOUT 31
YEARS, R/O CAMP NO.1, DHANPURI, THANA,
DHANPURI, DISTRICT SHAHDOL (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI OM SHANKAR PANDEY, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH SECRETARY, HOME
DEPARTMENT, VALLABH BHAVAN,
BHOPAL (MADHYA PRADESH)**
- 2. THE COLLECTOR, DISTRICT
SHAHDOL (MADHYA PRADESH)**
- 3. THE SUPERINTENDENT OF POLICE
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 4. THE TOWN INSPECTOR, POLICE
STATION DHANPURI, SHAHDOL (MADHYA
PRADESH)**

....RESPONDENTS

(BY MS. PRIYANKA MISHRA, GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the Court passed the following:

ORDER

The petitioner has called in question, order dated 06.07.2021 (Annexure P/2) passed by the District Magistrate, Shahdol, whereby, in exercise of power under Section 5, 6 and 7 of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (for short, hereinafter referred to as the “Act of 1990”) externment of the petitioner from District Shahdol, Sidhi, Satna, Umaria and Anuppur for a period of one year has been directed. The order dated 06.07.2021 was assailed by the petitioner in an appeal under Section 9 of the Act of 1990 before the Commissioner, Shahdol who has also dismissed the same on 16.11.2021 (Annexure P/1) and hence, the petitioner in the instant petition.

2. The case of the petitioner is that he was served with the show cause notice dated 20.03.2020 which is available at Page No.34 of the reply filed by the State to show cause as to why an action for externment of the petitioner should not be taken. Thereafter, because of Covid-19 Pandemic, the matter could not be proceeded. However, the petitioner was served with another show cause notice dated 02.03.2021 to which the petitioner has submitted his reply dated 06.07.2021. According to him, all cases mentioned in the show cause notice were old and stale cases. There were no serious charges against the petitioner and more importantly for last about one year, there was not a single case registered against him.

3. Learned counsel for the petitioner submits that without considering the reply or giving any opportunity of hearing, some

witnesses appears to have been examined behind his back. He submits that taking into consideration the law laid down by this Court in various cases, the order of externment deserves to be set aside. He places reliance on the decision of this Court in the matter of *Ashok Kumar Patel V. State of M.P.*¹, *Sanju @ Sanjay Ben V. State of M.P. And Ors.*², *Kala V. State of M.P.*³, *Raghuwanshi V. State of M.P.*⁴, *Pappu V. State of M.P.*⁵, *Dharmendra Singh V. State of M.P.*⁶, *Meena Sonkar V. State of M.P.*⁷ and *Chandra Prakash @ Tinku Pandey Vs. The State of M.P. & others*⁸

4. Learned counsel appearing for the State opposed the petition and she submits that the petitioner is a habitual criminal against whom there are 11 cases and considering his anti-social and criminal activities since 2009, the authority has taken action for externment. According to her, the Superintendent of Police, Shahdol vide his report dated 06.11.2019 informed the District Magistrate that because of continuous criminal activity of the petitioner and the fact that the people of the locality does not feel safe, therefore, the action of externment was proposed to be taken. She states that the petitioner was given due opportunity of hearing. His reply was considered and statement of witnesses namely Shiv Kumar Soni and Surya Prakash Chouhan were recorded and therefore, the action of externment is strictly in accordance with law, the same does not call for any interference. She places reliance on a

1 2009 (4) MPLJ 434
2 2005 (4) MPHT 102
3 2004 (4) MPLJ 234
4 2014 (4) MPLJ 654
5 (2007) 3 MPLJ 115
6 (2007) 2 MPLJ 108
7 (2017) 2 MPLJ 565
8 W.P.No.11825/2021(order dated 18.11.2021)

decision of this Court in the matter of *Arvind Singh @ Pappu Vs. State of M.P.*,⁹.

5. This Court has perused the record and it is seen that neither in order passed by the District Magistrate, nor in the report dated 06.11.2019 submitted by the concerned Superintendent of Police to the District Magistrate, it is mentioned as to how the movement or acts of the petitioner is causing or calculated to cause alarm, danger or harm to the other person or their property. The important aspects of the mandate of Clause (b) of Section 5 i.e. to reasonably believe that such person is engaged or is about to be engaged in the 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 or in the abatement of any such offence, are missing. There is no opinion recorded by the District Magistrate with respect to the fact that the witnesses are not willing to come forward to give evidence against the petitioner. Since, the essential ingredients of the provisions of Section 5 of the Act of 1990 are not fulfilled, therefore, the entire action of the externment is construed to be without application of mind.

6. There is another reason as to why the action of the District Magistrate is to be interfered with is that the proceedings were initiated on the report of Superintendent of Police dated 06.11.2019 and the action in question has been taken only on 06.07.2021. The proceedings for externment are not the routine proceedings and the same should not be resorted to in a casual manner. When such proceedings are initiated, it is necessary to take them to their logical end with utmost dispatch as the externment proceedings are intended to secure the public interest

9 (2017) 4 MPLJ 579

and life of the people and their property. The entire approach of the District Magistrate appears to be casual in nature. Hence, in view of the legal position as has been propounded by this Court on the basis of various decisions the impugned orders dated 06.07.2021 (Annexure P/2) and 16.11.2021 (Annexure P/1) are hereby set aside.

7. The petition stands **allowed**.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

Jasleen