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WP-19018-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 17th OF JULY, 2025WRIT PETITION No. 19018 of 2025*AMIT @ GOLU JAIN**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Ms. Anchan Pandey - Advocate for the petitioner.

*Shri V.S. Choudhary - Government Advocate for the
respondents/State.*

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ORDER

This petition has been filed seeking following reliefs:-

7.1 The hon'ble court may be pleased to quashed the order in rcms no-0089/jila bader/2024 passed by district magistrate Khandwa as well the order passed by appellate commissioner marked as Annexure P2.

7.3 The hon'ble court may be pleased to pass any other order in favour of petitioner to which this hon'ble deems fit.

2. It is submitted by learned counsel for petitioner that the petitioner, who is the citizen of India, is challenging the externment order dated 21/02/2025 passed by District Magistrate Khandwa, against the petitioner for a period of one year. Petitioner has also preferred an Appeal against the order dated 21/02/2025 before the Commissioner, Indore Division Indore, which was also dismissed vide order dated 29/04/2025 affirming the order passed by District Magistrate, Khandwa.



3. The main ground which is raised in the petition is that the entire criminal history of 54 cases has been considered by the Authorities. It is argued by learned counsel for the petitioner that in the year 2016, the proceedings under the Madhya Pradesh Rajya Suraksha Adhiniyam for externment of the petitioner was done in case No.04/2016. Thereafter, again in the year 2016 itself, the same proceedings were initiated against him in case No.25/2016. In the year 2017 also, proceedings under the Madhya Pradesh Rajya Suraksha Adhiniyam were again taken up by the Authorities in case No.79/2017 and 01/2017. All these four cases find place at serial numbers 34, 35, 36 and 38 of impugned order dated 21/02/2025. It is argued that once the proceedings under the Madhya Pradesh Rajya Suraksha Adhiniyam have already been drawn against the petitioner, then for the purpose of initiating new proceedings for externment of the petitioner, how the previous record can be taken note of by the Authorities to form an opinion regarding his externment. It is submitted that the entire recommendation which is made by the Superintendent of Police clearly reflects consideration of all 54 cases for the said purposes. It is further argued that after the year 2017, there was one case registered in Crime No.480/2020 for offence under sections 302, 34, 201, 212, 120B of IPC and under Sections 25, 27 of Arms Act and one case was registered in Crime No.364/2018 for offence under Sections 353, 153, 188, 34 of IPC and another case was registered in Crime No.667/2024 for offence under Sections 223, 125B, 287 of BNS, 2023. Rest all other proceedings are either with respect to private *Istigasas* or for minor offences.



4. Learned counsel appearing for the petitioner has relied upon the judgment passed by the Division Bench of this Court in the case of **Ajju @ Azam Vs. The State of Madhya Pradesh and Others** decided on 22/05/2023 in **Writ Appeal No.659/2023** and has argued that the alleged offences should have close proximity to the order of externment and second that there should be a specific finding recorded by the Authorities that the witnesses are not turning up and coming forward to depose against the externee or the petitioner. It is argued that the respondents have taken into consideration the old and stale cases since from the year 2001 for passing the order of externment against the petitioner. It is argued that the law is well settled by this Court in the case of **Ramgopal Raghuvanshi Vs. State of M.P. and others** reported in 2014 (4) MPLJ 654 wherein after consideration of the earlier judgments in respect of Section 5 of the Act held that the order of externment cannot be passed on the basis of old and stale cases. The aforesaid judgment was further followed in the case of **Bhim @ Vipul Vs. Home Department, (W.P. No.4329/2015)** decided on 14.09.2015 and considering the judgments passed in the case of **Ashok Kumar Patel Vs. State of M.P. and others** reported in 2009 (4) MPLJ 434, it was held that the expression “engaged” or “is to be engaged” used under Section 5 (b)(i) of the Act shows that the commission of offence or abetment of such offence by the reason must have close proximity to the date on which the order is proposed to be passed under Section 5(b) of the Act. It is further argued that there is nothing on record to show that subsequently any offence has been registered against the petitioner which could be danger to the society at large. Thus, the order of externment



based upon the old and stale cases is *per se* illegal. Hence, a prayer is made for quashment of externment order dated 21/02/2025 passed by District Magistrate Khandwa as well as order dated 29/04/2025 passed by the Commissioner, Indore Division Indore, affirming the externment order passed by District Magistrate, Khandwa

5. *Per contra*, learned counsel appearing for the respondents/State has vehemently opposed the prayer and has supported the impugned order.
6. Heard learned counsel for the parties and perused the record.
7. The requirement of provision of Section 5(b) of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 is that the District Magistrate has to form a specific opinion that the witnesses are not willing to come forward to give evidence in public against the person by the reason of his apprehension or threat. There is also nothing on record to demonstrate that the previous criminal record prior to earlier externment proceedings can be taken note of by the Authorities and also that the offences committed subsequent and which are taken note of by the Superintendent of Police to form an opinion are having close proximity enabling the initiation of externment proceedings.
8. If the recommendations of the Superintendent of Police, District Khandwa are seen, then the same reflect that the entire criminal record is taken note of by the Superintendent of Police and lastly for forming an opinion, it is mentioned under:-

"इसका आतंक दिनों दिन बढ़ने के साथ साथ आरोपी अपने साथ अपराधिक व्यक्तियों को संगठित कर एक समूह बना रहा हैं जिससे पूरे शहर में भय एवं दहशत का माहौल निर्मित हो गया है। उक्त बदमाश द्वारा शहर के



तीज त्यौहारों के दौरान चल समारोह में अपराधिक प्रवृत्ति के व्यक्तियों को संगठित करके खण्डवा शहर में सांप्रदायिक माहौल खराब करने का प्रयास करता है इसी क्रम में दिनांक 27.08.2024 को गोगा नवमी के चल समारोह के दौरान भी ईमलीपुरा मस्जिद के पास अपराधिक प्रवृत्ति के व्यक्तियों को संगठित करके चल समारोह में भगदड़ मचाने की कोशिश कर साम्प्रदायिक माहौल बिगाड़ने का प्रयास किया गया था जिसकी विडियो रिकार्डिंग प्रकरण में सलंगन की गई हैं इस प्रकार उक्त बदमाश की अपराधिक गतिविधियों के कारण आम नागरिक का जीवन अस्त व्यस्त होकर आतंक से भर गया है। इसके द्वारा शहर में कोई भी सांप्रदायिक स्थिति निर्मित कराई जा सकती है।"

9. Thus, it does not reflect any close proximity for initiation of externment proceedings. For the purpose of initiation of externment proceedings, there should be a clear opinion to the effect that witnesses are not turning up to depose against the petitioner either due to his fear or for safety reasons as has been considered by the Division Bench of this Court in the case of **Ashok Kumar Patel (supra)**, wherein the Division Bench has held that two conditions are necessary to be satisfied for validating the externment order. Firstly, the alleged offence should have close proximity to the order of externment and secondly, there has to be a material to show that witnesses are not coming forward to give evidence against the proposed externee. It was further held that if these two conditions are not satisfied then the order of externment passed by the District Magistrate and the appellate order needs to be quashed.



10. The fact remains that whether the old and stale cases can be considered for passing an externment order. The aforesaid proposition was considered by the Division Bench of this Court in the case of **Ashok Kumar Patel (supra)**, wherein it has further been held as under:-

“8. The expression is engaged or is about to be engaged” in the commission of 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, shows that the commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is proposed to be passed under Section 5 (b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an offence of the type mentioned in Section 5(b) several years or several months back, they cannot be any reasonable ground for believing that the 6 person is engaged or is about to be engaged in the commission of such offence.”

11. The aforesaid judgment was followed in the case of **Ramgopal Raghuwanshi (supra)** and also in the case of **Bhim @ Vipul (supra)** holding that the provisions of M.P. Rajya Suraksha Adhiniyam are not punitive in nature and person cannot be externed for his past acts. The aforesaid judgment passed in the case of **Ashok Kumar Patel (supra)** was also followed in the case of **Ajju @ Azam (supra)**, wherein the Division Bench of this Court has held as under:-

"6. After hearing learned counsel for the parties and going through the record, it is evident that the law laid down by Hon'ble Division Bench of this Court in **Ashok**



Kumar Patel (Supra) clearly makes out two grounds to sustain or quash an order of externment. First ground is that the alleged offences should have close proximity to the order of externment. Second ground is that there should be a specific finding recorded that witnesses are not coming forward to give evidence against the proposed externee.

7. In the present case, both the grounds are not made out. There is no close proximity of any heinous offence against the petitioner and the offences are of usual nature. Earlier also, the appellant was subjected to Jila Badar in 2016 and 2019. Thereafter, a case under Section 110 of Cr.P.C was registered and another case under Section 188 IPC, 3, 7 of Essential Commodities Act and Section 3 of Epidemic Diseases Act and then another case was registered under Section 294, 323, 506, 34 IPC in the year 2022. Thus, there is no proximity of any alleged offence to the order of externment and secondly, there is no mention of the fact that because of the fear of the appellant, the witnesses are not forthcoming to give evidence against the externee and, therefore, the impugned orders cannot be allowed to stand in the light of Division Bench decision of this Court in ***Ashok Kumar Patel (Supra)*** and they are hereby quashed."

12. If the aforesaid principles are applied to the fact and circumstances of the present case, then it is clear that there is no close proximity that could be pointed out to form an opinion for externment of the petitioner and also there is nothing on record to show that who are the witnesses who are not coming up to depose against the petitioner.

13. In absence of any material to substantiate the aforesaid, the impugned order passed by the District Magistrate regarding externment of the petitioner as well as the appellate order passed by the Commissioner are *per se* illegal. There is no explanation that could be given by learned State counsel to



substantiate his argument that all the criminal cases registered against the petitioner could be taken into consideration for passing the externment order.

14. In such circumstances and in view of the settled proposition of law, the impugned order of externment dated 21/02/2025 passed by the District Magistrate, Khandwa as well as appellate order dated 29/04/2025 passed by Commissioner, Indore Division Indore, deserves to be and are hereby quashed.

15. Accordingly, the petition is **allowed and disposed of**. No orders as to costs.

(VISHAL MISHRA)
JUDGE

Shbhnkr