

**Court No. - 80**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 17358 of 2023

**Petitioner :-** Mohd. Ibrahim

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Shri Niwash Yadav

**Counsel for Respondent :-** G.A.

**Hon'ble Subhash Chandra Sharma,J.**

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with prayer to allow this application and issue an ad interim mandamus commanding and directing the respondent no. 2, Commissioner, Azamgarh Mandal Azamgarh to decide the appeal no. C202315000001434 (Mohammad Ibrahim Vs. District Magistrate Mau) filed under Section 6 of the U.P. Control of Goondas Act, 1970, Police Station Dakshin Tola, District Mau dated 17.10.2023 and further be pleased to stay the effect and operation of the notice/report dated 26.2.2022 and order dated 10.10.2023 passed by District Magistrate, Mau (respondent no. 3) in case no. 623 of 2022 (Computerized Case No. D202215510000623, under Section 3(1) till the disposal of aforesaid appeal.

It is submitted by learned counsel for the petitioner that an order for externment for a period of 6 months was passed by the District Magistrate, Mau under Section 3(1) U.P. Control of Goondas Act, 1970 on the basis of beat report dated 11.2.2022 based on Case Crime No. 04 of 2019, under Sections 323, 504, 506 IPC and Case Crime No. 590 of 2019, under Sections 147, 148, 186, 188, 189, 341, 353, 504, 506, 120-B IPC and Section 7 Criminal Law Amendment Act. Further submitted that in the meantime no such activity was done by the petitioner to create any kind of apprehension in the members of the society even though the order for externment was passed by District Magistrate against which he filed appeal before the Commissioner, Azamgarh which was admitted and is still pending but the operation of order for externment was not stayed. In this way, during the pendency of appeal, if the affect of order in question is not stayed the purpose

of appeal would be defeated, therefore, requested to direct the court concerned not to take any coercive action against the petitioner in pursuance of externment order dated 10.10.2023 during the pendency of appeal and to decide the appeal as expeditiously as possible.

Learned A.G.A. urged that in this case order was passed by the District Magistrate on the basis of material on record and against which appeal was filed but he has nothing to object about the stay of operation of order for externment during the pendency of appeal.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties, perusal of record and the order passed by the Commissioner at the time of admission of appeal, it appears that though the appeal has been filed and is still pending before the court of Commissioner for final hearing but the application filed by the petitioner for staying the implementation of the order in question was rejected which cannot be said to be lawful.

As a result, it is directed that the order passed by the District Magistrate for externment and under challenge in appeal shall remain in abeyance during the pendency of appeal.

It is also directed that Commissioner, Azamgarh shall made his endeavour to decide the appeal of the petitioner as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

Accordingly, this writ petition is ***disposed of*** finally.

**Order Date :- 7.11.2023**

A. Singh