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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd April, 2024

Pronounced on: 21st May, 2024

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W.P.(CRL) 955/2024 & CRL.M.A. 9083/2024 (Stay)

RAJJAN @ ASHU CHAUHAN

..... Petitioner

Through: Mr. Pramod Dubey, Sr. Advocate with
Mr. Amit Saxena & Mr. Vishesh
Wadhwa & Mr. Arjun Gupta,
Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Nandita Rao, ASC (Crl.) for the
State SI Mahendra, P.S. Vasant Kunj,
South.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present writ petition under Article 226 read with Article 227 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), seeks the following prayers: -

“i) Issue a Writ of certiorari, mandamus or any other writ, order or directions thereby calling of records of the entire proceedings from the Court of Hon'ble Lieutenant Governor, Delhi, in Appeal No. 39 of 2024 titled as Rajjan @ Ashu Chauhan *versus* State and also, the records from the office of the Addl. Deputy Commissioner of Police-1, Vasant Kunj South, New Delhi, in the case titled as State *versus* Rajjan @ Ashu Chauhan *vide* File No. 19/2022, under Section 47 of the Delhi Police



Act, 1978, (for short 'DP Act') with Police Station Vasant Kunj South, New Delhi;

ii) Issue a Writ of certiorari, mandamus or any other writ, order or directions in favour of the Petitioner and against the Respondent thereby, setting aside/quashing of the impugned orders dated 13.03.2024 and 30.01.2024 passed by the Court of Hon'ble Lieutenant Governor, Delhi, in Appeal No. 39 of 2024 titled as Rajjan @ Ashu Chauhan versus State and further, setting aside/quashing of the order dated 30.01.2024 passed by the office of Addl. Deputy, Commissioner of Police-1, Vasant Kunj South, New Delhi, in case titled as State versus Rajjan @ Ashu Chauhan vide File No. 19/2022, under Section 47 of the DP, Act, with Police Station Vasant Kunj South, in the interest of justice.

iii) Pass any other further order or direction which this Hon'ble Court deems fit and proper be also issued in favour of the Petitioner and against the Respondent in the peculiar facts and circumstances of the case.

2. *Vide* the impugned order dated 13.03.2024 Hon'ble Lieutenant Governor while dismissing the statutory appeal filed on behalf of the petitioner under Section 51 of the Delhi Police Act, upheld the order of externment dated 30.01.2024 passed by learned Additional DCP Vasant Kunj South, whereby the present petitioner was externed for a period of 2 years, however, the period of the same was reduced from two years to one year.

3. The case of the respondent State as per the status report dated 01.04.2024 authored by Insp. Sahdev Singh Rana, SHO, PS Vasant Kunj (South) is as under:-

“1. That the brief facts of the case are that petitioner is a habitual offender criminal involved in 06 criminal cases related to cheating and dishonestly inducing delivery of property, house trespass, criminal breach of trust, forgery of valuable security, will etc., forgery for the purpose of cheating using as genuine a forged documents or electronic record putting persons in fear of accusation of offence, extortion, assault or criminal force to woman with intent to outrage her modesty, voluntarily causing hurt, wrongful constrain intimidation by word,



gesture or act intended to insult the modesty of woman, criminal conspiracy, rioting, cutting of tree and involved in offering of illegal gratification to the govt. servant.

3. That the details of cases registered against the Petitioner are given as follows:-

S. No.	FIR No.	Date	Section of Law	Police Station	Present Status
1.	353/17	30.10.2017	420/468/471 IPC	Kotla mubarakPur	The petitioner introduced himself as an officer in PMO and in collusion with other namely Kanchan garg and mohangarg and mohanjha has cheated the complainant in a tune of Rs. 1,50,00,000/- on the context of settlement of the above amount in lieu of demonstration of notes. The case is pending trial and next date oh hearing is fixed on



					06.04.2024
2.	267/18	05.06.2018	448/389/4204 06/467/468/4 71/34 IPC	V.K. South	A false GPA was created in the name of complainant and used as genuine documents to sell the piece of land. During investigation it came to notice that the said GPA is stated to be prepared by the petitioner in collusion with his defence witness namely dilippandey. Pending investigation and has been found involved in making forged documents in the name of his others. Accordingly, during investigation, the specimen signature as well as



					questioned documents has been sent top FSL and the result of the same is awaited. As per the information submitted by IO, it seems that he is directly involved in the case FIR.NO.267/18.
3.	03/19	07.02.2019	323/354/354 B/509 IPC	Lodhi Colony	The petitioner alongwith other person namely Naresh Dahiya caused outrage to the modesty of complainant. The FIR has been quashed by the Hon'ble High Court of Delhi vide order dated 12.03.2024 as FIR.NO. 03/19 & 04/19 are cross FIR's and both the



					parties as made settlement in writing in the form of settlement/compromise deed Dated 03.02.2024.
4.	91/21	27.02.2021	447 IPC & 8/24 Tree Act	V.K. South	The petitioner along with accused Aakash has taken unauthorise occupation of govt land and cutting of tree in order to grab the land. Accused has been convicted.
5.	RC AC-20170 04	09.08.2017	120B IPC r/w 8 of Prevention of Corruption Act, 1988	CBI	The petitioner has tried to facilitate in posting of a police inspector as SHO and taken a huge money of Rs. 7 lacs which were recovered from the possession of his wife. The case is pending trial and



					Next date of hearing is fixed for 03.06.2024.
6.	450/22	25.09.2022	323/341/506/ 379/34 IPC	V.K. South	On 24.09.2022, the petitioner along-with around 30 persons including gunman visited the premises of complainant where he forcefully gained entry in the premises and made brawl with them. He also abused the ladies who corroborated the facts in their statement U/s 164 Cr.P.C. Charegsheet has been filed and next date of hearing is fixed for 26.07.2024.

3. That, keeping in view of the criminal activities of petitioner and with a view of strong apprehension to the threat to the general public, in order to restrain the petitioner from Delhi, an externment proposal U/s 47 of Delhi Police Act 1978 was moved by SHO/Vasant Kunj (South) duly



remarked by ACP/Vasant Kunj against the petitioner. Accordingly, the Same was received in the office of Addl. DCP- I, South West District on dated 11.11.2022.

4. Accordingly, the proceeding for externment from the limits of NCT of Delhi U/s 47 of Delhi Police Act was initiated on 11.11.2022 and a notice U/s 50 of Delhi Police Act was issued to the petitioner for appear on 23.12.2022.

5. That the was appeared before the Addl. DCP-I/South West on dated 23.12.2022 without his counsel and surety. The petitioner submitted his written submission against the notice. The allegations were explained in vernacular to the petitioner and he understood the same but did not plead guilty and claimed trail.

6. That the petitioner was advised that he may contact Patiala House Court for any legal aid free of cost and he was also directed to produce the surety on 10.01.2023, However, the petitioner did not appear on 10.01.2023.

7. That on 17.01.2023 the petitioner as well as SHO/Vasant Kunj South appeared and he was examined as well as cross examined. During the examination, the SHO/VK.South corroborated the facts mentioned in the proposal that the petitioner is involved in criminal activities and cause harm to the general public. Thereafter, the matter was lingered for 07.02.2023,14.03.2023,14.04.2023,16.05.2023, 20.06.2023 &01.08.2023 as petitioner did not join the proceeding in above dates and he was abstaining from joining the same despite issuance of BWs against him.

8. Thereafter, on 12.09.2023, the petitioner joined the proceeding and prosecution witness MHC (R) PS V K South was examined and opportunity for cross examination of MHC (R) was given to the petitioner. but he did not avail the same. During the examination, the MHC (R) also produced the official record of the involvement of the petitioner in criminal cases which corroborated the above facts.

9. Thereafter, on several occasions, the petitioner had sook his personal exemption from the Court on the pretext each other and accordingly, he was allowed for the same. Later, the petitioner produced defence witness whose statement was also recorded and he was also cross examined by the Addl. DCP-I/SWD.

10. That during the course of Externment proceedings, the petitioner Rajjan @ Ashu Chauhan S/o Jai Shankar Prasad R/o A-09, A Block, Vasant Kunj Enclave& C-05 Vasant Kunj, New Delhi was found intimidating to the witnesses, public and also found violation of the



conditional bail grant to him vide order dated 19.10.2022 in case FIR No.450/22 PS Vasant Kunj South.

11. That an action U/s 110 G Cr.P.C was initiated against the appellant vide DD No. 53A Dated 04.01.2023. He was booked as well as bound down vide order dated 04.01.2023 by SDM/Vasant Vihar.

12. That after carefully going through the record, the statement of PWs and other records the competent authority was pleased to opine that the petitioner is a desperate criminal and habitual offender. Further, scrutiny of the records clearly indicates that there are sufficient grounds to conclude that he is actively involved in the criminal activities and he is not likely to improve his conduct in future.

13. Further, from perusal of the records it is stated that the presence of the petitioner in the community not only creates harm but also danger to the general public and witnesses are unwilling to depose in public against him.

14. That the petitioner is a Bad Character (B.C) of Bundle A of PS Vasant Kunj (South) due to his continuous and persistent activities. Also, the defence witness produced by him is found his associate in crime in case FIR's No. 267/18 & 450/22 and his deposition surely will be in the favour of petitioner.

15. That accordingly vide order dated 30.01.2024, in terms of the power vested Us 47 of Delhi Police Act, the petitioner was to be externed from the limits of the state of NCT of Delhi for the period of two years.

16. That on dated 07.02.2024 the petitioner filed and appeal U/S 51 DP Act, before the Hon'ble Lieutenant Governor NCT of Delhi and Hon'ble Lieutenant Governor NCT of Delhi reduced the period of externment to one year from two years. Rest of the contents of the order were remained unchanged.”

4. Learned Senior Counsel appearing on behalf of the petitioner had made the following submissions:-

(A) It was submitted that there is an inordinate delay in passing of the externment order as the proceedings had been initiated on 11.11.2022, however, the final order was passed only on 30.01.2024 after a lapse of one year two months and nine days. On account of the same, it was submitted that



the link between the grounds of externment and purpose of the externment had been snapped. Reliance was placed on the following judgments:-

- (i) **Kishor Rambhaji Narad v. State of Maharashtra, 2017 SCC OnLine Bom 8831 (paras 12,14)**
- (ii) **Sudeep v. State of M.P., 2018 (3) M.P.L.J 413, paras 9, 10, 35, 11.**

(B) It was further submitted that there was no live-link between the offences registered in 2017-22 and an externment order passed in 2024. Reliance was placed on **Deepak v. State of Maharashtra, 2022 SCC OnLine SC 99, paras 10,13 and 14**. Similarly, it was submitted that FIR No. 450/2022 was still pending investigation at the time of passing of the externment order and therefore, this case could not have been considered while passing the said order since the investigating agency after investigation may or may not send the accused to trial. Reliance was placed on **Imtiyaz Hussain Saiyyed v. State of Maharashtra, 2024 SCC OnLine Bom 442 (paras 12,19 and 20)**.

(C) It is submitted that other pre-condition apart from the applicant being hazardous to the community is that the witnesses are not willing to depose in public. It was submitted that in his cross-examination, during the externment proceedings, Insp. Sahdev Kumar Rana on being asked “how the respondent is creating fear in the society” has merely stated that FIR No. 03/2019 and FIR No. 450/2022 proves his statement. It was submitted that this statement can in no manner shows that the witnesses are not deposing in public. It was further submitted that externment order does not mention as to in which cases the witnesses were examined in camera and were declining to appear on account of apprehension of their safety. On the same line it was argued that



cases at serial no. 1-5, shown by the prosecution, in the proposal for externment, are neither at the stage of investigation or prosecution evidence which would give rise to the issue of deposition of witnesses in public and therefore, reliance on the same could not have been placed before passing the externment order. Reliance has been placed on following judgements:-

- (i) **Ram Niwas v. Commissioner of Police, 103 (2003) DLT 146 (DB) (paras 22-32)**
- (ii) **Commissioner of Police v. Ram Niwas, SLP (Crl.) No. 513/2004**
- (iii) **Ashok Kumar Patel v. State of M.P., 2009 (4) M.P.L.J. 434 (para11)**
- (iv) **Manish Pratap Singh v. State of Madhya Pradesh and Others, 2021 SCC OnLine MP 5909 (paras 8 and 9)**

It was further submitted that in the case at serial no. 6 chargesheet stands filed before the Court of competent jurisdiction in February 2024 and if the statement of witnesses have been recorded under Section 161 of the CrPC prior to the passing of externment order dated 30.01.2024 then prima facie the same demonstrates that despite the presence of the petitioner in pre-externment period the witnesses had been examined and had given the statements.

(D) It was submitted that although offence (DD No. 53 A, P.S. Vasant Kunj, South, under Section 110(g) of the CrPC) had allegedly taken place during the externment proceedings but no supplementary show cause notice was issued to the petitioner and still the same was taken into consideration while passing the externment order.



(E) It was submitted that as per the provisions there were two options with the DCP concerned either to direct the person to conduct himself in certain manner or removing him from a particular area. It was pointed out that it was incumbent on the competent authority to effectively weigh the options and in absence of the same the externment order will be considered to be arbitrary and vitiated on account of non-application of mind. Reliance was placed on **Bhim Singh v. Lt. Governor of Delhi & Anr. 98 (2002) DLT (DB) 216 (paras 8-9)**. Similarly, there was no justification in the order for externment of the present petitioner for a period of 2 years or Hon'ble Lieutenant Governor converting it to one year. It was submitted this shows non-application of mind. Reliance was placed on **Deepak v. State of Maharashtra, 2022 SCC OnLine SC 99 (para 17)**.

(F) It was further submitted that the impugned order passed by the Hon'ble Lieutenant Governor also does not take the following into consideration the fact that:-

- (i) FIR No. 353/2017 already stands settled by way of Settlement Deed dated 14.06.2018.
- (ii) FIR No. 267/2018 has no connection with the Applicant.
- (iii) FIR No. 03/2019 already stood quashed on 12.03.2018 by the Hon'ble Delhi High Court.
- (iv) No supplementary Show Cause Notice issued for the offence (DD No. 53A, PS Vasant Kunj South under Section 100(g) of the CrPC).

5. Per contra, learned Additional Standing Counsel for the State submitted that there is no inordinate delay in the externment proceedings. It is pointed



out that the proposal was initiated on 11.11.2022 and notice under Section 50 of Delhi Police Act was issued to the present petitioner to appear on 23.12.2022. On the said date the petitioner appeared before the learned Additional DCP without his counsel or surety and gave his written submissions against the notice. The petitioner was explained the allegations in the vernacular which he understood and claimed trial. He was directed to produce his surety on 10.01.2023, however, the petitioner did not appear on the said date and bailable warrants were issued against the present petitioner. On 17.01.2023 the present petitioner appeared and the SHO Vasant Kunj South was examined and cross-examined. It is pointed out that then the proceedings were pending as on 07.02.2023, 14.03.2023, 14.04.2023, 16.05.2023, 20.06.2023 and 01.08.2023 but the petitioner did not join the proceedings and he was abstaining from joining the same despite issuance of bailable warrants against him. It is pointed out on 12.09.2023 petitioner finally joined proceedings and the other prosecution witness was examined. As per the record, it was pointed out that, thereafter on several occasions the petitioner had sought personal exemption from the Court on one pretext or the other and finally produced his defence evidence on 10.10.2023. Subsequently, it was submitted that the petitioner sought personal exemption from appearance and finally on 30.01.2024 the final order was passed. In view of the aforesaid circumstances, it is submitted that there is no delay in the externment proceedings and that the present petitioner deliberately avoided to delay the proceedings.

6. It was further pointed out that during the course of the externment proceedings the petitioner who was granted anticipatory bail by the learned



ASJ vide order dated 19.10.2022 in case FIR No. 450/2022 was found in violation of the same and proceedings under Section 110(g) of the Cr.P.C. was initiated against the petitioner vide DD No53A/8841/2023. It was stated that the present petitioner was booked as well as bound down vide order dated 04.01.2023 by the SDM, Vasant Vihar. It is submitted that on account of the same, the link between the proposal of detention and the final order was alive and effective. Learned Additional standing counsel further submitted that the petitioner is a Bad Character (BC) of Bundle-A of Police Station, Vasant Kunj South due to his continuous and persistent illegal activities. It was also pointed out that the witness produced by the present petitioner during the externment was found to be his associate in the case FIR No. 267/2018 and 450/2022.

7. Attention of this Court was drawn to the impugned order dated 30.01.2024 passed by the learned Additional DCP, Vasant Kunj South wherein it has been recorded that during the externment proceedings the petitioner was booked under Section 110(g) of the Cr.P.C. and which was in his knowledge. It was further submitted that the learned Additional DCP in the said order also records his satisfaction that the petitioner is not likely to improve until strict measures are taken against him on account of his activities in the area of NCT of Delhi which are causing and are calculated to cause alarm, danger and harm to the respectable citizens. On account of the same learned Additional DCP was satisfied that the continuous presence of the petitioner is leading to alarm and danger in the minds of law abiding citizens of the area who have a right to lead peaceful life and therefore he was externed from the limits of NCT of Delhi for a period of two years. Learned



Additional standing counsel for the State relies upon the judgement of Hon'ble Supreme Court in **Pandharinath Shridhar Rangnekar v. Dy. Commr. Of Police, State of Maharashtra, (1973) 1 SCC 372.**

8. Heard learned counsel for the parties and perused the record.

Analysis and Findings

9. Sections 47 and 50 of the Delhi Police Act, 1978, read as under:

"47. Removal of persons about to commit offences.

- Whenever it appears to the Commissioner of Police-

- (a) that the movements or acts of any person are causing or are 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 offence involving force or violence or an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or under section 290 or sections 489A to 489E (both inclusive) of that Code or in the abetment of any such offence; or
- (c) that such person-
 - (i) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or
 - (ii) has been found habitually intimidating other persons by acts of violence or by show of force; or
 - (iii) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; or
 - (iv) has been habitually passing indecent remarks on women and girls, or teasing them by overtures;

and that in the opinion of the Commissioner of Police 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, the Commissioner of Police may by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof, by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi



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

Explanation.-A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have habitually committed that act.

50. Hearing to be given before order under section 46, 47, or 48 is passed.

(1) Before an order under section 46, section 47 or section 48 is made against any person, the Commissioner of Police shall by notice in writing inform him of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.

(2) If such person makes an application for the examination of any witness to be produced by him, the Commissioner of Police shall grant such application and examine such witness, unless for reasons to be recorded in writing, the Commissioner of Police is of opinion that such application is made for the purpose of causing vexation or delay.

(3) Any written explanation put in by such person shall be filed with the record of the case.

(4) Such person shall be entitled to be represented in the proceeding before the Commissioner of Police by a counsel.

(5)(a) The Commissioner of Police may for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 46, section 47 or section 48 require such person, by order in writing, to appear before him and to furnish a security bond with or without sureties for attendance during the inquiry.

(b) The provisions of sections 119 to 124 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to the order under clause (a) to furnish security bond.

(6) Without prejudice to the foregoing provisions, the Commissioner of Police, while issuing notice to any person under sub-section (1) may issue a warrant for his arrest and the provisions of sections 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to such warrant.



(7) The provisions of section 445, section 446, section 447 or section 448 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to all bonds executed under, this section."

10. Learned Single Judge of this Court in *Paramjeet v. State (NCT of Delhi)*, 2018 SCC OnLine Del 12895, after examining the aforesaid provisions observed as held as under:

"8. Thus the essential requirements to pass an order of externment are either the movement of the person are causing or calculated to cause alarm, danger or harm to the person or property, or there is a reasonable belief of the said person engaging in commission of offence or such person is so desperate and dangerous as to render his being at large in Delhi, hazardous for the community or is habitually intimidating, threatening, causing breach of peace or passing indecent remarks and also the 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.

9. The case of the petitioner is that false cases have been instituted against him, falsity or truth of the allegations in the FIRs registered against the petitioner is not the scope of determination before the competent authority and if the person has a propensity and is involved in offences of serious nature, satisfying the ingredients of Section 47 Delhi Police Act the competent authority is within its jurisdiction to pass the externment order."

11. Further, Section 52 of the Delhi Police Act, 1978, reads as under:

"52. Finality of order in certain cases.

- An order passed by the Commissioner of Police under section 46, section 47 or section 48 or the Administrator under section 51 shall not be called in question in any court except on the ground-

(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in sub-section (1), sub-section (2) or sub-section (4) of section 50 or in section 51, as the case may be; or



(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or

(c) in the case of an order made under section 47 or an order in appeal therefrom to the Administrator under section 51, the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom such order has been made.

(emphasis supplied)

12. The scope of interference in an externment order passed by the competent authority is limited. The Hon'ble Supreme Court in **Deepak v. State of Maharashtra and Others, 2022 SCC OnLine SC 99**, has observed and held as under:

"10. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences



under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section (1) of Section 56. **Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b)**

13. Considering the nature of the power under Section 56, the competent authority is not expected to write a judgment containing elaborate reasons. However, the competent authority must record its subjective satisfaction of the existence of one of the grounds in sub-section (1) of Section 56 on the basis of objective material placed before it. Though the competent authority is not required to record reasons on par with a judicial order, when challenged, the competent authority must be in a position to show the application of mind. **The Court while testing the order of externment cannot go into the question of sufficiency of material based on which the subjective satisfaction has been recorded. However, the Court can always consider whether there existed any material on the basis of which a subjective satisfaction could have been recorded. The Court can interfere when either there is no material or the relevant material has not been considered. The Court cannot interfere because there is a possibility of another view being taken. As in the case of any other administrative order, the judicial review is permissible on the grounds of mala fide, unreasonableness or arbitrariness."**

(emphasis supplied)

13. In view of the above legal position, this Court had summoned the records of the proceedings in the present case before the competent authority, i.e., Additional DCP. The perusal of the record reflects that the proceedings were initiated on 11.11.2022 and the notice under Section 50 of the Delhi Police Act was issued to the petitioner to appear on 23.12.2022. On the said



date, the petitioner had appeared before the said authority without his counsel or surety but had given his written submissions against the said notice. As per record, he was directed to appear with his surety on 10.11.2023, however, he chose not to appear and bailable warrants were issued against him. Thereafter, as per record, the petitioner failed to appear before the competent authority on 07.02.2023, 14.03.2023, 14.04.2023, 16.05.2023, 20.06.2023 and 01.08.2023. The notings in the record of the proceedings reflects that the bailable warrants had been issued against the petitioner but could not be executed on account of his not being available at the given addresses. Thereafter, again, the records reflect that the petitioner had sought exemption from personal appearance before the competent authority on one ground or the other and finally produced his defence evidence on 10.10.2023.

14. It is a matter of record that the present petitioner again absented himself in the proceedings by seeking personal exemption from appearance and finally on 30.01.2024, the impugned order was passed. In view of the aforesaid, the petitioner cannot be allowed to take advantage of his own wrong and claim that the proceedings vitiated on account of delay.

15. It is also a matter of record that during the pendency of the aforesaid proceedings, the petitioner was bound down under Section 110(g) of the Cr.P.C. *vide* DD no. 53A, P.S. Vasant Kunj (South) which reads as under:-

"110. Security for good behaviour from habitual offenders.—When 2 [an Executive Magistrate] receives information that there is within his local jurisdiction a person who—

.....

(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he



should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

It is pertinent to note that the petitioner was aware of the said proceedings initiated by the concerned police station and there was ample opportunity for him to explain the aforesaid circumstance.

16. So far as the contention of learned Senior Counsel for the petitioner with regard to the link between the offences registered in 2017-2022 to an externment order passed in the year 2024, it is suffice to say that this Court cannot go into the question of sufficiency of material based on which the subjective satisfaction of the competent authority has been recorded. As per Hon'ble Supreme Court in Deepak (supra), the Court can interfere when either there is no material or the relevant matter has not been considered. The Competent Authority while passing the order dated 30.01.2024 has recorded as under:

"Before deciding the case, I have perused the statements of witnesses recorded in camera by the then Addl. Deputy Commissioner of Police-I, South West District, Delhi. I am fully satisfied that the witnesses are not willing to come forward to make statements in public against him due to apprehension with regard to the safety of their person and property but they have deposed so in camera. I have also carefully gone through the record and other relevant material available on file. The record suggested that the Respondent is involved in 07 criminal cases of cheating and dishonestly inducing delivery of property, punishment for house-trespass, punishment for, criminal breach of trust, forgery of valuable security, will, etc., forgery for purpose of cheating, using as genuine forged document or electronic record, putting person in fear of accusation of offence, in order to commit extortion, assault or criminal force to woman with intent to outrage her modesty, punishment for voluntarily causing hurt, punishment for wrongful restraint, punishment for theft, punishment for criminal trespass, punishment for criminal



intimidation, word, gesture or act intended to insult the modesty of a woman, punishment of criminal conspiracy, tree Act. A close scrutiny of the record clearly indicates that there are sufficient grounds to conclude that he is actively involved in these cases. Besides, the respondent is a Bad Character (B.C.) of Bundle-A of P.s. V.K.South, Delhi. Due to his continuous and persistent activities, the Respondent is hazardous to the society. The subsequent conduct of the Respondent during Externment proceedings reflects that he is a habitual criminal. Hon'ble Supreme Court in the case of Amanulla Khan Kudeatalla Khan Pathan Vs State. of Gujarat and Ors. reported in (1999) 5 Supreme Court Cases (613) opined that a person can be called dangerous person if he is a habitual offender. "Habitually" would obviously mean repeatedly or persistently. The habitual character of the Respondent is very much evident from the fact that even during the course of proceedings, Respondent was found engaged in commission of offences. Due to his continuous and persistent activities, the Respondent can be called a dangerous person. The subsequent conduct of the Respondent during Externment proceedings reflects his habitual nature for committing crime. I am of the view that his presence in the community is hazardous to the society. The witnesses are unwilling to depose in public against him because of the apprehension on their part as regards the safety of their person & property at the hands of the Respondent and his conduct definitely requires stringent view.

Keeping in view the evidence brought on file, i.e. notice, reply of the notice, statement of Prosecution Witness and other evidence adduced during the course of proceedings, I come to the conclusion that he is not likely to improve-till stringent measures are taken against him. His activities in the area of N.C.T. of Delhi are causing and are calculated to cause alarm, danger and harm to the respectable citizens. His continuous presence in the area is leading to alarm and danger in the minds of law-abiding citizens of the area who have a right to lead peaceful life. I am of the view that his case is well within the scope of section 47 of Delhi Police Act, 1978 and he is a fit person to be externed from the limits of N.C.T. of Delhi."

This Court has perused the statement of the witnesses which were recorded in camera. These witnesses have clearly stated that the present petitioner is always moving around in the area with 10-15 bouncers type



persons in order to create fear in the area. It is further stated that atleast 4 and 5 of them are always armed with weapons. It is further stated that because of this, the present petitioner and his associates create feeling of fear and panic amongst the residents and they always threat that if somebody makes a complaint with regard to their illegal business, then, dire consequences would follow to such person and his family. It was further stated that on account of his aforesaid conduct there is an atmosphere of fear and panic amongst the residents. From the material on record, the competent authority arrived at a subjective satisfaction that the conduct of the petitioner would come within the meaning of Section 47 of the Delhi Police Act and therefore petitioner's externment was necessary for peaceful life of citizens of the area. From the above, it is also reflected that the competent authority has applied his mind with respect to the other option available, i.e., "direct such person to so conduct himself as shall seem necessary" with respect to the present petitioner and concluded that he is not likely to improve till stringent measures are taken against him.

17. At this stage it is apposite to refer to a judgement of the Hon'ble Supreme Court in **Pandharinath Shridhar Rangnekar v. Dy. Commr of Police, State of Maharastra, (1973) 1 SCC 372; 1973 SCC (Cri) 341**, wherein it is observed and held as under:

"9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and



complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externnee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which 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 reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externnee “of the general nature of the material allegations against him”. That obligation fixes the limits of the co-relative right of the proposed externnee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations."

18. The Hon'ble Supreme Court in *Gazi Saduddin v. State of Maharashtra*, (2003) 7 SCC 330, held and observed as under:

“13. It has not been pointed out that there was any lapse in following the procedure laid down under the Act and the Rules in passing the order of externment. The procedure laid down under the Act culminating in passing of the order of externment was duly followed. Primarily, the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on the material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.



14. In view of the findings recorded by the High Court there is no need for us to examine the case on facts but since the learned counsel for the appellant persisted and took us through the entire evidence present on the record including the statement of three witnesses recorded by the police *in-camera*, we might record our findings on facts as well. A perusal of the statements of three witnesses spells out that he had threatened the witnesses with dire consequences for their failure to participate in the demonstration organised by him. It has been stated by the witnesses that the appellant used to give threats and beating to poor persons in the locality and had created a terror in the locality. The appellant was instigating the residents on communal lines and created disharmony amongst them. He was harassing the public in general and disturbed the public tranquillity and security of the locality. That the appellant had given beating to two of the witnesses and snatched Rs 700 and Rs 300 respectively from them at the point of a knife. The third witness has also stated that the appellant was in the habit of beating people and threatening them as a result of which a terror was created in the minds of the residents of Manjulpura, Harsh Nagar and Lota Karanja areas. That he was communal and spreading hatred amongst the communities. It was also stated by him that he had given beating to him and threatened him that if he did not help him in teaching a lesson to the Hindu community then he would not spare his life.

15. A perusal of the aforesaid statements made by the three witnesses spells out that the appellant had threatened the witnesses with dire consequences for not participating in the demonstration organised by him. He threatened them with dire consequences if they did not support him and attend every programme organised by him. He was spreading communal feelings amongst the residents of the locality. He was harassing the public in general and causing disturbance to the public tranquillity and security of the locality. We are satisfied that a case was made out for the externment of the appellant under sub-clause (1) of Section 56(1)(bb) of the Act.”

19. So far as the contention of learned Senior Counsel for the petitioner with respect to the externment order being excessive in nature, as there is no reasoning given by the competent authority as to why the area of externment is NCT of Delhi and not the area of the concerned police station the following



observation of Hon'ble Hon'ble Supreme Court in **Pandharinath Shridhar Rangnekar (supra)** is relevant:-

“16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in *Balu Shivling Dombe v. Divisional Magistrate, Pandharpur*, is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as districts of Sholapur, Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was therefore arbitrary and excessive, the order having been passed without reference to the purpose of the externment.

17. But *Balu Shivling case*, furnishes no analogy in the instant matter. A vast city like Bombay presents its own peculiar problems of law and order. It has an over-growing industrial complex and the city has spread its arms far and wide. A fair proportion of its teeming population is mobile, with large multitudes streaming in and out of the city in the pursuit of their daily avocations. An order of externment restricted to the particular area chosen by the externee for his unlawful activities and to a small periphery thereof would in such circumstances fail of its true purpose. It would be impossible to secure obedience to such an order and its enforcement would raise practical problems which would impair the efficacy of the order. An order in the instant case if restricted, say, to the areas within the jurisdiction of the Vile Parle Police Station and its periphery would not serve its purpose. Rather than solving a problem of law and order, it would create yet one more.”

20. The Hon'ble Lieutenant Governor vide order dated 13.03.2024 has already reduced the period of externment from two years to one year.

21. In view of the above discussion and material on record, it cannot be said that the order of externment dated 30.01.2024 and the order dated 13.03.2024 passed by Hon'ble Lieutenant Governor suffers from any error.



22. The present petition is dismissed and disposed of accordingly.
23. Pending application(s), if any, also stand disposed of.
24. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

May 21, 2024/*sn*