



\$~68

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 120/2025, CRL.M.A. 1035-1036/2025**

MS BANNI

.....Petitioner

Through: Mr. Sunil Kumar Mehta, Advocate.

versus

HON BLE LT GOVERNOR OF DELHI AND ORS Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC
(Crl.) with Mr. Abhijeet Kumar and
Mr. Anurag Arora, Advocates for
State with Mr. Anil, SI, PS-Sarojni
Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

16.01.2025

%

1. The present petition under Article 226 of the Constitution of India has been filed, assailing order of externment dated 26th February, 2024 passed in File No. 27/2021 as well as the order in appeal dated 22nd May, 2024 in Case No. 73/2024. By virtue of the impugned orders, the Petitioner has been directed to remove herself beyond the limits of the NCT of Delhi for a period of one and a half years from the date of the externment order.

2. The background leading to the filing of the present case in brief is as follows:

2.1. The proposal for Petitioner's externment under the Delhi Police Act, 1978¹ was submitted by the SHO, Sarojni Nagar through ACP, Safdarjung Enclave, based on her involvement in committing offences related to

¹ "DPA"



property and person. At the time of the proposal, three FIRs had been registered against the Petitioner under Section 33 of the Delhi Excise Act at the Sarojini Nagar Police Station, as noted in the impugned externment order.

2.2 After the initiation of externment proceedings on 24th August, 2021, the number of cases against the Petitioner increased rather than subsided. By the time the proceedings were concluded and the externment order was passed, a total of nine FIRs had been registered against the Petitioner, six of which were pending trial, while three were still under investigation.

2.3 Considering these facts, Respondent No. 2 passed the impugned externment order, directing the Petitioner to remain outside the territorial limits of the NCT of Delhi for two years. The relevant portion of the order reads as follows:



- 2 -

"In her reply to the notice u/s 50 of D.P. Act, Respondent stated that in the notice it is alleged that the respondent is involved in 3 cases and all cases pertain to P.S. Sarojini Nagar. It is submitted that the cases mentioned from Sl. No.1 to 3 of the notice bearing FIR No.40/2018, P.S. Sarojini Nagar, FIR No.112/2018, P.S. Sarojini Nagar and FIR No.360/2020, P.S. Sarojini Nagar all are under 33 of Delhi Excise Act which are falsely planted upon the respondent and are petty cases being summons trial cases and do not warrant the present proceedings. That it is submitted that as per the mandatory provisions of Section 47 D.P. Act in the last preceding one year at least 3 cases should be registered against the accused so that a notice U/S 47 D.P. Act can be served upon him/her, it is pertinent to note here that the above mandatory provision has not been fulfilled and the notice should be set aside on this ground alone. In 1981 Cr. L.J. 5 our Hon'ble Supreme Court has held as under: "But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the Police. Therefore, Ss. 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or other is not adequate. There must be clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution as expounded by this Court in Maneka Gandhi (1978) 1 SCC 248: (AIR 1978 SC 597). That in the notice there is no mention the basis for the belief which has led for issuance of this notice, it is submitted that in all the cases not even a single public witness has been cited in order to substantiate and authenticate the allegations and the case of the prosecution. That the respondent is absolutely innocent, she is a victim of circumstances and she is not in any manner creating trouble to the people of the area as no complaint against the respondent has ever been made by the people of the neighborhood for any illegal acts or conduct of the respondent. That all the cases mentioned in the said notice served upon the respondent are minor cases/ offences which are not heinous offences so as to warrant proceedings U/S 47 & 50 of D.P. Act. 8. That the notice served upon the respondent does not reflect or spell out any immediate danger or threat to the community on which date the notice has been served upon the respondent as such the notice under reply is bad in law and against its spirit. That the respondent is senior citizen of 60 years of age and is suffering from various old age related ailments and she is housewife and if the respondent is externed from Delhi, the whole family of the respondent will face great hardship. It is therefore prayed that the notice be kindly ordered to be vacated, in the interest of justice".

On 12.09.2023, Inspr. Devender Kaushik, SHO/Sarojini Nagar, Delhi was examined as "Prosecution Witness" who deposed that the proposal for externment against the respondent was made keeping in view of her past criminal record and her present conduct. At the time of making of this proposal, she was found to have been involved in as many as 09 cases of punishment for Delhi Excise Act. and there is every likelihood for her to indulge in such offences in future too. She is a desperate and habitual offender and her presence in the area is leading to danger for the person & property of law-abiding citizens of the area. PW further deposed that

Contd...P...3.



the citizens are not willing to come forward to give evidence against her due to apprehension on their part as regards to the safety of their person & property at the hands of the Respondent. An opportunity was given to the Respondent to cross-examine the PW but, she did not avail the same. Statement of MHC(R)/PS Sarojini Nagar was got recorded as PW. He supported the contents of the Notice. He was also not cross examined by the respondent.

Ample opportunities were given to the Respondent to produce defence witnesses in his defence, if any but he did not do so.

During the course of Externment proceedings, Respondent Banni W/O Samma, R/O Jhuggi No. 84, Arjun Dass Camp, Laxmi Bai Nagar, Sarojini Nagar, New Delhi found involved in the following cases:-

S. No.	FIR No.	Dated	Section of Law	Police Station	Present Status
1.	36/22	15.01.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial
2.	120/22	01.03.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial
3.	143/22	27.03.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial
4.	203/22	18.05.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial
5.	321/22	06.08.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial
6.	462/22	19.11.2022	33 Delhi Excise Act	Sarojini Nagar	Pending Trial

Subsequently, a supplementary notice was issued on 27.12.2022 and served upon her in which directing to the respondent to submit her written reply in response to the supplementary notice **but she failed to do so. She did not bother to submit her written reply to the supplementary notice which indicates that she has nothing to say in this regard.**

During the course of Externment proceedings, Respondent Banni W/O Samma, R/O Jhuggi No. 84, Arjun Dass Camp, Laxmi Bai Nagar, Sarojini Nagar, New Delhi found involved in the following cases:-

S. No.	FIR No.	Dated	Section of Law	Police Station	Present Status
1.	291/23	22.09.2023	33 Delhi Excise Act	Sarojini Nagar	Pending Investigation
2.	401/23	12.12.2023	33 Delhi Excise Act	Sarojini Nagar	Pending Investigation
3.	02/24	01.01.2024	33 Delhi Excise Act	Sarojini Nagar	Pending Investigation

Subsequently, a supplementary notice was issued on 10.02.2024 and served upon her in which directing to the respondent to submit her written reply in response to the supplementary notice **but she failed to do so. She did not bother to submit her written reply to the supplementary notice which indicates that she has nothing to say in this regard.**

On several occasions, the Respondent was advised to engage a counsel to defend the case, at her cost or to approach the 'DLSA' at Patiala House Court, Delhi to engage a counsel, free of cost (for which she has a right) if, she is not in a



position to engage a counsel, at her cost but, she did not do so. 27

Today, the Respondent is present without her defence Counsel and preferred to argue her case herself. She argued that she was falsely implicated in the cases registered against her. She is not indulged in any criminal activity. Out of 12 cases registered against her, 03 cases are pending investigation and 09 cases are pending trial in the concern court. She further argued that she is not involved in any criminal case after 01.01.2024 and presently she is working as a housewife and lives peacefully. At the end, she prayed for leniency. Arguments heard in detail.

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 her 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 12 cases of punishment for Delhi Excise Act.** A close scrutiny of the record clearly indicates that there are sufficient grounds to conclude that she is actively involved in these cases. **Besides, the respondent is a Bad Character (B.C.) of Bundle-A of P.S. Sarojini Nagar, Delhi and during the course of proceedings, she was found involved in more criminal cases.** Due to her continuous and persistent activities, the Respondent is hazardous to the society. The subsequent conduct of the Respondent during Externment proceedings reflects that she 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 she 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 her continuous and persistent activities, the Respondent can be called a dangerous person. The subsequent conduct of the Respondent during Externment proceedings reflects her habitual nature for committing crime.

I am of the view that her presence in the community is hazardous to the society. The witnesses are unwilling to depose in public against her because of the apprehension on their part as regards the safety of their person & property at the hands of the Respondent and her 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 she is not likely to improve till stringent measures are taken against her. Her 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. Her 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 her case is well within the scope of section 47 of Delhi Police Act, 1978 and she is a fit person to be externed from the limits of N.C.T. of Delhi.

Now, therefore, in exercise of the powers vested upon me under section 47/50 of D.P.

Contd...P...5.



Act, 1978 and conferred upon me by the order of Commissioner of Police, Delhi under section 8(ii) of the said Act, I, **Kushal Pal Singh, Addl. Deputy Commissioner of Police-I, South West District, Delhi**, hereby direct **Banni W/O Samma, R/O Jhuggi No. 84, Arjun Dass Camp, Laxmi Bai Nagar, Sarojini Nagar, New Delhi** to remove herself beyond the limits of N.C.T. of Delhi for a period of **Two Years** within seven days from the date of this order. The Respondent is further directed not to enter or return to the area of N.C.T. of Delhi within the said period without written permission of the competent authority. She is however, permitted to attend the Court at Delhi/New Delhi on all the dates of hearing and shall immediately thereafter remove herself outside the limits of N.C.T. of Delhi and shall not visit any place other than the court premises. This relaxation is only for the date of hearing in the court for coming and going out of the limits of N.C.T. of Delhi. The contents of the order have been explained to her in "Hindi" language in the open Court and a copy of the order has been

delivered to her against her proper receipt. Order announced in the open Court in the presence of the Respondent. The Respondent is also informed of her right to appeal against this order u/s 51 of Delhi Police Act, 1978 to the Administrator (Hon'ble Lieutenant Governor of Delhi) within thirty days from the date of the service of such order on her. File be consigned to record.

Given under my hand and seal of this Court on 26/02/2024.

2.4 Aggrieved by the aforementioned externment order, the Petitioner preferred an appeal under Section 51 of the Delhi Police Act, 1978, before Respondent No. 1. Upon consideration, the appellate authority reduced the period of externment from two years to one and a half years, but otherwise upheld the decision of Respondent No. 2.

3. Counsel for the Petitioner has challenged the impugned orders on several grounds. First, he contends that proceedings initiated under the Delhi Excise Act, 1955, cannot form a valid basis for an externment order under the Delhi Police Act, as the alleged offences do not indicate any immediate or significant threat to public safety or property. The Counsel emphasizes that the Petitioner has not been convicted in any of the twelve cases cited in the externment proceedings, with several of these cases still under investigation and others pending trial. He asserts that an externment order premised solely on pending cases cannot be sustained in law, particularly in the absence of any adjudicated guilt. The Counsel further submits that the externment proceedings were conducted in violation of the principles of



natural justice. He points out that the Petitioner was not informed of her right to legal representation during the proceedings, nor was she provided with access to legal counsel despite the prolonged nature of the hearings before Respondent No. 2. This, he argues, is a gross violation of her constitutional and procedural rights. Moreover, he contends that while the impugned order makes references to the Petitioner's alleged involvement in twelve cases, the complete documents pertaining to these cases, including FIRs or chargesheets, were never furnished to the Petitioner. Consequently, she was deprived of the opportunity to effectively challenge or rebut the allegations against her. Counsel argues that the externment proceedings appear arbitrary, as several of the referenced cases remain under investigation, and the lack of specific findings renders the decision unsustainable.

4. Counsel also challenges the credibility of the evidence relied upon in the externment proceedings. He highlights that the witnesses examined in support of the allegations against the Petitioner were exclusively police officers, and no independent witnesses from the community were brought forward. He asserts that no efforts were made to examine individuals who could corroborate the claim that the Petitioner's presence in the locality posed a danger to public safety or property. The absence of independent testimony, coupled with the failure of Respondents to substantiate why public witnesses allegedly refrained from coming forward, undermines the fairness of the proceedings. Moreover, the Respondents have not provided specific details of the witnesses, further diminishing the probative value of the evidence relied upon. The Counsel emphasizes that the Petitioner has lived in Delhi with her family for a considerable time and is a law-abiding citizen. The impugned externment order, he contends, imposes



disproportionate prejudice on the Petitioner by uprooting her from her residence and subjecting her to significant social and economic hardship. He urges the Court to intervene, as the order is not only procedurally flawed but also fails to meet the substantive requirements under Section 47 of the Delhi Police Act.

5. Counsel for the Respondents vehemently disputes the contentions raised by the Petitioner. She submits that the impugned orders demonstrate that the Petitioner was provided with multiple opportunities to present her case, including the option to avail legal assistance, which she wilfully chose to forgo. The Respondents argue that the Petitioner's claims of procedural impropriety lack merit, as the record reflects adequate compliance with principles of natural justice. The Counsel further contends that the Petitioner's habitual involvement in criminal activities, as evidenced by her repeated violations under the Delhi Excise Act, fulfils the statutory criteria outlined in Section 47 of the Delhi Police Act, 1978. Emphasizing the cumulative impact of the twelve FIRs registered against the Petitioner, including six cases pending trial and three under active investigation, she argues that the Petitioner's continued presence in the community poses a serious threat to public safety and the maintenance of law and order. Respondents assert that the Petitioner's characterization of the cases as "minor" ignores the pattern of persistent unlawful conduct, which has led to alarm and apprehension among local residents. The Counsel also highlights that public witnesses were unwilling to come forward due to fears of retaliation, highlighting the Petitioner's adverse influence within her locality. In such circumstances, the Respondents maintain that the externment order was both necessary and proportionate, aiming to protect the rights and safety of law-abiding citizens while addressing the



Petitioner's disruptive behaviour.

6. The Court has carefully considered the submissions made on behalf of the Petitioner but finds them devoid of merit. A perusal of the impugned order reveals that the Petitioner was afforded ample opportunities to present her case at every stage of the proceedings. The record demonstrates that the Petitioner initially filed a reply to the notice under Section 50 of the Delhi Police Act, 1978, which was duly taken into account. Despite this, she failed to produce any defence witnesses, even after being granted multiple opportunities to do so. Further, supplementary notices issued on 27th December, 2022 and 10th February, 2024 directed the Petitioner to submit a written response to the allegations. However, her failure to comply with these notices and the absence of any written defence suggests either a lack of substantive rebuttal or wilful disregard for the proceedings. Such omissions carry implications, as they reinforce the credibility of the Respondents' case against her. The impugned order also notes that the Petitioner was repeatedly advised to engage legal counsel to assist her, either at her own expense or through the free legal aid services of the Delhi Legal Services Authority at Patiala House Courts. Despite this, she elected to proceed without representation and argued her case personally. The Court finds that this decision cannot be construed as a denial of her right to legal representation but rather as her deliberate choice to forgo such assistance. Thus, there is no merit in the Petitioner's claim that there has been a denial of natural justice.

7. The Petitioner's contention that cases registered under the Excise Act do not warrant the invocation of Section 47 of the Delhi Police Act, 1978, lacks legal and factual support. She has neither cited any binding judicial precedent nor pointed to any statutory provision that exempts such cases



from forming the basis of externment proceedings. The mere categorization of offences under the Excise Act does not, in itself, negate their relevance under the provisions of the DPA, particularly when the cumulative effect of the Petitioner's activities is alleged to pose a threat to public safety and order.

8. The Petitioner's objection regarding the reliance on the testimony of police officers is equally untenable. The proceedings under Section 47 of the DPA are inherently preventive in nature and aim to address the potential harm posed by individuals whose conduct raises substantial concerns. As the police officers were directly involved in investigating the Petitioner's activities, their testimony was not only relevant but also critical to the determination of her conduct and criminal tendencies. The absence of testimony from independent witnesses does not vitiate the proceedings, especially when the record demonstrates that public witnesses were unwilling to come forward out of fear or apprehension for their safety, as noted in the impugned order. The Petitioner cannot now fault the examination process for being limited to police officers, given the nature of the proceedings and the circumstances involved.

9. The Petitioner's grievance regarding the alleged non-supply of documents also appears to lack merit. With respect to the six cases currently pending trial, it is reasonable to assume that the relevant documents, including the charge sheets and supporting evidence, are already in her possession, as they form the basis of the ongoing proceedings. As for the remaining three cases still under investigation, the Petitioner had the opportunity to request access to the relevant documents during the course of the externment proceedings. However, the record does not reflect any such request on her part. Her failure to take proactive steps to secure these



documents further undermines her argument. Thus, the claim of procedural prejudice due to non-supply of documents is not substantiated.

10. The facts of the case, as elaborated in the impugned order, unequivocally establish the Petitioner's repeated involvement in criminal activities. At the time the proceedings were initiated in 2021, the Petitioner was already implicated in multiple cases. By the time the externment order was passed, the number of registered cases had increased, reflecting a consistent pattern of conduct detrimental to public safety and order. Such conduct justifies preventive measures under Section 47 of the DPA. At this juncture, it is pertinent to refer to the judgment of the Supreme Court in *State of NCT of Delhi v. Sanjeev @ Bittoo*,² whereby the Court deliberated on the scope of judicial intervention with respect to externment orders. The relevant portion of the said judgement is as follows:

"23. Though Section 52 limits the scope of consideration by the courts, the scope for judicial review in writ jurisdiction is not restricted, subject of course to the parameters indicated supra.

*24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. **On the contrary the order directing externment should show existence of some material warranting an order of externment.** While dealing with the question mere repetition of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.*

*25. As observed in Gazi Saduddin case [(2003) 7 SCC 330 : 2003 SCC (Cri) 1637] **satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice.** To that extent, objectivity is inbuilt in the subjective satisfaction of the authority."*

[Emphasis Supplied]

11. Applying this principle to the present case, it is evident that the

² (2005) 5 SCC 181.



Respondents acted within their statutory authority. The material on record demonstrates her habitual criminal behaviour. The Petitioner is listed as a “bad character” in bundle “A” at PS Sarojni Nagar, Delhi, and has been found to be involved in several criminal cases during the course of these proceedings. The competent authority, after considering the materials on record, concluded that the Petitioner was involved in multiple criminal cases. The authority found that the Petitioner’s presence in the community was hazardous to the society. The authority, therefore, concluded that stronger measures needed to be taken to address the Petitioner’s activities and prevent further harm.

12. In light of the aforesaid facts and circumstances, the Court finds no reason to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to issue a prerogative writ of mandamus to interfere with the externment order.

13. Accordingly, the present writ petition is dismissed along with pending applications.

SANJEEV NARULA, J

JANUARY 16, 2025

nk