

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 369 of 2016**

- Sanjay Agrawal S/o Shri Mahangilal Agrawal, Aged About 46 Years R/o Schoolpara, Thana And Tehsil Baikunthpur, District Korea, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur Chhattisgarh
2. District Magistrate (Collector) , Baikunthpur, District Korea, Chhattisgarh
3. Superintendent Of Police, Baikunthpur, District Korea, Chhattisgarh
4. Sub Divisional Magistrate, Baikunthpur, District Korea, Chhattisgarh
5. Station House Officer, Thana Baikunthpur, Baikunthpur, District Korea, Chhattisgarh
6. Station House Officer, Thana Charcha, Charcha, District Korea, Chhattisgarh
7. Shri S. Prakash, District Magistrate (Collector), Baikunthpur, District Korea, Chhattisgarh,
8. Shri Sujeet Kumar, Superintendent Of Police, Baikunthpur, District Korea, Chhattisgarh
9. Vineet Dubey, Station House Officer, Thana Baikunthpur, Baikunthpur, District Korea, Chhattisgarh
10. J. S. Kanwar, Station House Officer, Thana Charcha, Charcha, District Korea, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate
For Respondent/State	:	Shri R.K. Bhagat, Dy. GA
For Respondents No.9 & 10:	:	Shri Basant Dewangan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31/01/2019

1. Heard.
2. The present petition is to quash the notice dated 19.10.2016 (Annexure P-1) which was issued under Section 5 (b) of the Chhattisgarh Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as 'the Adhiniyam, 1990'), whereby a notice was served to the petitioner that externment proceedings would be drawn if the reply is not filed. In such notice reference of 11 criminal cases was made and the list of those cases was attached.
3. Learned counsel for the petitioner submits that the notice dated 19.10.2016 if it is compared with the time, it defeats the very object of the Adhiniyam, 1990 for which it was issued. It is contended that the entire object of the Adhiniyam, 1990 is to arrest any ensuing immediate offence and such cannot be continued for the time immemorial as it would defeat the life & liberty of the petitioner by efflux of time itself. He further submits that the notice cannot be continued as a arm twisting method against the object & intent of the legislation. He referred to the case of ***Sudeep Patel Vs. State of M.P. & ors. {2018 (3) M.P.L.J. 413}*** and submits that under the similar circumstances, the High Court of Madhya Pradesh has evaluated the object and has defined that the the Adhiniyam, 1990 is only for the limited purpose.
4. Per contra, learned State counsel submits that as many as 11 cases were to the credit of the petitioner. He further submits that all the cases would reveal that

under Section 506 IPC the FIR was attached. He further submits that continuous threats were extended, therefore, if the person is credited with such number of criminal cases, the State was right in their act to implement Section 5 (b) of the Adhiniyam, 1990.

5. I have heard learned counsel for the parties and perused the documents attached with this petition.
6. The notice served to the petitioner i.e. Annexure P-1 is perused. Annexure P-1 finds a reference of 11 criminal cases by the District Magistrate, Korea. The list of 11 cases, which is attached reveals that at serial No.1 one case was bearing No.99/07 was way back of the year 2007, subsequent two cases at serial Nos.2 & 3 the case number is one and same i.e. 26/12, at serial No.4 the case is bearing No.66/16 which is under Sections 420, 467, 468, 471, 34 IPC, whereas at serial Nos. 5 & 6 again particulars of one case bearing No.132/16 is given which is under Sections 147, 148, 149, 353, 186, 323, 294, 506B & 336 IPC and lastly at serial No.7 one another case is mentioned bearing No.09/16 under Section 110 of Cr.P.C. Therefore, at serial Nos. 2 & 3 and 5 & 6 the case numbers appear to be one and the same, though they are numbered as different serial numbers. Likewise at the bottom of it list of witnesses have been given in four serial numbers and it do not reflect of any criminal case, instead the name of the witnesses have been shown in serial numbers. Therefore, prima facie it appears that the reference of 11 cases which has been given was faulty; without verification and can be termed as without any application of mind.

7. Be that as it may, notice was issued under Section 5 (b) of the Adhiniyam, 1990.

The object of the Adhiniyam, 1990 purports that an act to provide for the security of the State, maintenance of public order and certain other matters connected therewith. Section 5 (b) of the Adhiniyam, 1990 under which the notice was issued would be relevant in the facts of this case, which is reproduced hereunder:-

“5. Removal of persons about to commit offence. -

Whenever it appears to the District Magistrate-

(a) xxx xxx xxx

(b) that there are reasonably 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, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate 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; or”

8. Reading of Section 5 (b) of the Adhiniyam, 1990 would show that when there are reasonably grounds for believing that such person is engaged or is about to be engaged in the commission of an offence and in the opinion of the District Magistrate witnesses will not come forward to give evidence, then in such case it can be invoked. Therefore, the object take into sweep the present time and also the future. So whether such future presumption would be uncontrolled or is to be considered at the whims of the officer? The answer would be the facts of the situation in a given case would decide the future course of action and it cannot be astronomical. The facts would show that the notice was of the year

2016 and 3 years have already passed and the reply of the State is completely silent of the fact that in between 2016 to 2019 what other criminal activities were done or not.

9. The preventive detention which is interpreted in para 10 in the case of **Sudeep** (supra) reads as under :-

.....

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"Preventive detention: Meaning and concept

32. There is no authoritative definition of "preventive detention" either in the Constitution or in any other statute. The expression, however, is used in contradistinction to the word "punitive". It is not a punitive or penal provision but is in the nature of preventive action or precautionary measure. The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future.

33. [In Haradhan Saha v. State of W.B.](#) explaining the concept of preventive detention, the Constitution Bench of this Court, speaking through Ray, C.J. stated: (SCC p. 205, para 19)

"19. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing

him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent."

34. In another leading decision in [Khudiram Das v. State of W.B.](#) this Court stated: (SCC pp. 90-91, para 8)

"8. ... The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in [State of Madras v. V.G. Row](#) that preventive detention is 'largely precautionary and based on suspicion' and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *R. v. Halliday*, namely, that 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'. This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii)

of Clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting."

35. Recently, in [Naresh Kumar Goyal v. Union of India](#) the Court said: (SCC p. 280, para 8)

"8. It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped. (See P.U. Iqbal vs. Union of India, Ashok Kumar vs. Delhi Admn. And Bhawarlal Ganeshmalji vs. State of T.N.)" (emphasis supplied)"

10. The principle which has been laid down by the Supreme Court if are read in parallel to the object of the Adhiniyam, 1990, it sums up that inordinate delay

cannot be allowed and there has to be live and proximate link between the such proposed grounds of detention & purpose of the detention is proposed. The notice of 2016 itself shows enough time has lapsed till 2019. The State government could not come out with the fact that what criminal activity has been done by the petitioner in between 2016 to 2019. The proposed externment is only an implication to the life & liberty of a person, which cannot be made to subjective satisfaction of the officer for time immemorial to make the entire statute & its object as porous. State cannot continue with the threat of externment under the garb of show-cause and fence the movement. Under the circumstances, in the facts of this case, this Court is of the opinion that the notice dated 19.10.2016 and the proceedings which emanated therefrom cannot be continued as it has died its natural death with the efflux of time. Accordingly, the petition is allowed and the notice dated 19.10.2016 (Annexure P-1) and the consequent proceedings thereof are hereby quashed.

Sd/-

Goutam Bhaduri

Judge

Ashu