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

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Reserved on: 10.10.2022

Pronounced on: 18.11.2022

+ **W.P.(CRL) 2135/2022 & CRL.M.A. 18409/2022**

RAKESH KUMAR

..... Petitioner

Through: Ms Mudita Sharda and Ms Gayatri
Nandwani, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Sanjay Lao, Standing Counsel (Crl.) for
State with Ms Supriya Manan and Ms
Priyam Agrawal, Advs.
IO Inspector Janender, PS-Mayur Vihar

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition filed under Article 227 of the Constitution of India read with section 482 of Cr.Pc seeking setting aside of the externment order dated 12.05.2022 passed by the court of Addl. DCP-I, East Delhi and the order dated 24.08.2022 passed by the Court of Ld. Lieutenant

Governor, Delhi in Appeal No. 122/2022 titled “Rakesh Kumar v.State of NCT of Delhi”.

2. The brief facts of the case which have resulted into filing of the present petition are that there are allegations against the petitioner that he was found involved in selling of illicit liquor and there were 21 cases against him punishable under the Excise Act. Vide the order dated 12.05.2022 passed by the Addl. DCP-I, the petitioner was externed from the limits of Delhi for a period of one year. Subsequently, the petitioner removed himself from the limits of NCT of Delhi and started residing in Gurgaon, Haryana and subsequently shifted to a rented accommodation in Noida, UP. Thereafter, the petitioner preferred an appeal under section 51 of Delhi Police Act being Appeal No. 122/2022 titled as “*Rakesh Kumar v. State of NCT of Delhi*” which was subsequently dismissed by the Court of Ld. Lieutenant Governor vide order dated 24.08.2022, thereby confirming the order dated 12.05.2022.
3. As per the order of externment dated 12.05.2022, there were 20 cases against the petitioners. However, as per the Status report, there are about 23 cases against the petitioner as under. The list of 23 cases is reproduced as under:-

Previous Conviction/Involvement Report

Name : Rakesh S/o Lt. Gurbachan R/o HN 30/475, Trilokpuri, Delhi.

S.N o.	FIR No.	Date	Section of Law	Police Station	Present Status
1	57	01.02.1994	61/1/14 Excise Act	Trilokpuri	Conviction
2	693	20.12.1994	61/1/14 Excise Act	Trilokpuri	To court 24/02/1995
3	319	19.05.1995	61/1/14 Excise Act	Trilokpuri	To court 11/08/1995
4	478	06.08.1995	61/1/14 Excise Act	Trilokpuri	Acquittal
5	88	16.02.1996	61/1/14 Excise Act	Trilokpuri	Acquittal
6	119	04.03.1996	61/1/14 Excise Act	Trilokpuri	To court 08/07/1996

7	355	13.05.1997	61/1/14 Excise Act	Trilokpuri	Acquittal
8	980	30.11.1997	61/1/14 535Excise Act659	Trilokpuri	Acquittal
9	535	19.07.1998	61/1/14 Excise Act	Trilokpuri	Acquittal
10	659	18.08.1998	61/1/14 Excise Act	Trilokpuri	Acquittal
11	214	28.08.1999	61/1/14 Excise Act	Mayur Vihar	To court 18/04/2000
12	117	22.05.2000	61/1/14 Excise Act	Mayur Vihar	To court Feb-2001
13	254	16.10.2001	61/1/14 Excise Act	Mayur Vihar	PT 25/01/2002
14	321	03.12.2002	61/1/14 Excise Act	Mayur Vihar	PT 09/06/2003
15	06	06/01/2018	33 Delhi Excise Act	Mayur Vihar	Charge has been framed on 17.09.22 and next date of hearing is 13.02.23

16	311	15.08.2018	33 Delhi Excise Act	Mayur Vihar	Put in court. Next date of hearing is 21.11.22
17	DD No. 57A	24.02.2019	107/151 CrPC	Mayur Vihar	
18	145	02.05.2019	33/38 Delhi Excise Act	Mayur Vihar	To Court on 01.01.20 and next date of hearing is 26.09.22
19	311	12.10.2019	33 Delhi Excise Act	Mayur Vihar	To Court on 01.02.22 and next date of hearing is 28.01.23
20	360	03/12/2019	33/58 Delhi Excise Act	Mayur Vihar	Pending investigation.
21	GD No.64	2021	110 G CrPC	Mayur Vihar	
22	102	28.02.2021	33/52 (2) Delhi Excise Act	Mayur Vihar	To Court on 22.03.22 and next date of hearing is 30.09.22
23	132	22/01/2022	33 Delhi Excise Act	Mayur Vihar	Charge sheet prepared.

4. Ms. Sharda, learned counsel for the petitioner has submitted that in the present case, the requirements of section 47 of the Delhi Police Act have not been complied with.

a. She states that the petitioner is not a habitual offender as per explanation to section 47 of the Delhi Police Act. She states that Section 47 mandates that externment proceedings can only be initiated against a habitual offender who has been found involved in more than 3 criminal actions immediately preceding externment action. Section 47 of the Act talks about removal of persons about to commit offences. In the present case, externment proceedings were initiated on 3.11.2020 and in view of section 47, externment proceedings could be initiated against the petitioner only if he was found involved in three or more cases between 03.11.2019 to 03.11.2020. There was only one case against the petitioner subsequent to 03.11.2019. Ms. Sharda has placed reliance on a judgement of this court titled as “**Bharat Singh v State of NCT of Delhi & ANR**” [W.P (CRL) 260/2019], more particularly para 14, which read as under:-

“14. Subsequently, the word 'habitually' mentioned in sub-clause (ii), (iii) & (iv) of sub-section (C) of Section 47 of DP Act is elaborated by the explanation which says that a person who within a period of one year immediately preceding the commencement of an action under Section 47 of DP Act is found in not less than three occasions to have committed or to

have been involved in any of the acts referred in sub- clauses, shall be deemed to have been habitually committed that act.”

b. Ms. Sharda also submits that the ‘double conditions’ under section 47 of the Act must be satisfied and must exist in conjunction for the police to extern a person. Section 47 requires that the police must be satisfied that the petitioner is (i) dangerous and poses imminent danger to the society and (ii) must also satisfy that no witness is coming forward to depose against the person out of fear. She states that in the present case, the ‘double conditions’ are not satisfied as there is no finding that the petitioner causes alarm, danger or harm to the society, or that he is about to commit offences which are serious in nature and there is also nothing on record to show the subjective satisfaction of the commissioner of Police recording that the witnesses are not coming forward to give evidence. Ms. Sharda has placed reliance on a judgement on this court titled as “**Satish Chauhan v. State (Govt. of NCT of Delhi) and Ors**” [2015 SCC OnLine Del 14339], more particularly paras 26,27,31,32 and 32 which read as under-

“26. The nature of cases which have been cited in support of the proposal for externment of the petitioner do not indicate or justify the opinion of the competent officer about petitioner having become a dangerous person. Even the deposition of in camera witnesses do not appear to be trustworthy as each and every word

of their statements tally. It is difficult, therefore, to countenance the line of reasoning that witnesses are not coming forward to depose against the petitioner. On the contrary, witnesses have deposed against the petitioner in the cases which have been lodged against him. No doubt, it is not necessary that all the witnesses must be found unwilling to give evidence in public but for a competent authority to come to a conclusion that because of fear of the petitioner, it is difficult to obtain evidence against him in open, there should be definite, cogent and real grounds for coming to such conclusion.

27. Section 47 of the Delhi Police Act, 1978 consists of two parts. The first part relates to the satisfaction of the competent authority for taking a decision regarding the petitioner having become a dangerous person and the second part requires the competent authority to come to a definite finding that witnesses are not willing to come forward to depose against the petitioner for the fear of reprisal. Though the subjective satisfaction of the competent authority has been attached with a finality in the Statute but such opinion of the competent authority has been held to be justiciable and subject to judicial scrutiny. Notwithstanding the provisions of Section 52 of the Delhi Police Act, which limits the scope of consideration by the Courts, judicial review of such administrative action cannot be shut out. Sufficiency of materials available before the competent authority may not be within the parameters of the scope of the judicial review of such

administrative orders but then the whole object of judicial scrutiny of such administrative orders would become illusory if it is not seen whether the satisfaction of the authority is based on materials which are or not referable or in consonance with the object for which such section has been enacted or that the satisfaction arrived at is demonstratively perverse and based on literally no evidence.

31. The relevant provisions of Delhi Police Act which have been referred to above are for the purpose of preventing commission of crime by pathological law breakers. This Court is mindful of the fact that in many cases, for tracking down law breakers, stringent measures are required to be adopted, but one of the most important fundamental rights of the citizen namely personal liberty cannot be relegated to the background and be left in the hands of the police entirely.

32. There does not appear to be any clear and present danger based upon any relevant material on which the competent authority has come to the conclusion that allowing the petitioner to remain Delhi would be alarming, dangerous and could lead to serious repercussions.”

5. She has also relied upon “**Ghan Shyam Kapoor v Lt. Governor of Delhi & Ors**” [2015 SCC OnLine Del 14180] more particularly para 11:-

“11. The explanation appended to the section defines habitual offender. If a person has involved himself in cases on three occasions or more within one year immediately preceding the commencement of the action, he is a habitual offender.”

6. Furthermore, the learned counsel for the petitioner states that the police knowingly and intentionally failed to issue mandatory supplementary notice under section 50(1) of the Delhi Police Act which reads as:-
“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.” She states that even though the extenment order of 12.05.2022 records a mandatory notice is required to be issued for the FIRs of the year 2021-22, no notice was given. Ms. Sharda states that merely recording that the petitioner had stated that he does not require the notice, does not absolve the respondent from meeting with the statutory principles of natural justice.
7. She further submits that the extenment order of 12.05.2022 observes that the petitioner is ‘actively’ involved in 21 cases. She says that the court of Addl. DCP-I, while passing the said order, failed to take into consideration that the petitioner has been acquitted in 11 cases, 2 cases have already been disposed of and 3 cases are under trial. It is also stated that the Addl. DCP-I court has ignored the petitioner’s defence witness, i.e, Shri Pyare Lal’s testimony. Not a single case has been

registered against the petitioner between the year 2002-2018. The petitioner is also said to be suffering from diabetes and weak eye sight, thereby is dependent on his wife for his day-to-day activities. Lastly, she submits that no opportunity was given to the petitioner to hire a lawyer to defend his externment.

8. Mr. Lao, learned counsel for the respondent states that the petitioner has been continuously found involved in selling of illicit liquor and also involved in two FIRs under Delhi Excise Act even after initiation of the externment proceedings. He further states that the petitioner is a Bad Character of Bundle-A of PS Mayur Vihar and is hence, dangerous for the society.
9. To answer the petitioner that externment proceedings can be initiated only against a habitual offender who has been found involved in more than three criminal actions 'immediately' preceding the externment action, Mr. Lao has placed reliance on a judgement of this court titled as **"Om Prakash v Addl. Commissioner of Police"** [2001 SCC OnLine Del 1334], more particularly paras 6, 10 and 11 which read as under-

"6. We have heard Mr. M.C. Dhingra, learned counsel for the petitioner and Mr. Akshay Bipin, learned counsel for the respondent. The contentions advanced on behalf of the petitioner before us are more or less similar as was sought to be advanced before the appellate authority. It has been contended by Mr. Dhingra, learned counsel for the petitioner, that the statutory requirements stipulated in explanation

under Section 47 of the Act are not met inasmuch as all the cases referred to are stale and more than three years old while the explanation requires at least three cases to be within one year preceding the commencement of the proceedings under Section 47/50 of the Act. It is also contended that the petitioner has not been convicted of a single offence. The petitioner is also aggrieved by the "in camera" proceedings and the same plea is raised before us relying on the Supreme Court judgment in Prem Chand's case (supra)."

10. As noted hereinbefore the learned counsel for the petitioner has also relied on the explanation to Section 47 of the Act to contend that there should have been at least three incidents in the previous one year for any action to be taken under Section 47 of the Act which was not the position in the present case as the incidents were alleged to be stale other than one incident. The explanation to Section 47 is as under:-

"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."

11. A reading of the explanation clearly shows that it defines when a person shall be deemed to have habitually committed

that act. The word habitual has been used in Section 47 (c), (ii), (iii) & (iv). The reference to the externment order would show that the reasons for the externment of the petitioner are under Section 47(a), (b) and (c)(i) of the said Act. Thus the explanation would have no application in the facts of the present case. The plea advanced by the learned counsel for the petitioner is thus not sustainable.”

10. Mr. Lao states that a bare perusal of the above would show that the court has to be satisfied that the person is a habitual offender and that his presence will cause harm in the society. The petitioner's wife also has 8 FIRs against her punishable under the Delhi Excise Act.
11. Learned counsel for the respondent has also stated that as far as service of notice under section 50(1) of Delhi Police Act is concerned, the offer was given to the petitioner it was not served upon the petitioner since it was stated by the petitioner that he does not require the notice as he is already implicated in the said cases. He further states that the petitioner was advised to engage a counsel and to approach DSLA at Karkardooma Courts free of cost, but he did not proceed with it.
12. Mr. Lao has also relied upon the judgement of the Coordinate Bench in **‘Khalid @ Aminuddin @ Pahalwan v. Addl. DY. Commissioner of Police & Anr’** [(2005) (79) DRJ 159] to state that the adequacy or inadequacy of material is not a matter to be weighed by the Court in section 482 Cr.PC and Article 226 of the Constitution of India proceedings, and has to be the subjective satisfaction of the competent authority.

13. I have heard learned counsel for the parties.
14. As far as violation of section 47 of the Delhi Police Act is concerned, judgement of Om Prakash (supra) is squarely applicable. Section 47 of the Act reads as-

“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.”

The explanation talks about habitually committing “that act”. That act only means the acts covered under section 47 (c)(i),(ii) and(iii). Paragraph 11 of the judgement of ‘Om Prakash’ (supra) passed by the Coordinate Bench of this court categorically states that for the application of explanation of section 47, the person should have committed three offences in one year of the nature of offences covered in section 47 (c)(ii),(iii) and (iv). In the present case, the externment of the petitioner is not based only on offences covered under section 47 (c) (ii), (iii) and (iv) but on other provisions of section 47 as well. The Addl. Commissioner of Police-I has held that the presence of the

petitioner is hazardous to the society and there is apprehension with regard to person's safety and property. Thus, the explanation to section 47 of the Act is not applicable.

15. In the present case, the petitioner's guilt in committing the offences is not in dispute. The externment of petitioner is on numerous grounds namely- (i) The petitioner dealing in illicit liquor and hence involved in 21 cases under excise act, (ii) habitual nature of committing crimes and (iii) witnesses unwilling to depose against the petitioner in public because of apprehension of safety of their person or property.
16. Hence, the contention of learned counsel that the externment action is based on stale cases is misconceived.
17. As regards the arguments that the police knowingly and intentionally failed to issue notice under section 50(1) of the Delhi Police Act, I am of the view that the externment order is not based on the FIR registered in the year 2021-2022, but on the fact that the petitioner was involved in twenty one cases. He was considered a dangerous and a hazardous person to the society. Even otherwise, the respondent had stated he doesn't want a supplementary notice as he was falsely implicated in the two FIRs.
18. As regards the mandate of twin conditions/double satisfaction of the police is concerned, reliance of Mr. Lao is well placed on a judgement titled "**Khalid @ Aminuddin @ Pahalwan v. Addl. Commissioner of Police & Anr**"(supra) to state that the reason for the witnesses not deposing against the petitioner is because they are afraid of him and lack courage to make depositions against him in courts. It also shows

that the Addl. DCP does not have any ill will against the petitioner so as to pass an externment order against him and thus, such order should not be revoked. The relevant portion of the judgement is reproduced as under:-

“6. The acquittal of the petitioner herein in most of the cases is of no help to him for the reason that the material has been placed on record to show that the acquittals were mainly on the ground that the public witnesses were not supporting the prosecution and were turning hostile. This fact satisfactorily conveys that the public witnesses are afraid of the petitioner and have no courage to make depositions against him in Courts. The statements recorded by the Addl. DCP in camera in which the public witnesses have deposed against the petitioner establish that the witnesses are afraid of the petitioner and apprehend harm to their person or property in case they openly depose against him. The statement of the SHO also in this behalf can be safely relied upon as he happens to be the man on the spot and knows better in regard to the criminal propensities of the petitioner. There is nothing on record to show that he has any enmity or ill will against petitioner to initiate false proceedings against him.

7. The impugned order of externment, therefore, is not liable to be interfered with by this court in exercise of powers under Article 226 of the Constitution of India or Section 482 of

the Cr.PC. It has to be kept in mind that the adequacy or inadequacy of the material is not a matter to be weighed by the Court and in case the competent authority has some material from which a reasonable inference can be drawn that a person is of desperate character and his movements and acts are capable of causing danger, alarm or harm to the general public, the view adopted by the competent authority has to be sustained and can not be substituted by the view of the Court.”

19. On 21.09.2022, I had directed the original file of the petitioner to be brought to court to show the material before the Deputy Commissioner of Police regarding the witnesses not willing to come forward to give evidence against the petitioner. Original file was placed before me and I have seen the statement of two witnesses who have stated that they were in fear of the petitioner and hence, did not come forward to depose against him. Admittedly, the petitioner is a Bad Character of Bundle-A of Mayur Vihar and a habitual criminal who might cause harm to person and property. This court in ‘**Surjeet Singh vs State**’ [1998 SCC OnLine Del 186] has observed that-

“20.... It is thus manifest from above that the intention of the legislature while enacting the provisions of Sections 47 & 48 of the Act was to give a handle in the hands of the police to deal with the desperate type of criminals who, in their opinion, cannot be dealt with in the open courts in accordance with the ordinary provisions of laws of the land. The said preventive

measures in the form of Sections 47 & 48 are resorted to in those discerning few cases where the witnesses are not available to depose to against the desperate type of criminal on account of an apprehension to their person and property. In such type of cases the police officers can deal with them in accordance with the provisions of Sections 47 & 48 of the Act i.e. they can be directed to remove themselves outside Delhi for a particular period so that they may not cause harm, danger to the person and the property of the people of Delhi. In case the contention of the learned counsel is upheld that the names of the witnesses and the material which is to be used against a particular person should be furnished to him in that eventuality the very purpose of enactment of Section 47 of the Act would be frustrated because, as observed above, the said Section is meant to deal with desperate type of criminals, under extraordinary situations and circumstances, who do not allow witnesses to appear against them and the witnesses do not come forward to depose against them for fear of reprisal.

21. A matter very much akin to the matter in hand came up before the Hon'ble Supreme Court as reported in Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police, State of Maharashtra, , wherein it was observed " If the show-cause notice were to furnish to the proposed examinee 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 it 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 externee" of the general nature of the material allegations against him."

20. Even though I am not required to see the subjective satisfaction of the competent authority, but even then the original file was placed before me and I read the statement of the witnesses who were reluctant to depose against the petitioner. For the reasons stated herein above, I am satisfied that the twin conditions in the present case namely(i) the petitioner is dangerous, poses danger the society and (ii)no witness is willing to come forward due to fear to their person or property, are both satisfied at the same time. For the aforesaid reasons, I find no grounds to interfere with the orders dated 12.05.2022 and 24.08.2022.
21. The petition is accordingly dismissed.

NOVEMBER 18, 2022/dm

JASMEET SINGH, J