

Madhya Pradesh High Court

Taarik @ Bablu vs The State Of Madhya Pradesh on 13 May, 2022

Author: Nandita Dubey

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SMT. JUSTICE NANDITA DUBEY
ON THE 13th OF MAY, 2022
WRIT PETITION No. 8689 of 2022

Between:-

TAARIK @ BABLU S/O SHRI TASDEEK AHMAD ,
AGED ABOUT 32 YEARS, R/O GAYATRI COLONY,
KHANDWA, THANA MOGHAT ROAD,
KHANDWA, (MADHYA PRADESH)

(By Shri Anoop Nair with Ms. Ritika Choudhary)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY HOME DEPARTMENT
MANTRALAYA, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)
2. COLLECTOR / DISTRICT MAGISTRATE
KHANDWA DISTRICT- KHANDWA (MADHYA
PRADESH)
3. THE SUPERINTENDENT OF POLICE KHANDWA
DISTRICT- KHANDWA (MADHYA PRADESH)
4. COMMISSIONER, INDORE SAMBHAAG
DISTRICT- INDORE (MADHYA PRADESH)

(By Shri Subodh Khatar, Govt. Advocate)

This petition coming on for admission this
following:

ORDER

Signature Not Verified This petition under Article 226 of the Constitution of India has been SAN preferred against the order dated 28.03.2022, passed by respondent No.4, Digitally signed by SMT. GEETHA NAIR Date: 2022.05.17 16:55:52 IST Commissioner, Indore Division in an appeal, affirming the order dated 14.01.2022, passed by respondent No.2, District Magistrate, Khandwa, under Section 9 of the M.P. Raja Suraksha Adhiniyam, 1990 (for short 'Adhiniyam, 1990), directing externment of petitioner for a period of six months from the revenue limits of district Khandwa and

its adjoining districts.

The facts in a nutshell are that respondent No.3, Superintendent of Police, Khandwa submitted an application before the Collector, requesting the proceedings of externment as per Section 5 of the Adhiniyam against the petitioner on the ground that petitioner is a habitual offender and due to his criminal activities, there is a possibility of breach of peace, which is dangerous to the society at large. On the basis of this application, a show cause notice was issued to the petitioner. Pursuant to which a detailed reply was submitted by the petitioner, stating that he has not indulged in any recent activities and therefore, there is no reason for passing any order of externment against him. The Collector, however, passed an order of externment for a period of six months from Khandwa (East Nimar) and its adjoining districts. Against the order of externment, an appeal was preferred before the Commissioner, Indore Division, however the same was also dismissed affirming the order passed by the Collector.

The contention of learned counsel for the petitioner is that the order of externment directly affects the personal liberty granted under Article 21 and the fundamental freedom granted under Article 19(d) of the Constitution of India. It is stated that there are no recent cases registered against the petitioner and the order of externment has been passed on the basis of old and stale cases in Signature Not Verified SAN which petitioner has already been acquitted. It is submitted that in three of the Digitally signed by SMT. GEETHA NAIR Date: 2022.05.17 16:55:52 IST cases, he has been acquitted, however, without application of mind and without considering the record of the petitioner, order of externment on the basis of old and state cases has been passed which is illegal and perverse and deserved to be quashed.

Per contra, learned counsel for the State has vehemently opposed the petition. It is submitted that the petitioner is a habitual offender against whom more than 10 cases have been registered at various police stations of district Khandwa. It is submitted that apart from that Istagaza proceedings under Cr.P.C. have also been initiated against the petitioner, but he has not mended his ways. It is further pointed out from the list mentioned in the order of Collector that the petitioner is continuously engaged in serious offences. Hence, looking to the public safety, the Collector has externed him for a period of six months only. It is further pointed out that there is no stay in the present matter and six months period is going to be over on 30th of June, 2022.

Heard the learned counsel for the parties and perused the record. Section 5 of the M.P. Rajya Suraksha Adhiniyam, 1990 provides for removal of persons about to commit offence as under :-

5. Removal of persons about to commit offence. - Whenever it appears to the District Magistrate-

(a) that the movements or acts of any person are causing or 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, 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 Signature Not Verified SAN regards the safety of their person or property; or Digitally signed by SMT. GEETHA NAIR Date: 2022.05.17 16:55:52 IST

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

the District Magistrate may, by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or any part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.

A perusal of aforesaid provision shows that a person(s) can be removed from a district, if the acts of person in question are alarming and dangerous to the safety of the persons or society at large. In forming such an opinion the antecedent of the person/accused plays a vital role. If the prior events/acts show that there is reasonable apprehension that such person is likely to act in a manner prejudicial to the interest of a person or property and may cause harm and alarm, action under Section 5 of the Act can be taken. However, these act or antecedent history should be proximated the point of time and have a rationable connection with the conclusion arrived.

In the instant case, as evident from the details of cases mentioned in tabular form in the impugned orders, the petitioner was engaged in various illegal and antisocial activities. More than 19 cases, spreading over from 2004 to 2021, were lodged against him under the various provisions of IPC and Cr.P.C. and Disaster Management Act, out of which, as per petitioner, he has been acquitted in Crime No.s 508/2004, 513/2015 and 267/2010, the parties Signature Not Verified SAN compromised and petitioner was acquitted. Between 2018 to 2021, 5 cases Digitally signed by SMT. GEETHA NAIR Date: 2022.05.17 16:55:52 IST under Sections 294, 323, 325, 506, 34, 341, 147, 148, 148 IPC were lodged against the petitioner and 5 times proceeding under Section 107, 106, 116(3), 110(6) were taken against him.

The Collector after analyzing the record of petitioner held that presence of petitioner would not be congenial to public peace and order. This opinion is arrived at after examining the criminal antecedents of the petitioner, which are proximate to the time. Such a finding is not without any basis or substance, hence calls for no interference from this Court.

Petition is dismissed.

(NANDITA DUBEY) JUDGE gn Signature Not Verified SAN Digitally signed by SMT. GEETHA NAIR Date: 2022.05.17 16:55:52 IST