

(2023) 06 MP CK 0106

In the Madhya Pradesh High Court

Case No : Writ Petition No. 23061 Of 2022

Aslam @ Bhayyu Khan

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 30-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 3(2), 5(a)(b)

Code Of Criminal Procedure, 1973 — Section 107, 116(3)

Indian Penal Code, 1860 — Section 506

Citation : (2023) 06 MP CK 0106

Hon'ble Judges : Pranay Verma, J

Bench : Single Bench

Advocate : Jagdish Chand Dangi, Pranjali Yajurvedi

Final Decision : Dismissed

Judgement

Pranay Verma, J

1. This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the order dated 30.09.2022 (Annexure P/1) passed by the Commissioner, Indore Division, Indore, affirming the order dated 05.08.2022 (Annexure P/2) passed by the Commissioner of Police, District Indore, whereby he has been externed from the local limits of District Indore, Ujjain, Dewas, Dhar and Khargone for a period of 6 months in exercise of powers under Section 5(a)(b) of M.P. Rajya Suraksha Adhiniyam, 1990 (for short 'the Adhiniyam') and has been directed to notify his movements during the said period.

2. The facts of the case are that on 14.06.2022 the Deputy Commissioner of Police, Zone No.2, District Indore submitted a report to the Commissioner of Police, District Indore against the petitioner stating that since the year 1999 he has been involved in criminal activities and has been committing hooliganism, marpeet, abuses, illegal extraction of money, illegal gambling etc. and has been

encroaching upon land, has been keeping illegal fire arms and has been inflicting assault dangerous to life hence he ought to be externed. On the report the Commissioner of Police registered a case and issued a show cause notice to the petitioner. The petitioner filed his detailed reply to the same refuting all the allegations levelled against him. Thereafter statements of witnesses were recorded and the petitioner also advanced his oral arguments.

3. Eventually by order dated 05.08.2022 the Commissioner of Police observed that the petitioner has been involved in criminal activities from the year 1999 up to 2022 and total 21 cases have been registered against him. Though he has been acquitted in 11 cases but in 6 cases he has been convicted and fine has been imposed upon him. Four cases against him are still pending in the Court. Prohibitory proceedings have also been initiated against the petitioner on 17 occasions. It is hence apparent that the petitioner is a habitual criminal and it cannot be said that proceedings have been initiated against him by the Police falsely. Consequently, he held that there is sufficient material against the petitioner and witnesses are not coming forward to give evidence against him. He is a criminal minded person and his presence has endangered public peace and order. He hence directed for externment of the petitioner as aforesaid. The aforesaid order has been maintained in appeal having been preferred by the petitioner by the Divisional Commissioner, Indore Division, Indore by the impugned order dated 30.09.2022.

4. Learned counsel for the petitioner has submitted that the impugned orders are illegal, contrary to law and have been passed without application of mind. The reply filed by the petitioner has not been considered by them. Though the petitioner had given detailed reply but the explanation provided by him has not at all been considered. The petitioner was not afforded proper opportunity of hearing and defending himself. On 26.05.2022, the petitioner had filed an application before Police Station Khajrana, Indore for deleting his name from the criminal record list. It is pursuant to that only that the present proceedings have been initiated which are apparently mala fide. There was no concrete evidence on record and the impugned orders have been passed on possibilities and imagination. The petitioner has been acquitted in the cases but said acquittals have not been accepted merely because he had produced photocopies of the order. It is hence submitted that the impugned orders deserve to be quashed. Reliance has been placed on the decision in Jugal Kishore V/s. Lieutenant Governor Delhi and Another 2017 SCC Online Del 8167, of this Court in W.P. No.17311/2022 Sunil Soni V/s. State of M.P. & Others decided on 14.09.2022, Pappu V/s. State of M.P. 2007 (3) MPLJ 115, Bhola V/s. State of M.P. 2003 (1) MPJR 381 and Ashok Kumar Patel V/s. State of M.P. 2009 (4) MPLJ 434.

5. Per contra learned counsel for the respondents/State has submitted that there is no illegality whatsoever in the impugned orders. The same have been passed on proper appreciation of the material available on record and by affording due and adequate opportunity of hearing to the petitioner. The entire conduct of the

petitioner leaves no room for doubt that he has been involved in criminal activities and his presence is a threat to public peace and tranquility. No interference is hence called for.

6. I have heard the learned counsel for the parties and have perused the record.

7. From the record it is apparent that total 21 criminal cases have been registered against the petitioner. As per the authorities below, he has been acquitted in 11 cases and in 6 cases he has been found guilty and punishment of fine has been imposed upon him. Four cases are pending against him. As per the petitioner, 18 cases in which he was implicated have been decided and only three cases are pending. The fact however remains that the petitioner has been convicted in 6 criminal cases. Though in this petition the petitioner has filed orders passed by the Courts acquitting him in 12 cases but has not filed the orders of the remaining 6 cases. It is apparent that he has tried to conceal those orders wherein he was convicted since as per the authorities below he has been convicted in 6 cases and as per the petitioner himself 18 cases have been decided and he has filed 12 orders meaning thereby that he has suppressed 6 orders in which he was convicted. As per petitioner 3 cases are pending against him whereas as per the authorities below 4 cases are pending against him. In absence of any material produced by the petitioner it can be safely held that 4 cases are pending against the petitioner.

8. From the record it is also apparent that prohibitory proceedings have been initiated against the petitioner on 17 occasions on and from the year 2010. Proceedings for his externment have been taken in the year 2010, 2012, 2015 and 2016 and in the year 2017 he was apprehended under Section 3(2) of the Adhiniyam. The last case which has been registered against the petitioner vide Crime No.286/2022 is of the year 2022 itself and show cause notice was issued to the petitioner on 26-05- 2022. There is hence close proximity of the last case registered against the petitioner with the show cause notice issued to him. In 2022 itself prohibitory proceedings under Section 107, 116(3) of Cr.P.C. were also initiated against the petitioner.

9. The aforesaid factual matrix leaves no room for doubt that the actions of the petitioner have resulted in a situation where his presence is harmful for the peace and tranquility of the general public and he is a threat to public law and order. The petitioner has been involved in criminal cases ever since 1999 and has been convicted in six of them.

Prohibitory proceedings have been initiated against him on 17 occasions and proceeding under Section 3(2) of the Adhiniyam, 1990 have also been initiated against him in 2017. 11 cases registered against the petitioner were under Chapter XII, XVI, XVII or under Section 506 of the IPC. It is hence apparent that the petitioner has been engaged in commission of offences under those Chapters/ Sections. The authorities below have upon a careful perusal of the material arrived at a finding that due to acts of the petitioner witnesses are not coming

forward to give their evidence against him due to apprehension on their part as regards their safety.

10. From the impugned orders it is clear that the authorities below have adverted themselves to all aspects of the matter and have thereafter only passed the impugned orders. Though a bald assertion has been made by the petitioner that he was not afforded opportunity of hearing to defend himself but no document or material has been pointed out in support of the said contention. The reply filed by him has been taken into account by both the authorities while passing their orders hence it cannot be said that the reply filed by him has not been considered. The explanation offered by the petitioner therein has rightly not been accepted. Making of an application by the petitioner on 26.05.2022 for deletion of his name from criminal record list has no bearing on the matter and instead further reaffirms that his name has been placed in the list of habitual criminals.

11. Thus in the totality of facts and circumstances of the case, I am of the opinion that the authorities below have not committed any error while passing the impugned orders. The petition is thus found to be without any merit and is hereby dismissed.