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

% *Date of Decision: 13th May, 2024*

\+ W.P.(CRL) 1432/2024 and CRL.M.A. 13944/2024 (stay)

NISHANT ARORA @ NONI ..... Petitioner

Through: Mr. Sunil Kumar Kalra and Mr. Ajay Bidhuri, Advocates.

versus

LIEUTENANT GOVERNOR OF DELHI, GNCTD & ANR. ..... Respondents

Through: Mr. Rahul Tyagi, ASC and Mr. Javed Iqbal, Mr. Azam Rehmani, Mr. Mohd. Zeeshan, Ms. Akansha Jain, Ms. Shashi, Ms. Deepti Nain, Mr. Mukesh Pathak and Mr. Uttam Singh, Advocates with SI Arvind Kumar Saini, PS: Geeta Colony, for State.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioner under Section 482 Cr.P.C. assailing order dated 03.04.2024 passed by the Lieutenant Governor of Delhi/Respondent No.1 in Appeal No.43/2024 filed under Section 51 of Delhi Police Act, 1978 ('DP Act') as well as order dated 15.01.2024, passed by Additional Deputy Commissioner of Police-I/ Respondent No.2 in Case No.42/2017.

2. Factual matrix to the extent necessary is that on 15.01.2024, Respondent No.2 passed an order whereby Petitioner was directed to remove himself beyond the limits of NCT of Delhi for a period of one year with a

further direction not to enter or return back within the said period without written permission of the Competent Authority. Externment order was passed under Sections 47 and 50 of DP Act noting that: Petitioner was involved in six criminal cases involving obstruction of public servants in discharge of public functions, murder, attempt to murder, voluntarily causing hurt, voluntarily causing hurt by dangerous weapons, endangering life or personal safety of others, wrongful restraint, assaulting or using criminal force to deter public servant from discharge of his duty under IPC and Arms Act, 1959; he is a Bad Character ('BC') of the area, placed in Bundle-A of PS: Geeta Colony; and during the pendency of the present proceedings also he was involved in two more criminal cases. Basis this record, Respondent No.2 passed the externment order on a subjective satisfaction that Petitioner's presence in the community was hazardous to the society as he was a habitual offender and witnesses are unwilling to depose in public against him for fear of their person and properties.

3. Challenge was laid to the externment order by the Petitioner in an Appeal filed under Section 51 of DP Act before Respondent No.2. After hearing the rival parties and considering the record, which reflected that Petitioner was acquitted in FIR No.211/2012 and discharged in FIR No.136/2022, Respondent No.2 took a lenient view in the matter and reduced the externment period from one year to six months.

4. Mr. Sunil Kalra, learned counsel submits that Petitioner is innocent and was falsely implicated in the six cases in which FIRs were registered. Out of the six cases, Petitioner has been acquitted in case FIRs bearing Nos.211/2012 and 334/2016 and discharged in FIR No.136/2022 during investigation and thus only three cases are currently pending against

the Petitioner, a crucial and mitigating fact, overlooked by the Respondents.

5. It is contended that Respondents have misread and misconstrued provisions of Section 47 of the DP Act and wrongly interpreted the word 'habitually' mentioned in Section 47(c)(ii), (iii) and (iv) of DP Act, which takes colour from the Explanation to the provision. It is provided in the Explanation that a person, who during 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. In the present case, six FIRs were lodged against the Petitioner in the years 2012, 2015, 2016, 2017 and 2023 respectively and he is not involved in 3 cases in one year preceding commencement of action under Section 47 and cannot be termed as 'habitual' as defined under the Explanation to the Section. Reliance is placed on the judgments of this Court in ***Shammy v. Lt. Governor and Others, (2005) 117 DLT 629*** and ***Jugal Kishore v. Lt. Governor, Delhi, (2017) 2 JCC 1335.***

6. It is further argued that the Supreme Court in ***Prem Chand v. Union of India & Ors., AIR 1981 SC 613,*** has held that Sections 47 and 50 have to be read strictly and mere apprehension of the police is not enough. There must be a clear and present danger based upon credible material which makes the movements and acts of the person involved alarming or dangerous or fraught with violence. There must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the concerned area is hazardous to the community and its safety. It is submitted that in ***Ram Niwas v. Commissioner of Police and***

Others, (2003) 103 DLT 146, this Court set aside the externment order finding, on judicial scrutiny, that in none of the cases pending against the Petitioner witnesses had expressed their apprehension that they were unable to appear and depose because of fear of the Petitioner. It was also observed that the order of externment has very serious repercussions on the Petitioner and his family and a stringent test must be applied to avoid easy possibility of abuse of this power to the detriment of fundamental freedoms of persons externed.

7. It is argued that both the impugned orders indicate that no reasons have been given for passing the orders and in the absence of a reasoned order the right granted to the Petitioner is illusory. It is a settled law that reasons form the backbone of any order and without reasons neither the person against whom the order is passed nor the Court examining the order in a judicial review would be in a position to ascertain the grounds that weighed with the authority to pass an order. Reliance is placed on the decision in ***Mohd. Aslam v. Delhi Administration & Ors., 1986 (29) DLT 437,*** in this context.

8. Learned counsel for the Respondent *per contra* defends the impugned orders and submits that externment of the Petitioner is justified from the records. Respondent No.2 had passed an order of externment for a period of one year, however, Respondent No.1 has taken a lenient view and reduced the externment period to six months. It is argued that six FIRs were registered against the Petitioner between 2012 to 2023 out of which two of them are under Section 302 IPC and provisions of the Arms Act. Petitioner had been declared as a BC and is in Bundle-A of PS: Geeta Colony, Delhi. His movements and acts were calculated to cause alarm, danger and harm to

person and property and his presence in Delhi or any part thereof is found to be hazardous to the community. Respondent No.2 has found from the record that witnesses were not willing to come forward and give evidence in public against him in fear of their life and property.

9. In response to the contention of the Petitioner that proceedings for externment can only be initiated against a habitual offender found involved in more than three criminal cases in the preceding year, learned ASC relies on judgments of this Court in ***Om Prakash v. Addl. Deputy Commissioner of Police, 2001 SCC OnLine Del 1334*** and ***Rakesh Kumar v. State of NCT of Delhi, 2022 SCC OnLine Del 3887***. It is urged that in ***Om Prakash (supra),*** this Court has interpreted the Explanation to Section 47 of the DP Act and held that where the reasons for externment are under Section 47(a), (b) and (c)(i) of the DP Act, the Explanation would have no application.

10. Heard counsel for the Petitioner and learned ASC for the State.

11. Before proceeding to examine the rival contentions of the parties, it will be useful to reproduce Sections 47, 51 and 52 of the DP Act hereunder:-

> *"47. Removal of persons about to commit offences.—Whenever it appears to the Commissioner of Police—*
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> *(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*
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> *(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*
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> *(c) that such person—*
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> *(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*
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> *(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.

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51. Appeal against orders under section 46, 47 or 48.—(1) Any person aggrieved by an order made under section 46, section 47 or section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.

(2) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm, vary or set aside the order appealed against: Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.

(4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.

(5) In calculating the period of thirty days provided for an appeal under this section, the time taken for obtaining a certified copy of the order appealed against, shall be excluded.

> *52. Finality of order in certain cases.—An order passed by the Commissioner of Police under section 46, section 47 or section 48 or the Administrator under section 51 shall not be called in question in any court except on the ground—*
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> *(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in sub-section (1), sub-section (2) or sub-section (4) of section 50 or in section 51, as the case may be; or*
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> *(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or*
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> *(c) in the case of an order made under section 47 or an order in appeal therefrom to the Administrator under section 51, the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom such order has been made."*

12. Coming first to Section 52 of the DP Act. Plain reading of the provision shows that if there is no material before the Commissioner of Police or the Administrator to form an opinion for externing a person, Court would interfere on examining the matter in its given facts, however, if there is some material, Court cannot examine the sufficiency of the same when called upon to exercise power of judicial review. In this context, I may allude to the observations of the Supreme Court in ***State of NCT of Delhi and Another v. Sanjeev alias Bittoo, (2005) 5 SCC 181,*** wherein dealing with the scope of interference in an externment order, which undoubtedly is an administrative order, the Supreme Court held as follows:

> *"15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (see State of U.P. v. Renusagar Power Co. [(1988) 4 SCC 59 : AIR 1988 SC 1737]). At one time, the traditional view in England was that the executive was not*

answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classical work Judicial Review of Administrative Action, 4th Edn. at pp. 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows : The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories : (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

16. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinise the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT v. Mahindra and Mahindra Ltd. [(1983) 4 SCC 392 : 1983 SCC (Tax) 336 : AIR 1984 SC 1182]) The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:

> *"There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest.*
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> *(Also see Padfield v. Minister of Agriculture, Fisheries and Food [1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924 (HL)] .)"*

17. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

18. The famous case commonly known as "the Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] " is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

19. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] (KB at p. 229 : All ER pp. 682 H-683 A). It reads as follows:

> *"... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used*

> *in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."*

Lord Greene also observed (KB p. 230 : All ER p. 683 F-G)

> *"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."*
>
> *(emphasis supplied)*

Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

20. The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows : (All ER p. 950h-j)

> *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural*

impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;"

Lord Diplock explained "irrationality" as follows : (All ER p. 951a-b)

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

21. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

22. These principles have been noted in the aforesaid terms in Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] . In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)

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."

13. Legal principles governing the field of externment are settled and it would be significant to refer to the observations of the Supreme Court in the case of ***Lt. Governor, NCT and Others v. Ved Prakash alias Vedu, (2006) 5 SCC 228,*** as follows:-

> *"18. The law operating in the field is no longer res integra which may hereinafter be noticed:*
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> *(i) In a proceeding under the Act all statutory and constitutional requirements must be fulfilled.*
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> *(ii) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter.*
>
> *(iii) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing.*
>
> *(iv) The test of procedural safeguards contained in the Act must be scrupulously complied with.*
>
> *(v) The satisfaction of the authority must be based on objective criteria.*
>
> *(vi) A proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose.*
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> *19. The High Court ordinarily should insist on production of the entire records including the statement of the witnesses to express their intention to keep their identity in secret so as to arrive at a satisfaction that such statements are absolutely voluntary in nature and had not been procured by the police officers themselves.*
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> *20. We have noticed hereinbefore, that the High Court itself held that the allegations made in the notice satisfy the statutory requirement but, in our opinion, the High Court was not correct in coming to the finding that the third appellant was bound to disclose the cases in which the witnesses had not deposed against the respondent out of fear or because of threat, etc. If an attempt is made to communicate the cases in which witnesses were not forthcoming due to the activities of the proceedee, the same would violate the secrecy required to be maintained and would otherwise defeat the purpose for which Section 47 of the Act had been enacted.*
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> *21. An order of externment must always be restricted to the area of illegal activities of the externee. The executive order must demonstrate*

due application of mind on the part of the statutory authority. When the validity of an order is questioned, what would be seen is the material on which the satisfaction of the authority is based. The satisfaction of the authority although primarily subjective, should be based on objectivity. But sufficiency of material as such may not be gone into by the writ court unless it is found that in passing the impugned order the authority has failed to take into consideration the relevant facts or had based its decision on irrelevant factors not germane therefor. Mere possibility of another view may not be a ground for interference. It is not a case where malice was alleged against the third appellant.

22. The High Court and this Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human right of the proceedee. The fundamental right under Article 21 of the Constitution undoubtedly must be safeguarded. But while interpreting the provisions of a statute like the present one and in view of the precedents operating in the field, the court may examine the records itself so as to satisfy its conscience not only for the purpose that the procedural safeguards available to the proceedee have been provided but also for the purpose that the witnesses have disclosed their apprehension about deposing in court truthfully and fearlessly because of the activities of the proceedee. Once such a satisfaction is arrived at, the superior court will normally not interfere with an order of externment. The court, in any event, would not direct the authorities to either disclose the names of the witnesses or the number of cases where such witnesses were examined for the simple reason that they may lead to causing of further harm to them. In a given case, the number of prosecution witnesses may not be many and the proceedee as an accused in the said case is expected to know who were the witnesses who had been examined on behalf of the prosecution and, thus, the purpose of maintaining the secrecy as regards identity of such persons may be defeated. The court must remind itself that the law is not mere logic but is required to be applied on the basis of its experience."

14. With these principles in mind, I would now examine the main plank of the argument of the Petitioner that externment proceedings against him stand vitiated on the touchstone of Explanation to Section 47 inasmuch as the Competent Authority is empowered to initiate proceedings against a person only if he is 'habitual' i.e. involved in more than three criminal acts within one year immediately preceding commencement of the action under the said Section. This argument, in my view, clearly stems from a

misreading of Section 47 and the Explanation thereto. The word "habitually" is used by the Legislature in sub-clauses (ii) to (iv) of sub-Section (c) of Section 47 of DP Act. This implies that for the Explanation to apply, the person should have committed three offences in the preceding one year of the nature of offences covered under Section 47(c)(ii), (iii) and (iv) and the corollary is that if the offence committed by such a person is covered under Section 47(a), (b) or (c)(i) and the ingredients of the offence are made out, the Competent Authority will be well justified in passing the externment order and the Explanation will be wholly inapplicable. In this interpretation, this Court finds strength from the judgments of this Court in ***Om Prakash (supra)*** and ***Avinash v. Lt. Governor of Delhi & Ors., 2017 (166) DRJ 50.***

15. In the present case, the Competent Authority, i.e. Respondent No.2. after examining the reply of Petitioner to the notice under Section 50 of the DP Act and other cogent material on record found that Petitioner was involved in six criminal cases punishable under different provisions of IPC and Arms Act; there were sufficient grounds to conclude that he was actively involved in these cases; he is BC of the area and placed in Bundle-A of PS: Geeta Colony; is involved in two more criminal cases for offences committed during the course of these proceedings; his presence was hazardous to the society; his continuous and persistent activities makes him a dangerous person; his activities in the areas of NCT of Delhi are calculated to cause alarm, danger and harm to the respectable citizens, who have a right to lead peaceful life; and the witnesses are unwilling to depose in public against him because of fear of safety of their person and property. Court had called for the original file containing the proposal and other material on the basis of which the impugned orders were passed and perusal of the file shows that there was sufficient material before the Competent Authority to

pass the externment order. Statements of witnesses were recorded *in camera* and the Competent Authority had recorded its satisfaction that they were not willing to come forward and make statements in public against the Petitioner. *Albeit* Courts cannot delve into the subjective satisfaction of the Competent Authority, save and except, to examine the decision making process, yet having called for the file and having gone through the same, I am satisfied that the externment order is justified in the facts of the case as also the statements of the two witnesses.

16. It is thus evident that the externment order has been passed on grounds, which clearly fall under Section 47(a) and (c)(i) and which is sufficient to hold that Explanation to Section 47 will not be attracted in the present case and thus the contention that as a pre-condition to externment, Petitioner ought to have been involved in cases/acts referred to in Section 47 on three occasions in the year immediately preceding commencement of externment proceedings, has no merit.

17. The argument of the Petitioner that the externment and the appellate orders are non-speaking orders, bereft of any reasoning, has no legs to stand. The externment order is a detailed and reasoned order and has been passed after giving due opportunity to the Petitioner to defend his case. His reply to the notice under Section 50 of DP Act has been extracted in the order and taken into consideration. It is also recorded in the order and fortified from the original file that ample opportunities were given to the Petitioner to produce defence witnesses, if any, but he chose not to do so. On several occasions, Petitioner was advised to engage a counsel at his cost or approach the Legal Services Authority, which also he failed to do and made a categorical statement that he would prefer to argue his case himself. The

Competent Authority has taken note of all the cases in which the Petitioner was involved including his record of being a BC of the area and reasons have been penned down based on the material in the file. Court is satisfied that the order is a reasoned order warranting no interference on this score. Equally reasoned is the order of the Appellate Authority, wherein on the basis of the records indicating the involvement of the Petitioner in multiple cases, his status as a BC and other material, the Appellate Authority has come to a conclusion that externment is justified. It is incorrect for the Petitioner to argue that no notice has been taken of the fact that Petitioner was acquitted in two FIRs and discharged in one. The Appellate Authority has upon taking note of his acquittal/discharge in the concerned FIRs reduced the period of externment to six months from one year.

18. Examining the externment order on the anvil of Section 47 and within the confines of Section 52 of DP Act and keeping in mind the judgments of the Supreme Court on the scope and ambit of interference in an externment order as well as the observations of this Court in ***Khalid v. Addl. Dy. Commissioner of Police and Ors., 115 (2004) DLT 670,*** that adequacy or inadequacy of material is not a matter to be weighed by the Court exercising power under Section 482 Cr.P.C. and Article 226 of the Constitution of India while examining an order passed on subjective satisfaction of a Competent Authority based on objective considerations, this Court finds itself unable to interfere with the impugned orders.

19. Petition is accordingly dismissed being wholly devoid of merits. Pending application also stands disposed of.

JYOTI SINGH, J

MAY 13, 2024/*B.S. Rohella*