IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 14th OF OCTOBER, 2024

WRIT PETITION No. 22524 of 2024

RAJESH NAGPURE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:
Shri Pravesh Naveriya – Advocate for the petitioner.
Shri Mohan Sausarkar – Government Advocate for the respondents/State.

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O R D E R

Record of externment proceedings has been provided in sealed cover.

2. This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

(i) Issue a writ in the nature of certiorari to quash and set aside the impugned order dated 29/07/2024 passed by Respondent no.2, i.e. **Annexure P/4.**

(ii) Issue a writ in the nature of certiorari to quash and set aside the impugned order dated 06/04/2024 passed by Respondent no.3, i.e. **Annexure P/2.**

(iii) To allow the cost of case in favour of petitioner.

(iv) Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this petition.

3. The facts necessary for disposal of present petition in short are that the Superintendent of Police, Balaghat by his recommendation dated 17/10/2023 proposed an action against the petitioner under Section 5 of M.P. Rajya Suraksha Adhiniyam. In this recommendation, it was mentioned that SHO, Police Station Gramin Navegaon has mentioned that the petitioner is of criminal in nature and is in habit of abusing and threatening the public along with his companions. Petitioner is also in habit of threatening the complainant and witnesses, as a result his activities have created terror in the Society. Although the Police Station Gramin Navegaon had taken preventive measures from time to time but could not control the criminal activities. It was also mentioned that on 17/03/2012, Crime No.46/2012 was registered against the petitioner for offence under Sections 294, 323, 506, 34 of IPC. On 30/11/2018, Crime No.313/2018 was registered for offence under Sections 294, 323, 506, 34 of IPC. On 19/02/2020, Crime No.41/2020 was registered for offence under Sections 294, 323, 147, 148, 341, 506, 34 of IPC. On 11/06/2020, Crime No.112/2020 was registered for offence under Sections 294, 323, 506, 34 of IPC. On 16/08/2022, Crime No.156/2022 was registered for offence under Sections 294, 323, 506, 34 of IPC and on 09/08/2023, Crime No.169/2023 was registered for offence under Sections 294, 323, 506, 34 of IPC. Preventive actions were taken on three occasions and two *Ishtagasa* No.83/12, 375/22 were filed under Section 107/116(3) of Cr.P.C. and *Ishtagasa* No.92/23 was filed under Section 110 of Cr.P.C.

4. Notices were issued to the petitioner by order dated 18/10/2023.

5. Petitioner appeared before the District Magistrate Balaghat on

26/10/2023 and his counsel filed his *Vakalatnama*. On 30/10/2023, last opportunity was granted to file reply. Thereafter on 06/11/2023, the statement of SHO, Police Station Gramin Navegaon, District Balaghat was recorded and thereafter the case was adjourned for examination of departmental witnesses. It appears that the petitioner did not cross-examine Kamal Singh Gehlot, SHO, Police Station Gramin Navegaon, District Balaghat. On 20/11/2023, 30/11/2023, 11/12/2023, 21/12/2023 and 04/01/2024 the case was adjourned for examination of departmental witness. On 18/01/2024, the petitioner was absent and accordingly, warrant of arrest was issued and on the very same day the departmental evidence was closed and the case was fixed for final arguments. On 01/02/2024, petitioner appeared and submitted that the date may be fixed after 18/02/2024 as his engagement is to be held on 18/02/2024. On 19/02/2024 and 29/02/2024, the case was adjourned for final arguments. On 07/03/2024, petitioner made a prayer for cross-examination of the witnesses, however as the Presiding Officer was to attend the Government meeting, therefore the case was adjourned. On 14/03/2024 also the case was adjourned because the Presiding Officer was to attend a Government meeting. On 21/03/2024, 28/03/2024, the case was adjourned as the Presiding Officer was busy in election work. On 01/04/2024, final arguments were submitted and on 06/04/2024, final order was passed.

6. Although the Superintendent of Police, Balaghat had referred to six criminal cases but the District Magistrate, Balaghat while passing the final order also considered Crime No.36/2024 which was registered for offence under Sections 294, 323, 506, 34 of IPC and *Ishtagasa*

No.01/24 which was filed under Section 122 of Cr.P.C. Thus, District Magistrate while passing the final order had considered additional material.

7. It is submitted by counsel for petitioner that this act of the District Magistrate has caused serious prejudice to the petitioner. Further, no opportunity to cross-examine the departmental witness was granted to the petitioner. In order dated 06/11/2023, it is nowhere mentioned that petitioner had refused to cross-examine Kamal Singh Gehlot, SHO Police Station Gramin Navegaon, District Balaghat. Furthermore, in the statement of Kamal Singh Gehlot, he had not spoken about any offence which was allegedly committed by the petitioner in the year 2024 but it appears that SHO Police Station Gramin Navegaon, District Balaghat sent a letter to the District Magistrate, Balaghat on 02/04/2024 informing the registration of Crime No.36/2024 and *Ishtagasa* No.1/24 and without giving any opportunity to meet out the said information, impugned order was passed. Even the copy of said letter was not provided to the petitioner. The case was finally heard on 01/04/2024 and it appears that thereafter letter dated 02/04/2024 was taken on record by District Magistrate and without giving any opportunity, the order of externment was passed. It is further submitted that the Appellate Court also did not consider the aforesaid aspect. It is further submitted that even as per the criminal history, only the offences of trivial in nature under Sections 294, 323, 506, 34 of IPC were registered against the petitioner. Some of the offences are stale in nature. It is further submitted that there is nothing in the statement of Kamal Singh Gehlot to the effect that witnesses are not turning up. It was simply stated by

SHO, Police Station Gramin Navegaon that since the elections are to be conducted, therefore under these circumstances, free movement of petitioner in the Society is not conducive. Thus, it is submitted that the proceedings were initiated with an oblique motive to keep the petitioner away from election proceedings.

8. *Per contra,* petition is vehemently opposed by counsel for the State.

9. Heard learned counsel for the parties.

10. The Supreme Court in the case of **Deepak Vs. State of Maharashtra and Others** decided on 28/01/2022 in **Criminal Appeal No.139/2022** has held as under:-

> "4. We have given careful consideration to the submissions. Under clause (d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by passing an order of externment must stand the test of reasonableness.
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> 6. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v. Dy. Commr. Of Police, State of Maharashtra (1973) 1 SCC 372 in

paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.

7. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction 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 offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII

> are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).”

11. Thus, it is clear that order of externment imposes a restriction on fundamental right of a person as enshrined under Article 19(1)(d) of Constitution of India. It is true that aforesaid fundamental right is not absolute and can be subjected to reasonable restrictions, therefore order of externment must pass the test of reasonableness.

12. If the facts of present case are considered, then it is clear that six criminal cases for offence under Sections 323, 294, 506, 34 of IPC were registered against the petitioner. One offence was registered in the year 2012, one was registered in the year 2018, two were registered in the year 2020, one was registered in the year 2022 and the last one was registered in the year 2023. The recommendation for initiating proceedings under Section 5 of M.P. Rajya Suraksha Adhiniyam was sent by Superintendent of Police, Balaghat on 17/10/2023.

13. It is well established principle of law that the criminal history must have close proximity with the proceedings under Section 5 of M.P.

Rajya Suraksha Adhiniyam. By no stretch of imagination, it can be said that offences registered against the petitioner in the year 2012, 2018, 2020 had any close proximity with the recommendation sent by the Superintendent of Police, Balaghat for initiating proceedings under Section 5 of M.P. Rajya Suraksha Adhiniyam.

14. So far as the offences under Sections 294, 323, 506, 34 of IPC are concerned, the same are trivial in nature. No offence of any nature except under Sections 294, 323, 506, 34 of IPC was ever registered against the petitioner. There is nothing on record that in which case the witnesses had not appeared before the Court on account of pressure/ terror of the petitioner. Old and stale cases cannot be taken into consideration.

15. A Co-ordinate Bench of this Court in the case of **Gangaram Vs. Commissioner, Indore Division and Another** reported in **2022 (1) M.P.L.J. 711** has held as under:-

> "**10.** It is also not disputed that in the show cause notice, reference of only one case was made, which was registered on 24-9-2018; and the show cause notice was issued on 11-9-2020 i.e. after almost two years of the registration of the offence, whereas the impugned order has been passed by the District Magistrate, Burhanpur on 7-12-2020. Thus, it is apparent that not only that the impugned order has been passed after two years of the case registered against the petitioner, but it also contained reference of one more case registered against the petitioner on 14-10-2020. This Court in the case of *Sudeep Patel* v. *State of M.P., (2018) 3 MP LJ 413 passed in M.P. No. 904/2017 on 9-1-2018* has already held that the purpose of initiation of externment proceedings is to restrain a person from committing another offence in the near future

and in such circumstances the order of externment must be passed within the close proximity of the offences committed by the petitioner. The relevant paras of the same are reads as under:—

"8. In the considered opinion of this Court, the learned District Magistrate while passing the impugned order was oblivious of the statement of object and reasons of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 which provides as under:

"STATEMENT OF OBJECT AND REASONS

For want of adequate enabling provisions in existing laws for taking effective preventive action to counteract activities of anti-social elements Government have been handicapped to maintain law and order. In order to take timely and effective preventive action it is felt that the Government should be armed with adequate power to nip the trouble in the bud so that peace, tranquility and orderly Government may not be endangered.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx" (emphasis supplied)

9. Even according to section 3 of the Adhiniyam of 1990 which is in respect of power to make restriction order, it is for preventing any person from acting prejudicial to the maintenance of the public order. Thus the sole purpose of the Adhiniyam of 1990 is to act timely and effectively to initiate preventive action against a wrongdoer, which object, in the considered opinion of this Court has been totally lost sight of while passing the impugned order. As is already observed that the show cause notice was issued on 11-6-2015, the reply was filed by the petitioner on 14-7-2015 and thereafter the final

order was passed by the District Magistrate after recording the statements of various police personnel on 23-5-2017, whereas the District Magistrate ought to have proceeded with the matter expeditiously without affording any undue adjournments to either of the parties and passed the order within a reasonable time but the matter was kept pending for almost two years. In such circumstances, although no period of limitation is provided in the Adhiniyam, but still, the order should have been passed by the District Magistrate within a reasonable time frame. The order in itself was passed by the District Magistrate within a period of around two years and during this entire period the petitioner was roaming around freely and there is no allegation that during this period also he committed any offense, thus the application of the provisions of Adhiniyam appears to be totally redundant.

10. The District Magistrates, exercising their powers under the Adhiniyam must understand that it is not a mere formality which they have to perform before passing the order of externment under the Adhiniyam which directly affects a person's life and liberty guaranteed under Article 19(1)(d) of the Constitution of India. This Court is of the opinion that in a way, the preventive detention is akin to the provisions of externment under the Adhiniyam for both these measures are preventive in nature and are enacted with a view to provide safe environment to the public at large. The only difference being that in case of preventive detention, the threat is imminent and serious whereas in case of externment, its degree is somewhat obtuse and mollified and is not as serious as it is in the case of preventive detention. The necessity to pass an order of preventive detention has been

emphasized by the Apex Court in the case of *State of Maharashtra* v. *Bhaurao Punjabrao Gawande*, *(2008) 3 SCC 613* which is equally applicable to the cases of externment. The relevant paras of the same read as under:—

> "Preventive detention : Meaning and concept
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> 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.
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> 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)
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> > "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 die 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 reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility 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.
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> 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.
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> **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* v. *Union of India*, *Ashok Kumar* v. *Delhi Admn.* and *Bhawarlal Ganeshmalji* v. *State of T.N.*)" (emphasis supplied)
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> 11. Thus, testing the validity of the impugned order on the anvil of the principles so laid down by the Apex Court, it becomes manifestly clear that the order is flawed and cannot be sustained as there is an inordinate delay in passing the impugned order, which has led to loose its effectiveness."

16. A Co-ordinate Bench of this Court in the case of **Meena Sonkar Vs. State of M.P. and others** reported in **2017 (2) M.P.L.J. 565** has held as under:-

> "**16.** Division Bench of this Court in the case of *Ashok Kumar Patel* v. *State of M.P.*, 2009 (4)

M.P.L.J. 434 after considering section 5 of the Act held thus:

> "8. The expression is engaged or is about to be engaged" in the commission of offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under section 506 or 509 of the Penal Code, 1860 or in the abetment of any such offence, shows that the commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is proposed to be passed under section 5(b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an offence of the type mentioned in section 5(b), several years or several months back, there cannot be any reasonable ground for believing that the person is engaged or is about to be engaged in the commission of such offence."

17. In the case of *Ramgopal Raghuvanshi* v. *State of M.P.*, 2014 (4) M.P.LJ. 654 this Court after considering the earlier judgments in respect of section 5 of the Act held that the order of externment cannot be passed on the basis of old and stale cases. A co-ordinate Bench of this Court at Indore in the case of *Bhim @ Vipul* v. *Home Department*, W.P. No. 4329/2015, decided on 14-9-2015 [2015 MPLJ Online (Cri.) (S.C.) 4] has also considered the judgments rendered in the cases of *Ashok Kumar* (supra) and *Ramgopal Raghuvanshi* (supra) and held that the expression "engaged or is to be engaged" used in section 5(b)(i) shows that commission of offence or the abetment of such offence by the person must have close proximity to the date on which the order is proposed to be passed under section 5(b) of the Act.

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19. Under the provision of section 5 of the Act, if a detention order has to be passed, there has to be sufficient material for passing the order as fundamental right of freedom of a person is involved. The order passed by the appellate Authority is nothing but repetition of the order passed by the District Magistrate without any application of mind.

20. In the case of *Sanju @ Sanjay Ben* v. *State of M.P.*, 2005 MPLJ Online 3 : 2005 (4) MPHT 102 while considering the provisions of the Adhiniyam, 1990, the Court held that the provision is not punitive in its nature and a person cannot be externed for his past acts. Although past activities of a person may afford a guide as to his behaviour in future, they must be reviewed in the context of the time when the order is proposed to be made. The past activities must be related to the situation existing at the moment when the order is to be passed. In the present case from the facts it is noted that the same cases were being repeatedly considered by the authority and on earlier occasions, he found that the same material cannot formed a basis for passing an order of externment but by the impugned order is passed on the basis of most of the same cases which are old and stale which has already been held by this Court in number of cases as discussed above that the old and stale activities cannot be grounds of externment.

21. The opportunity of hearing and application of mind by the competent authority have been held essential requirements before passing an order of externment or detention under the Adhiniyam, 1990 or the Act, 1980. The Division Bench in the case of *Ravi Tiwari* v. *Union of India*, 2003 MPLJ Online 3 : 2003 (3) MPHT 528 held that the authorities cannot pass orders or cannot grant

> approval mechanically by filling the gaps in cyclostyle order. Another Division Bench in the case of *Shri Sayeed alias Aslam* v. *State of M.P.*, 2003 MPLJ Online 4 : 2003 (4) MPHT 312 (DB) held that in the cases of detention order passed under the Act, 1980 subjective satisfaction of the authority cannot be lightly recorded by reproducing the words and the sentences of the statute. There has to be proper consideration and appreciation for recording the satisfaction which has to be passed on true materials."

17. If the facts and circumstances of this case are tested on the anvil of judgment passed by Supreme Court in the case of **Deepak (supra)** as well as judgments passed by Co-ordinate Bench of this Court in the cases of **Gangaram (supra)** and **Meena Sonkar (supra),** it is clear that old and stale cases have been taken into consideration. Another two offences which were registered in the year 2022 & 2023 are trivial in nature. There is no material on record to suggest that witnesses were afraid of the petitioner and were not willing to come forward to depose against him. Kamal Singh Gehlot, SHO Police Station Gramin Navegaon in his statement had stated that petitioner has been convicted in some of the trials which clearly means that witnesses were not afraid of the petitioner and they were deposing against him. Furthermore, it is clear from the statement of SHO Police Station Gramin Navegaon, District Balaghat that the very purpose of initiating proceedings under Section 5 of M.P. Rajya Suraksha Adhiniyam was to keep the petitioner away from election proceedings.

18. Furthermore, District Magistrate Balaghat has considered the additional materials which were supplied to him by SHO, Police Station Gramin Navegaon after the case was finally heard and in that situation,

the District Magistrate should not have either taken into consideration the additional material or should have given an opportunity of hearing to the petitioner to meet out the additional material which was to be relied upon against him. Once the petitioner had expressed that he wants to cross-examine the departmental witnesses, then it was obligatory on the part of the District Magistrate to provide an opportunity to do so but that was not done. Even in the order-sheet dated 06/11/2023, on which SHO Police Station Gramin Navegaon was examined, it is nowhere mentioned that petitioner had refused to cross-examine him.

19. Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that the order of externment passed against the petitioner cannot be upheld.

20. Accordingly, order dated 06/04/2023 passed by District Magistrate, Balaghat in Miscellaneous Criminal Case No.72/ Externment/2023, by which petitioner was directed to remove himself from the limits of districts Balaghat, Seoni, Mandla, Dindori for a period of one year as well as order dated 29/07/2024 passed by Commissioner, Jabalpur Division, Jabalpur in Appeal No.33/Externment/2024, are hereby **quashed.**

21. Petition succeeds and is hereby **allowed.**

(G.S. AHLUWALIA)
JUDGE

S.M.