HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2025

BEFORE

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THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 30021 OF 2025 (GM-POLICE)

BETWEEN

SRI MAHESH SHETTY THIMARODI
A/A 58 YEARS,
S/O VITTAL SHETTY,
R/AT THIMMARODI HOUSE,
UJJIRE VILLAGE, BELTHANGADY TALUK,
DAKSHINA KANNADA-574240.

...PETITIONER

(BY SRI. THARANATH POOJARY., SR ADVOCATE FOR
SRI. BALAKRISHNA M.R., ADVOCATE)

AND

1. STATE OF KARNATAKA
   REP. BY SECRETARY,
   DEPARTMENT OF HOME,
   VIDHANA SOUDHA,
   BENGALURU 560001.

2. ASSISTANT COMMISSIONER
   CUM SUB DIVISIONAL MAGISTRATE,
   PUTTUR SUB DIVISION, PUTTUR,
   DAKSHINA KANNADA 574201.

3. DEPUTY SUPERINTENDENT OF POLICE,
   BANTWAL SUB DIVISION,
   DAKSHINA KANNADA 574211.

4. POLICE SUB INSPECTOR
   BELTHANGADY POLICE STATION,
   BELTHANGADY, DAKSHINA KANNADA 574214.

.... RESPONDENTS

(BY SRI. K. SHASHI KIRAN SHETTY., A.G. A/W
SRI. B.N. JAGADEESHA., ADDL. SPP A/W
SMT. K.P. YASHODHA., AGA FOR RESPONDENTS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF IN THE NATURE OF APPROPRIATE NATURE TO DECLARE THAT SECTION 12(5)(6) THE KARNATAKA CO-OPERATIVE SOCIETIES ACT IS ULTRA VIRES AND IN VIOLATION OF ARTICLE 19(1)(G) AND ARTICLE 43-B OF THE CONSTITUTION OF INDIA AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 13.10.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before this Court seeking for the following reliefs:

   i. *Issue a writ of certiorari quashing the order dated 18.09.2025 passed by the R2 made in No. MAGCR (Gadiparu)/18/2025-26 vide Annexure-A, in the interest of Justice and equity*

   ii. *Pass such other writ or order as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of Justice and equity.*

2. The Petitioner claims that on 18.07.2025 a show-cause notice was issued to the Petitioner under Section 58 of the Karnataka Police Act, 1963 ***(herein after referred to as "KP Act, 1963")*** asking him to appear before the Assistant Commissioner and

also the Sub-Divisional Magistrate to show-cause against his proposed externment under Section 55 (a) and (b) of the KP Act, 1963.

3. In the said notice, the reports of the Deputy Superintendent of Police, dated 12.05.2025, and the Inspector of Police, dated 11.05.2025, were mentioned. It is contended that the externment of the Petitioner is based on 21 criminal cases filed against the Petitioner from 1992 onwards. In the said notice, it was alleged that the Petitioner had spearheaded agitations insofar as Sowjanya's murder was concerned.

4. The Petitioner was served with another show-cause notice on 20.08.2025, citing 24 criminal cases, and was required to submit a reply to the Assistant Commissioner by 20.08.2025. The Petitioner has appeared before the Assistant Commissioner, who, vide the impugned order dated 18.09.2025 (Annexure-A), had directed the externment of the

Petitioner. It is challenging the same, that the Petitioner is before this Court seeking the aforesaid reliefs.

5. Sri. Tharanath Poojary., learned Senior Counsel appearing for the Petitioner, would submit that;

5.1. All the reports and documents were not furnished along with the show-cause notice.

5.2. The details of all cases have not been furnished. The Petitioner has been harassed by the Respondent police by filing false cases. Five cases have been filed in recent years, two of which were filed after the notice was issued. These factors were not brought to the notice of the Petitioner, and without doing so, the Assistant Commissioner has passed an order without applying his mind.

5.3. The principles of natural Justice have been completely violated by the Respondents by not

furnishing all the documents and details relied upon by the Assistant Commissioner.

5.4. The Petitioner has been targeted for carrying out agitations which are in the public interest. Several complaints have been filed against the Petitioner regarding the agitation.

5.5. The respondents are completely ill-disposed towards the Petitioner. In that background, he submits that an appeal under Section 59 of the KP Act, 1963, is not an adequate alternative remedy and, as such, he submits that this Court ought to exercise jurisdiction under Articles 226 and 227 of the Constitution of India.

5.6. In the impugned order, five reports are mentioned. When the Petitioner had appeared before the Assistant Commissioner on 01.09.2025, two additional cases were placed on record. Although a direction was issued to

the respondents to furnish the details, and a request was made by the Petitioner, his submission on instructions is that the case details had not been furnished to the Petitioner. Therefore, he submits that action has been taken against the Petitioner without complying with the principles of natural Justice.

5.7. He relies on the decision of the Hon'ble Apex Court in ***Deepak S/o Laxman Dongre vs. The State of Maharashtra & Ors***[1]**,** more particularly para 6, 7, 11 and 12 thereof, which are reproduced hereunder for easy reference;

> ***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 Maharashtra1 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*

[1] *Criminal Appeal No.139/2022*

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. *In the facts of the case, the non-application of mind is apparent on the face of the record as the order dated 2nd June 2020 of the learned Judicial Magistrate is not even considered in the impugned order of externment though the appellant specifically relied upon it in his reply. This is very relevant as the appellant was sought to be detained under sub-section (3) of Section 151 of Cr.PC for a period of 15 days on the basis of the same offences which are relied upon in the impugned order of externment. As mentioned earlier, from 2nd June 2020 till the passing of the impugned order of externment, the appellant is not shown to be involved in any objectionable activity. The impugned order appears to have been passed casually in a cavalier manner. The first three offences relied upon are of 2013 and 2018 which are stale offences in the sense that there is no live link between the said offences and the necessity of passing an order of externment in the year 2020. The two offences of 2020 alleged against the appellant are against two individuals. The first one is the daughter of the said MLA and the other is the said Varsha Bankar. There is material on record to show that the said Varsha Bankar was acting as per the instructions of the brother of the said MLA. The said two offences are in respect of individuals.*

> *There is no material on record to show that witnesses were not coming forward to depose in these two cases. Therefore, both clauses (a) and (b) of subsection (1) of Section 56 are not attracted.*
>
> ***12.*** *As the order impugned takes away fundamental right under Article 19(1)(d) of the Constitution of India, it must stand the test of reasonableness contemplated by clause (5) of Article 19. Considering the bare facts on record, the said order shows non-application of mind and smacks of arbitrariness. Therefore, it becomes vulnerable. The order cannot be sustained in law.*

5.8. By relying on ***Deepak's case***, his submission is that mere registration of multiple offences would not be sufficient to satisfy the requirement of Clause (b) of Sub-section (1) of Section 56 to pass an order of externment. The competent Authority is required to be satisfied and express such satisfaction in the order passed on the basis of material on record that witnesses are not willing to come forward to give evidence against the person proposed to be externed on account of their apprehension

as regards their safety or that of their property, if they were to depose against the person sought to be externed. Since the Assistant Commissioner expressed no such satisfaction in the impugned order, he submits that, as the basic requirements were not satisfied, this Court could exercise jurisdiction under Article 226 of the Constitution of India.

5.9. He relies on the decision of the Hon'ble Apex Court in ***Ambadas v. State of Karnataka***[2]**,** more particularly para No.5 thereof, which is reproduced hereunder for easy reference;

> ***5.*** *No doubt if there is express provision in the statute governing a particular subject matter, there is no scope for invoking or exercising inherent powers of the Court; because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter and it being an extraordinary power, has to be sparingly exercised with great care and caution, the power cannot be invoked where another remedy is available and if any matter is covered by express provisions of the statute, the High Court cannot and need not give a goby invoking the provisions of Section 482 because that may amount to evolving new procedure in the garb of*

[2] *1987 SCC OnLine Kar 68*

exercise of inherent powers, and that is well settled. Although as provided under Section 59 of the Act a remedy by appeal is available to any person aggrieved by such order of externment passed under Section 55 of the Act and the appeal lies to the Government, but from a reading of Section 59 together with Section 60 of the Act, it would appear that there is no bar against the Court interfering with such order of externment in the circumstances as enumerated in Section 60 of the Act - (1) where the procedure laid down in sub-section (1) of Section 58 is not followed; (2) there is no material before the Authority concerned upon which it could have been based its order; and (3) the Authority making the order is not of the opinion that witnesses were not willing to come forward to give evidence in public against the persons in respect of whom an order is made under Section 55. Forming of such opinion by the Authority as to the willingness of the witnesses to come forward in public to give evidence against the persons sought to be proceeded is a must; because under Clause (b) of Section 55, externment order could be made only where it appears there are reasonable grounds for believing that person or persons is engaged or is about to be engaged in commission of an offence involving force or violence an offence punishable under Chapter XII, XVI or XVII of the Penal Code, 1860, or in the abetment of any such offence, and in the opinion of such officer 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. Here in the case on hand, although the learned Sub Divisional Magistrate appears to have referred to so many criminal cases instituted against the three of the petitioners, but nowhere he is of the opinion that cases against those of the persons had ended in acquittal because of the witnesses unwilling to give evidence for fear of safety of person or property. In fact, no material worth

the name has been placed to show that the cases ended in acquittal because of such fear. At one stage, of course the S.D.M. appears to have thought, that may be so, but there is no basis for the same. As pointed out by their Lordships of the Supreme Court in the case of Prem Chand v. Union of India [(1981) 1 SCC 639 : AIR 1981 SC 613.] mere apprehension of the police is not enough for passing an order of externment. Some ground or the other is not adequate for making the order of externment. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural Justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution. The Act permits externment, provided the action is bona fide. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny. It would appear, the Learned S.D.M. has been more influenced by the secret report sent by the Circle Inspector of Police about such apprehension and the secret visit to the place, which has not been put to the petitioners. In substance, the S.D.M. has failed to form an opinion on tangible material that witnesses were not willing to come forward to give evidence in public against the petitioners. The latter part of the requirement of Clause (b) of Section 55 having not been fulfilled, the impugned order of externment passed cannot be sustained.

The petitions are therefore allowed. The impugned order passed by the Sub Divisional Magistrate is set aside.

5.10. By relying on ***Ambadas's case***, he submits that even though a remedy is provided under Section 59 of the KP Act 1963, Section 59 would have to be read with Section 60 and if so read, it would be clear that there is no Bar for the Constitutional Court to exercise jurisdiction under Article 226 when the procedure laid down in Sub-section (1) of Section 58 is not followed, or when there is no material before the Authority concerned upon which it could have based its order or the Authority making the order is as not clearly stated that witnesses were not willing to come forward to give evidence in public against whom an order under Section 55 of the KP Act, 1963 is proposed to be passed. If any of these requirements are not satisfied, this Court could exercise powers under Article 226 and 227 of the Constitution of

India, set aside the order without requiring the externee to file an appeal under section 59 of the KP Act 1963.

5.11. He relies on the decision of this Court in ***SACHIN M.R., vs. STATE OF KARNATAKA & Ors.***[3]**,** more particularly para Nos.11 and 14 thereof, which are reproduced hereunder for easy reference;

> ***11.*** *The case of the Petitioner merits consideration on the touchstone of the statute quoted hereinabove. The three crimes pending against the Petitioner are as afore-narrated. The show cause notice referred to all the three crimes. Two of the crime for the offences under the IPC and the third for offences punishable under Section 107 of the Cr.P.C. He was directed to appear on 20.03.2024. The notice is dated 16.03.2024. It is signed on 18.03.2024 and the Petitioner is said to have been served and directed for appearance within 2 days. The notice as is required does not append the report by respondent No.3. On the day on which the Petitioner was directed to appear, the impugned order is passed. Verbatim similar to what was obtaining in the show cause notice. There is not a whisper in the order about the notice being sent or received by the Petitioner and his reply being submitted.*

[3] *WP NO.9727 OF 2024 dated 05.04.2024*

> ***14.*** *There are several safeguards for passage of an order of externment upon the person against whom it is sought to be passed. These are procedural safeguards. It is trite that procedural safeguards are the life blood of liberty, which cannot be treated or taken away in the manner that it is done in the case at hand. It is also to be noticed that the orders passed by this Court and the Apex Court are deliberately or blissfully ignored by the 2nd respondent, as there is not even a semblance of compliance either of the statute or the orders passed by this Court. Therefore, the State/the 2nd respondent is hereby admonished that any repetition of the kind of the orders that is passed in deliberate defiance to the orders passed by the Apex Court or this Court would fringe on the borders of contumacious contempt on the part of the State. Therefore, such acts iterated through such orders would be viewed seriously. It thus becomes necessary to direct the Chief Secretary of the State, to take note of the situation, and issue a circular for appropriate passage of the orders of externment, bearing in mind the observations made in the course of the order. This would prevent abuse of the office and mushrooming of cases filed before this Court.*

5.12. By relying on ***Sachin's case***, he submits that if all the documents are not furnished and there is no acknowledgement of such service on the

externee, then the order passed for externment is required to be set aside.

5.13. He relies on the decision of the Hon'ble Apex Court in ***Mohammed Javeed Agha vs. State of Karnataka***[4]**,** more particularly para Nos.4, 9 and 11 thereof, which are reproduced hereunder for easy reference;

> ***4.*** *The Petitioner herein has been arraigned as an accused in several criminal cases registered against him in between 1995 i.e., S.C. No. 560/95, S.C. No. 9/95, S.C. No. 529/2000, S.C. No. 153/99, C.C. No. 18455/99 and C.C. No. 24323/98. The Commercial Street Police registered a case in Crime No. 154/04 for the offence punishable under Sections 399 and 402 of the Penal Code, 1860 and after investigation, charge-sheet came to be filed in C.C. No. 24787/04, which is still pending and the other case registered in Crime No. 36/05 for the offence punishable under Sections 386 and 506(b) r/w Section 34 of the IPC the Petitioner was arrested subsequently and he was released on bail and investigation is still pending. So as on today the charge-sheet came to be filed against the revision-petitioner by Commercial Street Police Station which is pending on the file of the 11th Addl. ACM, Bangalore in C.C. No. 24787/04 and another case is still under investigation. So during pendency of the*

[4] *(2007) 2 AIR KAR R 243*

investigation of the case in Crime No. 154/04 filed by the Commercial Street Police Station' and another case, the impugned order came to be passed by the respondent after issuing show cause notice to the Petitioner. Of course no prior notice was issued about the involvement of the revision-petitioner in Hyder Asgar's case. In order to take revenge against the murder of Petitioner's Guru Chappal Hameed and Rizwan Being alias Moulana, the impugned order has been passed.

9. *On the other hand the learned State Public Prosecutor for the respondent submitted that the Commissioner of Police and District Magistrate has rightly passed the Annexure-C against the revision-petitioner after considering the involvement of this Petitioner in several criminal cases. It is argued that the Petitioner was acquitted in several cases on account of the threat given to the prosecution witnesses and nobody is prepared to come forward to give evidence against him and his associates. Several rowdy sheets have been opened in some police station. Since the revision-petitioner is a rowdy sheeter and he is threatening several persons and, therefore, respondent is right in passing the Annexure-C. It is submitted that there are no incorrect or illegal findings recorded by the respondent and, therefore, he prays for dismissal of the revision-petition.*

11. *Hence, the revision-petition is allowed and the impugned order under challenge passed by the Commissioner of Police and District Magistrate, Bangalore is hereby quashed.*

5.14. By relying on ***Mohammed Javeed Agha's case***, he submits that though there may be several cases or complaints which might have been filed, the fact of acquittal in those cases would have to be considered by the competent Authority and if such acquittal is taken into consideration, there could be no externment order passed since by way of such acquittal, the very filing of the complaint is *set at naught* and as such, such complaint cannot be used against a person sought to be externed. Even if such an acquittal were to be used for passing an externment order, it would be required that the competent Authority come to a categorical conclusion that such an acquittal occurred because the prosecutional witnesses did not come forward to give evidence against the externee, but for which there would be no acquittal in those proceedings.

5.15. He relies on the decision of this Court in ***Shri Aluru Kadasidda @ Badaka vs. The State of Karnataka & another***[5] **,** more particularly para Nos.5 and 7 thereof, which are reproduced hereunder for easy reference;

> ***5.*** *Perused the material available on record. The contention of learned HCGP that the Petitioner has got appeal remedy under Section 59 of the K.P. Act is required to be rejected in view of position of law declared by Co-ordinate Bench of this Court in the case of Ambadas and others vs. State of Karnataka and another1 , wherein it has been held as under:*
>
> *"5. No doubt if there is express provision in the statute governing a particular subject matter, there is no scope for invoking or exercising inherent powers of the Court; because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter and it being an extraordinary power, has to be sparingly exercised with great care and caution, the power cannot be invoked where another remedy is available and if any matter is covered by express provisions of the statute, the High Court cannot and need not give a go by invoking the provisions of S. 482 because that may amount to evolving new procedure in the grab of exercise of inherent powers, and that is well settled. Although as provided under S. 59 of the Act a remedy by appeal is available to any person aggrieved by such order of externment*

[5] *Criminal petition No.102529/2024 dated 02.07.2025*

passed under S. 55 of the Act and the appeal lies to the Government, but from a reading of S. 59 together with S. 60 of the Act, it would appear that there is no bar against the Court interfering with such order of externment in the circumstance as enumerated in S. 60 of the Act - (1) where the procedure laid down in sub-section (1) of S. 58 is not followed; (2) there is no material before the Authority concerned upon which it could have based its order, and (3) the Authority making the order is not of the opinion that witnesses were not willing to come forward to give evidence in public against the persons in respect of whom an order is made under S. 55. Forming of such opinion by the Authority as to the willingness of the witnesses to come forward in public to give evidence against the persons sought to be proceeded is a must; because under Clause (b) of S. 55, externment order could be made only where it appears there are reasonable grounds for believing that person of parsons in engaged or is about to be engaged in commission of an offence involving force or violence an offence punishable under Chapter XII, XVI or XVII of the Penal Code, or in the abetment of any such offence, and in the opinion of such officer 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. Here in the case on hand, although the learned Sub Divisional Magistrate appears to have referred to so many criminal cases instituted against the three of the petitioners, but nowhere he is of the opinion that cases against those of the persons had ended in acquittal because of the witnesses unwilling to give evidence for fear of safety of person or property. In fact, no material worth

the name has been placed to show that the cases ended in acquittal because of such fear. At one stage, of course the S.D.M. appears to have thought, that may be so, but there is no basis for the same. As pointed but by their Lordships of the Supreme Court in the case of Prem Chand v. Union of India, mere apprehension of the police is not enough for passing an order of externment. Some ground or the other is not adequate for making the order of externment. There must be a clear and present danger based upon credible material which makes the movement and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural Justice must be fairly complied with and vague allegations and secret hearings are gross violations of Arts. 14, 19 and 21 of the Constitution. The Act permits externment, provided the action is bona fide. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny. It would appear, the learned S.D.M. has been more influenced by the secret report sent by the Circle Inspector of Police about such apprehension and the secret visit to the place, which has not been put to the petitioners. In substance, the S.D.M. has failed to form an opinion on tangible material that witnesses were not willing to come forward to give evidence in public against the petitioners. The latter part of the requirement of Clause (b) of S. 55 having

not been fulfilled, the impugned order of externment passed cannot be sustained."

7. *On perusal of the report of the PSI and the impugned order passed by respondent No.2, there is no allegation of Petitioner involving force or violence or an offence punishable under Chapter XII, XVI or XVII of IPC or in abetment of any such offences. There is also no allegation against the Petitioner that the PSI was of the opinion that witnesses are not wiling to come forward to give evidence in public case against Petitioner for the reason of apprehension on their part as regards to safety of their persons or property. Therefore, Clause (b) of Section 55 of the K.P. Act is not attached. What is alleged against the Petitioner is of committing offence under K.P. Act, wherein the Petitioner pleaded guilty and accordingly he paid fine amount and in another case there is allegation of causing hurt and in third case, the Tahasildar has issued notice under Section 107 of Cr.P.C. for maintenance of peace and tranquility in the area. Therefore, there is no allegation of causing or calculating cause alarm, danger or harm to persons or property. Therefore, Clause (a) of Section 55 of the K.P. Act is also not made out. As there is no out break of epidemic decease, clause (c) of Section 55 of the K.P. Act is not attracted.*

5.16. By relying on ***Aluru Kadasidda's case***, he submits that neither in the reports which have been submitted nor in the order passed by the competent Authority, there is any whisper as

regards witnesses not willing to come forward to give evidence against the externee on apprehension of fear of person or property. There is no allegation made against the externee that if he is not so externeed, he may cause harm, loss and injury to the person or property of the prosecution witnesses. Hence, there cannot be an externment order passed without such a finding.

5.17. He relies on the decision of the Hon'ble Apex Court in ***Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council & Anther***[6] more particularly para Nos.54, 55 and 57 thereof, which are reproduced hereunder for easy reference;

> ***54.*** *The access to High Courts by way of a writ petition under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of*

[6] *(2025) 4 SCC 1*

their constitutional rights or even statutory rights. This is an inalienable right and the rule of availability of alternative remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute. [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1. See also, L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577 : (1997) 228 ITR 725; S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242; Union of India v. Parashotam Dass, (2025) 5 SCC 786.]

55. *It has been well-settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies — (i) where there is a violation of principles of natural Justice or fundamental rights; (ii) where an order in a proceeding is wholly without jurisdiction; or (iii) where the vires of an Act is challenged. Noticeably, Msefc as a statutory authority performs a statutory role and functions within the four corners of the law.*

57. *Following the judgments in Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , this Court in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P.,*

(2021) 6 SCC 771 : (2021) 88 GSTR 228] laid down the following principles : (Radha Krishan Industries case [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : (2021) 88 GSTR 228] , SCC p. 795, para 27)

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural Justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article

226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

5.18. By relying on ***Tamil Nadu Cements Corporation Limited case,*** he submits that the fetter of non-exercise of powers under Article 226 and 227 of the Constitution of India is a self-imposed one by the Constitutional Courts. In appropriate cases, the Constitutional Courts could exercise writ jurisdiction more particularly when there is a violation of principles of natural Justice or fundamental rights where the order passed in a proceeding without jurisdiction or where the vires of an Act has been challenged. The externment order is

violative of Article 21 as also Article 19(1)(g) of the constitution of India. Therefore, this Court ought to in these circumstances exercise its jurisdiction under Article 226 and 227 of the Constitution of India.

5.19. He relies on the decision of the Hon'ble Apex Court in ***Ram & Shyam Company vs. State of Haryana & Ors.,***[7] more particularly para No.9 thereof, which is reproduced hereunder for easy reference;

> ***9.*** *Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries [(1979) 4 SCC 22 : 1979 SCC (Cri) 896] rejected the writ petition observing that "the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him". We remain unimpressed. Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party*

[7] *(1985) 3 SCC 267*

invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in State of U.P. v. Mohammad Nooh [AIR 1958 SC 86 : 1958 SCR 595 : 1958 SCJ 242] it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the Authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant

relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.

5.20. By relying on ***Ram & Shyam Company's case***, he submits that when on the face of the record it appears that the establishment is against the Petitioner, an appeal remedy would not be an efficacious remedy since the Appellate Authority, being part of the establishment, is unlikely to set aside the order passed by the Assistant Commissioner.

5.21. In that background, he submits that the above petition is required to be allowed and the reliefs sought for granted.

6. Sri.K.Shashi Kiran Shetty., learned Advocate General appearing for the State submits that;

6.1. There are numerous cases which have been filed against the Petitioner. Even before

Sowjanya's agitation, there were more than 11 cases which have been filed against the Petitioner. Thereafter, several cases have been filed, some of which are not related to the Sowjanya agitation. The Petitioner is making use of the Sowjanya agitation and has resorted to criminal activities for which the State has been forced to take necessary action.

6.2. His submission is that under Sub-section (1) of Section 58, all the documents and details are not required to be furnished. Only the material allegations are required to be made known to the person sought to be externed. Even though that is the requirement, all the documents have been furnished to the Petitioner. The show-cause notice itself is a detailed one wherein the details of all the proceedings/complaints which have been filed against the Petitioner have been detailed. The police reports dated

11.05.2025 and 12.05.2025 have been acknowledged by the Petitioner to have been received in the objection statement filed.

6.3. The show-cause notice dated 20.08.2025 at Annexure-C would indicate that the report dated 18.08.2025 has also been furnished. The Petitioner did not raise his grievance regarding the non-furnishing of the said report at any point in time. It is only now, after suffering an order, that the Petitioner has raised this issue before this Court.

6.4. He submits that the other police reports dated 27.08.2025, 29.08.2025 and 10.09.2025 are basically further statements in respect of the earlier reports and as such constitute a subset of the earlier reports. Even though these reports have been furnished, original records are produced before this Court to evidence the receipt of the report dated 27.08.2025. His

submission is that some of the documents had been sent by post and have returned unclaimed.

6.5. Be that as it may, he submits that in terms of Sub-section (1) of Section 58 of the KP Act, 1963, it is only the material particulars which are required to be furnished, which have been so furnished, hence the question of the Petitioner raising a dispute in relation thereto would not arise.

6.6. He submits that the Hon'ble Supreme Court has upheld the constitutional validity of Section 57 of the Bombay Police Act, 1951, which is in *pari materia* to Section 55.

6.7. He relies on ***Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay & Ors.,***[8] more particularly para Nos.16, 17, 18, 19 and 31 thereof, which are reproduced hereunder for easy reference;

[8] *(1956) 1 SCC 815*

16. *It was next contended that the proceedings are initiated by the police and it is the police which is the judge in the case and that therefore the provisions of the Act militate against one of the accepted principles of natural Justice that the prosecutor should not also be the judge. In order to appreciate this argument reference has to be made to the provisions of Section 59 of the Act. It provides that before action is taken under Sections 55, 56 or 57 of the Act, the Authority entrusted with the duty of passing orders under any one of those sections or any officer above the rank of an Inspector authorised by that officer or Authority shall inform the person proceeded against in writing "of the general nature of the material allegations against him" in order to give him a reasonable opportunity of explaining his conduct. If that person wishes to examine any witnesses, he has to be given an opportunity of adducing evidence. That person has the right to file a written statement and to appear in the proceeding by an advocate or attorney for the purpose of tendering his explanation and adducing evidence. If the person fails to appear or to adduce evidence, the Authority or officer has the right to proceed with the enquiry and to pass such order as may appear fit and proper. It is thus clear that the criticism against the procedure laid down in Section 59 is not entirely correct. The evidence or material on the basis of which a person may be proceeded against under any one of the Sections 55, 56 or 57 may have been collected by police officers of the rank of an Inspector of Police or of lower rank. The proceedings may be initiated by a police officer above the rank of Inspector who has to inform the person proceeded against of the general nature of the material allegations against him. But the order of externment can be passed only by a Commissioner of Police or a District Magistrate or a Sub-Divisional Magistrate specially empowered by the State Government in that behalf. Hence the satisfaction is not that of the person prosecuting, if that word can at all*

be used in the context of those sections. The person proceeded against is not prosecuted but is put out of the harm's way. The legislature has advisedly entrusted officers of comparatively higher rank in the police or in the magistracy with the responsible duty of examining the material and of being satisfied that such person is likely again to engage himself in the commission of an offence similar to that for which he had previously been convicted.

17. *The proceedings contemplated by the impugned Section 57 or for the matter of that, the other two Sections 55 or 56 are not prosecutions for offences or judicial proceedings, though the officer or Authority charged with the duty aforesaid has to examine the information laid before him by the police. The police force is charged with the duty not only of detection of offences and of bringing offenders to Justice, but also of preventing the commission of offences by persons with previous records of conviction or with criminal propensities. As observed by Patanjali Sastri, C.J. in State of Madrasv. V.G. Row [State of Madras v. V.G. Row, (1952) 1 SCC 410 at p. 421 : 1952 SCR 597] , "externment of individuals, like preventive detention, is largely precautionary and based on suspicion". To these observations may be added the following words in the judgment of Patanjali Sastri, C.J. with reference to the observations of Lord Finlay in R. v. Halliday [R. v. Halliday, 1917 AC 260, 269 (HL)] : (V.G. Row case [State of Madras v. V.G. Row, (1952) 1 SCC 410 at p. 421 : 1952 SCR 597] , SCC p. 420, para 25)*

"25. … The Court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based."

It is thus clear that in order to take preventive action under Section 57 of the Act the legislature has entrusted police officers or

Magistrates of the higher ranks to examine the facts and circumstances of each case brought before them by the Criminal Investigation Department. But the legislature has provided certain safeguards against tyrannical or wholly unfounded orders being passed by the higher ranks of the police or the magistracy.

18. *It was next contended that the provisions relating to hearing any evidence that may be adduced by the police or by the person proceeded against and right of appeal to the State Government conferred by Section 60 of the Act are illusory. We cannot agree that the right of appeal to the State Government granted to the person proceeded against by an order under Section 57 is illusory because it is expected that the State Government which has been charged with the duty of examining the material with a view to being satisfied that circumstances existed justifying a preventive order of that nature, will discharge its functions with due care and caution. Section 61 has provided a further safeguard to a person dealt with under Section 57 by providing that though an order passed under Section 55, Section 56 or Section 57, or by the State Government under Section 60 on appeal shall not be called in question in any court, he may challenge such an order in a court on the ground (1) that the Authority making the order or any officer authorised by it had not followed the procedure laid down in Section 57, or (2) that there was no material before the Authority concerned upon which it could have based its order, or (3) that the said Authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person proceeded against. In this connection it was argued on behalf of the Petitioner that Section 59 only required the general nature of the material allegations against the person externed to be disclosed and that, as it did not further provide for particulars to be supplied to such a*

person, it would be very difficult for him to avail of at least the second ground on which Section 61 permits him to get the matter judicially examined. But in the very nature of things it could not have been otherwise. The grounds available to an externee had necessarily to be very limited in their scope because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under Section 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the Sections 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, of examining witnesses in open Court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure.

19. *Reliance was placed on a number of decisions of this Court referred to above on behalf of the Petitioner to show that the terms of Section 57 impugned in this case could not come within the permissible limits laid down by the Constitution in clause (5) of Article 19. But arguments by analogy may be misleading. It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia. The case nearest to the present one is the decision of this Court in Gurbachan Singh v. State of Bombay [Gurbachan Singh v. State of Bombay, (1952) 1 SCC 683 : 1952 SCR 737] , where Section 27(1) of the City of Bombay Police Act was under challenge and the Court upheld the constitutionality of that section. If*

> *anything, Section 57 impugned in this case provides a surer ground for proceeding against a potential criminal insofar as it insists upon a previous conviction at least. At least in clauses (b) and (c) it insists upon more than one previous order of conviction against the person proceeded against, thus showing that the Authority dealing with such a person had some solid ground for suspecting that he may repeat his criminal activities. It has not been contended before us that the decision of this Court referred to above does not lay down the correct law or that it was open to challenge in any way. We do not think it necessary therefore to consider in detail the other cases relied upon on behalf of the Petitioner.*
>
> ***31.*** *For all the above reasons I consider that Section 57 of the Act is constitutionally invalid.*

6.8. By relying on ***Hari Khemu Gawali's case***, the learned Advocate General submits that what is required to be informed is the general nature of the material allegation, which is the general nature of the material allegation against him. There is no requirement to furnish all documents and/or copies. The externment order being required to be passed by a higher official, the legislature has entrusted such officers of higher rank the responsible duty of

examining the material and on being satisfied, pass such orders. An order of externment is a preventive order to ensure that offences are not committed by the externee when there is a suspicion i.e., likely to commit offences. Once the State Government is satisfied from the material on record that circumstances exist for passing such preventive order, this Court ought not to exercise its powers under Article 226 and 227 of the Constitution of India but leave the externee to file necessary appeal.

6.9. It is not the case of the Petitioner that the Assistant Commissioner did not have the power to pass an order. When an order has been passed by an Authority having jurisdiction, the same cannot challenged in a proceeding under Article 226 and 227 of the Constitution of India. The statutory remedy available would have to be resorted to by such an externee.

6.10. He submits that if a notice has been issued to the proposed externee and he has appeared before the Authority concerned, the principles of natural Justice have been satisfied, and any appeal against an Order passed under Section 55 lies before the Government under Section 59.

6.11. He relies upon the decision of this Court in ***Mr.Javeed vs. State of Karnataka***[9], more particularly para No.3 and 4 thereof, which are reproduced hereunder for easy reference;

> ***3.*** *What is being challenged is the externment order dated 04.09.2025 at Annexure-A. A perusal of the papers indicates that before such an order was passed, notice was issued to the Petitioner, the Petitioner appeared before respondent No.2 and made his submissions.*
>
> ***4.*** *In that view of the matter, the requirement of natural Justice has been satisfied and the Petitioner has an alternative efficacious remedy in terms Section 59 of the Karnataka Police Act 1963.*

6.12. By relying on ***Javeed's case,*** he submits that once a notice has been issued and the externee

[9] *WP No.28910 of 2025 dated 09.10.2025*

has appeared before the Competent Authority, the Principles of natural Justice have been satisfied; it is only the appellate remedy which is available under Section 59 of the KP Act 1963.

6.13. He relies upon the decision of this Court in ***Sunil @ papu vs. State of Karnataka***[10]**,** more particularly para 8 and 9 thereof, which are reproduced hereunder for easy reference;

> ***8.*** *I have considered the submission made by the learned counsel for both sides. Admittedly, the Petitioner has remedy of filing an appeal under Section 59 of the Karnataka Police Act, 1963. Therefore, I am not inclined to entertain the writ petition.*
>
> ***9.*** *So far as the prayer made by the learned counsel for the Petitioner that till the decision of the appeal, the impugned order should not be given effect to. I am afraid that in the fact situation of the case, such relief cannot be granted as the order of externment has been passed only for a period of 11 days and in case the interim order is granted, the same would tantamount to granting final relief to the Petitioner without even filing of the appeal by the Petitioner. Therefore, the order passed by a Bench of this Court dated 09.01.2018 passed in W.P.No.712/2018 is distinguishable on the facts of the case which do not apply to the present fact situation of the case.*

[10] *2019 SCC Online Kar 550*

6.14. By relying on ***Sunil @ papu's case***, he submits that when an appeal under Section 59 of the KP Act, 1963 is available, the writ petition ought not to be entertained.

6.15. He relies upon the decision of Hon'ble Delhi High Court in ***Dhiraj vs. State (NCT Delhi) and Others***[11]**,** more particularly para No.18 thereof, which is reproduced hereunder for easy reference;

> ***18.*** *The Supreme Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 was observed as under:—*
>
> ***27. The principles of law which emerge are that:***
>
> ***27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.***
>
> ***27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective***

[11] *2023 SCC online Del 6911*

alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural Justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

> ***28. These principles have been consistently upheld by this Court in*** *Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad,* ***(2003) 5 SCC 399],*** *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot,* ***(1974) 2 SCC 706] and*** *Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India,* ***(2008) 5 SCC 632] among other decisions.***

6.16. By relying on ***Dhiraj's case***, he submits that none of the exceptions carved out in the said matter apply to the present matter, inasmuch as the rights which are sought to be asserted by the Petitioner are subject to the KP Act 1963. Even if it were to be a fundamental right, since the procedure under law has been followed, a writ petition would not lie, more so when an alternative relief of appeal is available. The Petitioner has been served with notice, furnished with documents, and heard in the matter, he being represented by counsel. Thus, none of the principles of natural Justice is

violated. The orders having been passed under Section 55 of the KP Act 1963 and being permitted to be so passed under law by the Competent Authority cannot be said to be one without jurisdiction. The vires of the Act not having been challenged, none of the exceptions carved out in ***Dhiraj's case*** or that in ***Radha Krishan Industries case***, would be attracted in the present case.

6.17. The proposed externee is entitled to be informed only of the general nature of the allegations against him, and not the specific particulars. All documents are not required to be furnished.

6.18. He relies upon the decision of the Hon'ble Apex Court in ***Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police*****, the State of Maharashtra**[12]**,** more particularly para Nos.9,

[12] *(1973) 1 SCC 372*

10, 11 and 12 thereof, which are reproduced hereunder for easy reference;

> ***9.*** *These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under Clause (a) or (b) of Section 56, and only if, the Authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externee 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 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". That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.*

10. *It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh v. State of Bombay [(1952) 1 SCC 683 : 1952 SCR 737 : AIR 1952 SC 221 : 1952 SCJ 279] had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in Bhagubhai v. Dulldbhabhai Bhandari v. District Magistrate, Thana. We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.*

11. *In Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay [1956 SCR 506 : AIR 1956 SC 559 : 1956 SCJ 599] in which an order of externment was passed under Section 57 of the Act, it was held by this Court on an examination of the general scheme of the Act that the provisions of Sections 55, 56, 57 and 59 cannot be held to be invalid on the grounds that only the general nature of the material allegations is required to be disclosed to the externee, and that it would be difficult for him to get the matter judicially examined. Sinha J., speaking for the majority, observed:*

"The grounds available to an externee had necessarily to be very limited in their scope because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under Section 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the Section 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary

way, namely, of examining witnesses in open Court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure."

12. *In State of Gujarat v. Mehboob Khan Usman Khan, this Court, reversing the judgment of the High Court of Gujarat, rejected the argument that a notice substantially similar to the one in the instant case was bad for vagueness. It was held that the person proposed to be externed was entitled to be informed of the general nature of the material allegations and not to the particulars of those allegations. As to the meaning of the phrase "general nature of the material allegations", it was observed:*

"Without attempting to be exhaustive we may state that when a person is stated to be a 'thief' that allegation is vague. Again, when it is said that 'A' stole a watch from X on a particular day and at a particular place', the allegation can be said to be particular. Again, when it is stated that X is seen at crowded bus stands and he picks pockets' it is of a general nature of a material allegation. Under the last illustration, given above, will come the allegations, which, according to the Gujarat High Court, suffer from being too general, or vague. Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasised that when he has to tender an explanation to a notice, under Section 59, he can only give an explanation, which can be of a general nature. It may be open to him to take a defence, of the action being taken, due to mala fides, malice or mistaken identity, or he may be able to tender proof of his general good conduct, or alibi,

during the period covered by the notice and the like."

6.19. By relying on ***Pandharinath Shridhar Rangnekar's case***, he submits that a full and complete disclosure of particulars would frustrate the very purpose of the externment proceedings. The proposed externee cannot be given the concrete data, like specific dates of incidents or the names of the persons involved in the incident, which is likely to cause harm and injury to the witnesses. The legislature in its wisdom has thought it fit to provide such a power to extern a person subject to the procedure being complied. In the present matter procedure having been complied the Petitioner cannot have any grievance. His submission by relying on ***Hari Khemu Gawali's case*** is that the grounds available to an externee would be necessarily limited, since

if evidence could be adduced in public, such a person would be dealt with under the applicable criminal law and preventive provisions would not be required to be applied. Preventive provisions are applied in special cases where the State is of the belief that the externee may cause or commit any offence.

6.20. He relies upon the decision of the Hon'ble Apex Court in ***State of Maharashtra & Anr. vs. Salem Hasan Khan***[13]**,** more particularly para No.4 thereof, which is reproduced hereunder for easy reference;

> ***4.*** *On behalf of the appellant reliance has been placed on the decision of this Court in Pandharinath Shridhar Rangnekar v. Deputy Commissioner of Police [(1973) 1 SCC 372: 1973 SCC (Cri) 341 : (1973) 3 SCR 63] , wherein a similar plea was taken by the appellant before this Court. It was contended that the failure on the part of the State Government indicated non-application of mind. The appellant had also urged that the allegations contained in the show-cause notice were too vague in absence of details to afford him reasonable opportunity to defend himself. Rejecting the argument, this Court held that a full and complete disclosure*

[13] *(1989) 2 SCC 316*

> *of particulars, as is requisite in an open prosecution, will frustrate the very purpose of an externment proceeding. There is a brand of lawless elements 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 reprisal witnesses are unwilling to depose in public. While dealing with the contention that the State Government was under a duty to give reasons in support of its order dismissing the appeal, the point was rejected in the following terms: (SCC p. 378, para 14)*
>
> *"Precisely for the reason for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment."*
>
> *As observed, if the authorities were to discuss the evidence in the case, it would be easy to fix the identity of the witnesses who were unwilling to depose in public against the proposed externee. A reasoned order containing a discussion would probably spark off another round of harassment. We are, therefore, of the view that the High Court was in error in quashing the order as confirmed by the State Government in appeal.*

6.21. By relying on ***Salem Hasan Khan's case,*** he submits that the externee is only entitled to be informed of the general nature of the material allegation, neither the externing Authority nor

the State Government in appeal can be asked to write a reasoned order in the nature of a judgment.

6.22. He submits that the Courts should not interfere with externment orders unless the order passed is demonstratively perverse and based on no evidence.

6.23. He relies upon the decision of the Hon'ble Apex Court in ***Gazi Saduddin vs. State of Maharashtra***[14]**,** more particularly para No.13 thereof, which is reproduced hereunder for easy reference;

> ***13.*** *It has not been pointed out that there was any lapse in following the procedure laid down under the Act and the Rules in passing the order of externment. The procedure laid down under the Act culminating in passing of the order of externment was duly followed. Primarily, the satisfaction has to be of the Authority passing the order. If the satisfaction recorded by the Authority is objective and is based on the material on record then the courts would not interfere with the order passed by the Authority only because another view possibly can be taken. Such satisfaction of the Authority can be interfered with only if the satisfaction*

[14] *(2003) 7 SCC 330*

> *recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.*

6.24. By relying on ***Gazi Saduddin's case***, he submits that an order of externment can be passed on subjective satisfaction of the concerned Authority which can be recorded in writing for an externee to seek for interference the externee would have to establish that the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person would not form or that the person concerned was not given due opportunity resulting in prejudicing his rights. None of these being established in the present case, the relief sought for by the Petitioner cannot be granted.

6.25. Lastly, he relies upon the Interlocutory Order passed by the Hon'ble Apex Court in ***Special***

Leave to Appeal (Crl.)No(s).6588/2025 dated 08.09.2025 in Mohammed Rasal.C. & Anr., vs. State of Kerala & Anr., more particularly para Nos.6, 7, 8, 9, thereof, which are reproduced hereunder for reference;

> ***6.*** *We find that in this case, the petitioners had approached the High Court directly for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023(for short, 'BNSS'),,without first approaching the Sessions Court for the said relief. We are of the opinion that though the concurrent jurisdiction is conferred upon the Sessions Court and the High Court to entertain a prayer for pre-arrest bail under Section 482 of the BNSS (formerly, Section 438 CrPC), the hierarchy of Courts demands that no person seeking such remedy should be encouraged or allowed to directly approach the High Court for exercising jurisdiction under Section 482 of the BNSS (formerly, Section 438 CrPC) by bypassing the jurisdiction of the concerned Sessions Court.*
>
> ***7.*** *The Sessions Judge exercises powers under Section 438 CrPC in relation to all cases registered with the police stations in the particular District. This area-wise distribution of work would make it much more convenient and facilitate expeditious disposal, if the application for pre- arrest bail is first filed before the Sessions Court which would have a direct and first-hand assistance of the concerned Public Prosecutor appointed for that particular District. The Sessions Court would also have an immediate access to the Case Diary thereby facilitating a better appreciation of facts of the case.*
>
> ***8.*** *We further feel that if the practice of entertaining the applications for pre-arrest bail*

> *directly in the High Court is encouraged, and the parties concerned are not relegated to first approach the Sessions Court concerned, the High Court would be flooded with a spate of pre-arrest bail applications thereby creating a chaotic situation. We say so, because if the parties are required to approach the Sessions Court concerned for seeking remedy of pre-arrest bail, there is a strong probability that significant number of applications would be allowed at that level only thereby acting as a filtration process before the process reaches the High Court.*
>
> ***9.*** *It is trite that in most of the States, there is a consistent practice requiring the litigant concerned to first approach the Sessions Court for seeking relief of pre-arrest bail and only in the event of denial of such relief, the litigant would be granted access to approach the High Court for seeking such relief. This is, of course, subject to just exceptions and the High Court, for reasons to be recorded, may entertain an application for pre-arrest bail directly in special/extra-ordinary circumstances.*

6.26. By relying on the Interlocutory Order passed in ***Mohammed Rasal.C's case***, he submits that the Hon'ble Apex Court has frowned on the practice of an accused approaching the High Court directly seeking for anticipatory bail or a pre-arrest bail and the Hon'ble Apex Court has categorically directed that the accused ought to first approach the District Court having jurisdiction which cannot bypassed by

approaching the High Court directly, even though there is a concurrent jurisdiction of the District Court and the High Court. By relying on the same, he submits that it is for the Petitioner to approach the appellate Authority under Section 59 of the KP Act 1963 and the Petitioner could not have approached this Court by-passing the alternative efficacious remedy of an appeal.

6.27. Based on all the above, he submits that the writ petition filed is required to be dismissed and if the Petitioner so wishes, he could file an Appeal under Section 59 of the KP Act, 1963.

7. Heard Sri.Tharanath Poojary., learned Senior Counsel appearing for the Petitioner and Sri.K.Shashi Kiran Shetty., learned Advocate General appearing for the Respondent-State. Perused papers.

8. The points that would arise for consideration are;

1. Whether all police reports and documents, including FIR, statements, charge sheet,

etc., are required to be furnished to the person who is sought to be externed?

2. Whether there is a requirement in all cases for the Assistant Commissioner to consider and State as to whether witnesses have not come forward or would not come forward to depose against the person who is sought to be externed, if he continues to reside within the jurisdiction?

3. Whether the principles of natural Justice have been followed in the present case?

4. Is there any infirmity in the impugned order requiring this Court to intercede?

5. ***What order?***

9. I answer the above points as follows;

10. **Answer to point No.1:** ***Whether all police reports and documents, including FIR, statements, charge sheet, etc., are required to be furnished to the person who is sought to be externed?***

10.1. The submission of Sri.Tharanath Poojary., learned Senior Counsel for the Petitioner, is that without the reports and documents being furnished along with the show-cause notice,

the Petitioner as the addressee of the notice, would not know what to reply to. The principle of natural Justice would stand completely violated if they are not furnished.

10.2. After the appearance of the Petitioner before the Assistant Commissioner, two additional cases were filed. Though a request had been made for furnishing the same, copies were not furnished. On that ground, he submits that the rights of the Petitioner have been adversely affected.

10.3. In that regard, he has relied upon the decision in ***Sachin M.R's case*** and contends that if all documents are not furnished, and there is no acknowledgement of such service on the externee, then the order for the externment would be required to be set aside.

10.4. A persusal of said judgment in ***Sachin's case*** does not indicate that it is so inasmuch as that

decision was one relating to service of notice and not service of documents, and it is in the background of the show-cause notice not having been issued, that the above observations were made.

10.5. In the present case, the issue raised by the Petitioner is as regards service of documents and not that of service of notice, notice having been received and acknowledged by the Petitioner to have been so received, and sunsequently having been represented by legal counsel in the proceedings before the Assistant Commissioner.

10.6. Learned Advocate General would submit that under Sub-section (1) of Section 58 of the KP Act, 1963, all the documents and details are not required to be furnished; only material allegations are required to be made known to the person sought to be externed. The show-

cause notice detailing the allegations against the Petitioner, the Petitioner was well aware of what the Petitioner had to reply to.

10.7. Be that as it may, he submits that the police reports have been furnished to the Petitioners, this being done by the State in its fairness and not because the Petitioner is entitled thereto.

10.8. He relies on ***Hari Khemu Gawali's*** case to contend that what is required to be informed to the person sought to be externed is the general nature of material allegations. There is no requirement to furnish all documents and/or copies. The externment order being required to be passed by a higher official like the Assistant Commissioner, the legislature has thought it fit to interest such a higher officer with the responsibility to pass such an order, who would consider the matter on the merits thereof, and only if satisfied that the circumstances exist for

passing a preventive order, such an order would be passed. This discretion being exercised by the higher officer, the order on the face of it reflecting that there is an application of mind, this Court ought not to intercede in the matter.

10.9. He also relies upon the decision in ***Pandharinath Shridhar Rangnekar's case*** and submits that full and complete disclosure of particulars would frustrate the very purpose of the externment. The police reports and other reports containing sensitive information, including the complete details of the incident, the persons involved, and witnesses, etc., those details, if furnished, would lead to an adverse effect in the investigation.

10.10. Reliance is also placed on ***Salem Hasan Khan's case*** to contend that the externee is only entitled to be informed of the general

nature of the material allegations. These being the arguments advanced, it would be required for this Court to ascertain the requirement under law.

10.11. Section 55 of the KP Act, 1963 is reproduced hereunder for easy reference.

> ***55. Removal of persons about to commit offences****.—Whenever it shall appear in the City of Bangalore and other areas for which a Commissioner has been appointed under section 7 to the Commissioner, and in other area or areas to which the Government may, by notification in the official Gazette, extend the provision of this section, to the District Magistrate, or the Sub-Divisional Magistrate having jurisdiction and specially empowered by the Government in that behalf,—*
>
> *(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 of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer 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, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him, or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts or any part thereof contiguous thereto by such route and within such time as the said officer may specify and not to enter, or return to the said place from which he was directed to remove himself.

10.12. A perusal of Section 55 would indicate that whenever it appears that in the city of Bangalore and other areas for which a Commissioner has been appointed, that the movements or acts of any person are causing or calculated to cause alarm from a danger or harm to person or property, or if 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 and XVII of the IPC, or in the abetment of any such offence and when in the opinion of such officer 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 or their personal property, then an order of externment could be passed.

10.13. Section 58 of the KP Act, 1963, is reproduced hereunder for easy reference.

> ***58. Hearing to be given before an order is passed under section 54, 55 or 56****.—*
>
> *(1) Before an order under Section 54, 55 or 56 is passed against any person, the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness,*

produced by him, the Authority or officer concerned shall grant such application and examine such witness, unless for reasons to be recorded in writing the Authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by a legal practitioner for the purposes of tendering his explanation and examining the witnesses produced by him.

(2) The Authority or officer proceeding under sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 54, 55 or 56 require such person to appear before him and to furnish a security bond with or without sureties for such attendance during the inquiry. If the person fails to furnish the security bond as required or fails to appear before the officer or Authority during the inquiry, it shall be lawful to the officer or Authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him may be passed.

10.14. A perusal of Sub-section (1) of Section 58 of the KP Act, 1963 would indicate that before an order under Section 54, 55 or 56 is passed against any person, an officer acting under any

of the said sections shall inform the person in writing of the general nature of the material allegation against him and gave him a reasonable opportunity of tending an explanation regarding them. If such a person who is sought to be externed makes an application for the examination of any witness produced by him, the Authority or officer concerned shall grant such application and examine such witness unless, for reasons to be recorded in writing, the Authority or officer is of the opinion that such application is made for the purpose of vexation or delay.

10.15. Any written statement put in by such a person shall be filed with the record of the case, and such person shall be entitled to appear before the officer proceeding under Section 58 of the KP Act, 1963, by a legal practitioner for the

purpose of tendering his explanation and examining the witnesses produced by him.

10.16. Sub-section (2) of Section 58 of the KP Act, 1963 deals with securing the attendance of any person against whom the order is proposed to be passed and for that purpose to secure bonds etc., Thus, in terms of Sub-section (1) of Section 58 it is clear that what is required to be informed to the person who is sought to be externed is the general nature of the material allegation against him, which should be given in writing and a reasonable opportunity of tendering and explanation regarding it.

10.17. The statute requiring information of the general nature of material allegation, it is not sustainable for the Petitioner to contend that all reports and documents are required to be made available.

10.18. Looked at from another angle, the information required to be given under Sub-section (1) of Section 58 of the KP Act, 1963 would require detailing the pending or disposed criminal proceedings, the allegations against the proposed externee and the possible reasons as to why the externment order is proposed to be made.

10.19. Insofar as the pending or disposed matters, the externee would be well aware of the details thereof, being a party to those proceedings, the documents thereof would also be available with the proposed externee. As such, the question of providing details thereof would not arise. This would necessarily have to be caveated with the situation where the proposed externee is not a party to those proceedings and/or did not have access to the copies of the papers in those proceedings. In

those circumstances it would be required for the concerned officer acting under Section 58 of the KP Act, 1963, to provide the papers of the proceedings.

10.20. Insofar as the police reports are concerned, as held by the Hon'ble Apex Court in ***Pandharinath Shridhar Rangnekar's case*** full and complete disclosure of particulars would frustrate the very purpose of externment. Thus, in my considered opinion, providing of the police report would amount to full and complete disclosure, and those police report containing sensitive information, the Petitioner would not be entitled to the entire report/reports but would only be entitled to be informed of the general nature of the material allegation made against him.

10.21. ***Thus, I answer point No.1 by holding that in cases relating to externment, all***

police reports and documents, including FIR, statements, charge sheet etc, are not required to be furnished to the person who is sought to be externed. General information of the material allegations, in the police report, documents, FIR, statements, charge sheet would have to be provided in writing to the person sought to be externed.

10.22. ***It is again reiterated that copies of those documents are not required to be provided. Whether the general nature of material allegations has been provided in the notice issued under Sub-section (1) of Section 58 of the KP Act, 1963 would be the subject matter of an appeal, if and when filed under Sub-section (1) of Section 59 of the KP***

Act, 1963. Since, the same would relate to disputed questions of fact, which would have to be considered by the Appellate Authority.

11. ***<u>Answer to point No.2:</u> Whether there is a requirement in all cases for the Assistant Commissioner to consider and state as to whether witnesses have not come forward or would not come forward to depose against the person who is sought to be externed, if he continues to reside within the jurisdiction?***

11.1. Sri Tharanath Poojari., learned Senior Counsel for the Petitioner has sought to contend that before passing an order of externment, it is required for the Competent Authority in this case the Assistant Commissioner to have categorically stated that witnesses have not come forward or would not come forward to depose against the Petitioner who is sought to

be externed, if he continues to reside within the jurisdiction. He bases the said submission on the decision in ***Deepak S/o Laxman Dongre's Case*** and submits that a Competent Authority is required to be satisfied and express such satisfaction in the order passed on the basis of the material on record that witnesses are not willing to come forward to give evidence against the person proposed to be externed on account of their apprehension as regards their safety or that their of property, if they were to depose against the person sought to be externed. Reliance is also placed on the decision of ***Aluru Kadasidda's case*** to a similar effect.

11.2. Section 55 of the KP Act, 1963 has been extracted hereinabove. Clause (b) of Section 55 of the KP Act, 1963, which has been dealt with in answer to point No.1, clearly mandates

that when in the opinion of such officer 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.

11.3. The usage of the word in Clause (b) of sub-section 55 of the KP Act, 1963 is "***and***" i.e., to say, there has to be a reasonable ground for believing 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 and XVII of the Indian Penal Code or the abatement of any such offence. When, in the opinion of such officer, witnesses are not willing to come forward to give evidence in public….. Thus, the usage of the word being "***and***", which is conjunctive, both requirements are to be

satisfied under Clause (b) of Section 55 of the KP Act, 1963.

11.4. It is not only for reasonable grounds to be in existence, indicating the person sought to be externed is engaged or is about to be engaged in the commission of an offence. It should also be that witness/es would not come forward, it is only then could an order of externment be passed.

11.5. The submission of the learned Advocate General that serious offences have been alleged against the Petitioner, no witnesses would come forward, would not suffice the requirements of judicial review to be exercised by this Court when an order of externment, which impacts right to life and liberty under Article 21 of the Constitution of India, has been passed. There being no dispute that an order of externment would be one which impacts the

right to life and liberty under Article 21 of the Constitution of India.

11.6. As indicated, *Supra*, the conjunctive "***and***" having been used, the order of the Assistant Commissioner would have to be clear and categorical and comply with the requirements of Section 55 of the KP Act, 1963, which includes Clause (b) thereof.

11.7. The reason for the same is not far to see, since every person who commits an offence or is likely to commit an offence is not externed. The powers under Section 55 of the KP Act, 1963 would have to be exercised in terms of Clause (a), where the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or in terms of Clause (b) as aforesaid. If powers are exercised under Clause (b) of Section 55, the conjunctive word "***and***" having been used,

both the requirements aforesaid have to be complied with.

11.8. The matter would be different if the powers are exercised under Clause (a) or Clause (c) of Section 55, which do not require such a condition to be satisfied.

11.9. In the present case, though it is stated that the powers under Section 55 of the KP Act, 1963 have been exercised, it is not clear as to whether it is under Clause (a), Clause (b) or Clause (c) [it cannot be Clause (c) since the same is not attracted]. The powers could have been exercised under Clause (a) or Clause (b), it was required for the Assistant Commissioner to have categorically indicated as to under which provision the order was passed.

11.10. If it had been passed under Clause (b) of Section 55 of the KP Act, 1963, in view of the use of the conjunctive "***and***" both the

requirements would have to be satisfied. In the event of powers being exercised under Clause (a), externment could be made only if the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property.

11.11. Since the disjunctive "***or***" has been used between Clause (a) and Clause (b) as indicated ***supra***, the impugned order does not indicate under which provision the order has been passed to ascertain whether the requirement of that provision have been satisfied.

11.12. ***Hence, I answer point No.2 by holding that, in all cases, there is no requirement for the Assistant Commissioner to consider and state as to whether witnesses have not come forward or would not come forward to depose against the person who is sought to be externed if he continues to***

reside within the jurisdiction. Since the same would not get attracted, if an order under Clause (a) of Section 55 is passed. Such an order would be required to be passed only if power is exercised under Clause (b) of Section 55 of the KP Act, 1963.

12. **<u>Answer to point No.3:</u> Whether the principles of natural Justice have been followed in the present case?**

12.1. Principles of natural Justice contemplate issuance of notice, providing an opportunity of hearing and a reasoned order to be passed amongst other things.

12.2. In the present case, a notice has been issued to the Petitioner, he has been heard in the matter, and a reasoned order has been passed, thereby complying with the requirements of the principles of natural Justice.

13. **Answer to point No.4: Whether there is any infirmity in the impugned order requiring this Court to intercede?**

13.1. Section 60 of the KP Act, 1963, is reproduced hereunder for easy reference;

> ***60. Finality of orders****.—Any order passed under Section 54, 55 or 56 or by the Government under section 59 shall not be called in question in any court except on the ground that the Authority making the order or any officer authorised by it had not followed the procedure laid down in sub-section (1) of section 58 or that there was no material before the Authority concerned upon which it could have based its order or on the ground that the said Authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under section 55.*

13.2. Though an appeal under Section 59 of the KP Act, 1963 has been provided, Section 60 provides for the scope of judicial review *dehors* the appellate remedy. This has probably having been provided since an order of externment directly impacts the

fundamental right to life and liberty under Article 21 of the Constitution of India.

13.3. A perusal of Section 60 of the KP Act, 1963 would indicate that any order passed under Section 54, 55 or 56 or by the Government under Section 59 of the KP Act, 1963 shall not be called in question by any Court except on the ground that the Authority making the order or any officer authorised by it had not followed the procedure laid down in Sub-section (1) of Section 58 or that there was no material before the Authority concerned upon which it could have based its order or on the ground that the said Authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under Section 55 of the KP Act, 1963.

13.4. Section 60 of the KP Act, 1963 again uses the disjunctive word "***or***" inasmuch as it is Section 54, 55 or 56 or by the Government under Section 59. If it was only Section 59 which had been used in Section 60, then an appeal would be the only remedy available for an order passed under Section 55. Since the disjunctive "***or***" has been used at any stage of the order i.e., if an order is passed under Section 54 or 55 or 56, then the same would be subject to judicial review under Section 60 of the KP Act, 1963.

13.5. Of course, an order under Section 59 i.e., an appeal, would always be subject to judicial review. However the judicial review is restricted to only a situation where the procedure laid down under Sub-section (1) of Section 58 of the KP Act, 1963 has not been followed or that there was no material

before the Authority concerned upon which it could have based its order or on the ground there is said Authority was not of opinion that witness were unwilling to come forward to give evidence in public. The disjunctive "***or***" having been used all of them would have to be read separately and not together.

13.6. Though the submission of, Sri Tharanath Poojari, learned Senior Counsel for the Petitioner, is that in every order of externment it should be reflected that witnesses are not willing to come forward for an order of externment to be passed, I have dealt with the same in my answer to point No.2 and indicated in what circumstances the same would apply.

13.7. Section 60 of the KP Act, 1963 is worded in the negative; there has to be an opinion

that witnesses are not unwilling to come forward to give evidence in public for Section 60 of the KP Act, 1963 to apply. The wording being as it is, I am of the considered opinion that the same would be relevant only if an externment order is passed under Clause (b) of Section 55 of the KP Act, 1963 and that is the reason why the disjunctive "***or***" has been used in Section 60 of the KP Act, 1963.

13.8. Thus, again there was no reason for the Assistant Commissioner to have referred to witnesses coming forward or not to give evidence or otherwise unless the order has been passed under Clause (b) of Section 55 and as indicated supra the order does not indicate as to whether it has been passed under Section 55(a) or 55(b) i.e., only for that limited extent that there is an infirmity

in the order requiring this Court to intercede.

14. **Answer to point No.5: What order?**

14.1. In view of the findings above, the impugned order not disclosing whether it is passed under Clause (a) or Clause (b) of Section 55 of the KP Act, 1963. If it is an order under Clause (b) of Section 55 of the KP Act, 1963 the said order not disclosing the reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of offense, or an offence punished under Chapter XII, XVI and XVII of the Indian Penal Code or in the abatement of any such offence, and when in the opinion of such officer or witnesses are not willing to come forward to give evidence in public, I am of the considered opinion that the matter would have to be

required to be remitted to the Assistant Commissioner to pass a fresh order clearly and categorically indicating as to under which provision it has been passed and the order to satisfy the requirement of the said provision.

14.2. In that view of the matter, I pass the following;

ORDER

i. The writ petition is ***partly-allowed.***

ii. The order dated 18.09.2025 passed by respondent No.2 in No.MAGCR (Gadiparu) /18/2025-26 at Annexure-A is set aside.

iii. The matter is remitted to respondent No.2 for the limited purposes of passing a reasoned order indicating the provision under which the said order has been passed by complying with the requirements thereof, which order shall be

passed within 15 days from the receipt of a copy of this order.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 2 Sl No.: 1