

[2026 LiveLaw \(SC\) 872](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DIPANKAR DATTA; J., SHEEL NAGU; J.
AUGUST 31, 2026.

CRIMINAL APPEAL NO. 4083 OF 2026 [ARISING OUT OF SLP (CRL.) NO. 12330 OF 2026]
VIJAY KUMAR RAJPOOT ALIAS VIJJU *versus* STATE OF CHHATTISGARH & ORS.

Chhattisgarh Rajya Suraksha Adhiniyam, 1990 — Section 5(a), Section 5(b), and Section 8 — Scope and Procedure for Externment — Mandatory Requirement of Prior Notice and Hearing — Absence of Review Jurisdiction — Quashing of Externment Order Passed Ex Parte Upon Reopening Closed Proceedings - The District Magistrate had initially closed externment proceedings initiated against the appellant with a warning, taking note of his acquittal in previous cases - upon registration of fresh FIRs (one under the Chhattisgarh Municipal Corporation Act, 1956 and another under the Bharatiya Nyaya Sanhita, 2023 / SC/ST Act) and a report by the Superintendent of Police, the District Magistrate recalled/reopened the closed proceedings and passed an ex parte order of externment banishing the appellant for one year without issuing a fresh notice or affording an opportunity of hearing while the appellant was in judicial custody – Held under Section 8(1) of the Adhiniyam, informing the proposed externee in writing of the general nature of the material allegations against him and granting a reasonable opportunity of tendering an explanation are indispensable conditions precedent for the exercise of power under Sections 3 to 6 - An order passed in derogation of these mandatory requirements stands vitiated and is void ab initio - Under Section 8(4) read with Section 8(5), an ex parte order can lawfully be passed only when the person fails to execute a security bond for attendance or fails to appear before the District Magistrate during the inquiry - Save and except these express statutory contingencies, the statute does not authorize the District Magistrate to dispense with notice or hearing and proceed ex parte - An administrative authority has no inherent power to review, recall, or reopen its earlier order unless specifically empowered by statute - The District Magistrate possessed no jurisdiction to recall the closure order; any alleged breach of a prior warning or receipt of a fresh police report could not clothe the authority with review jurisdiction, but instead statutorily mandated following the procedure prescribed under Section 8 afresh. [Paras 18 - 25]

Constitution of India — Article 226 — Alternative Statutory Remedy — Exhaustion of Remedies vs. Maintainability & Entertainability — Flagrant Violation of Natural Justice and Lack of Jurisdiction - The High Court dismissed the appellant's writ petition challenging the ex parte externment order on the ground of availability of an alternative statutory appellate remedy under Section 9 of the Adhiniyam – *Held that the* self-imposed restriction of exhausting an alternative statutory remedy does not bar the exercise of writ jurisdiction where the impugned order has been passed in flagrant breach of the principles of natural justice or without jurisdiction - Relegating the appellant to an appeal under Section 9 in the face of an egregious violation of mandatory statutory safeguards and total lack of review jurisdiction demonstrated an abject failure on the part of the High Court to exercise jurisdiction vested in it. [Paras 16-27]

Chhattisgarh Rajya Suraksha Adhiniyam, 1990 — Section 5(a) & 5(b) — Inapplicability of Grounds — Subjective Satisfaction Must Rest on Objective Material – Held that invocations of Section 5(b) require reasonable grounds to

believe that the person is engaged or about to engage in offences involving force or violence, or specified offences under Chapters XII, XVI, or XVII of the IPC (or Sections 506/509 IPC) - Allegations of circulating offensive social media videos affecting religion (corresponding to Chapter XV IPC) do not satisfy the statutory threshold of Section 5(b) - Even under Section 5(a), an order of externment seriously infringes upon fundamental freedoms guaranteed under Article 19(1)(d) of the Constitution and cannot be passed routinely, on mere ipse dixit, or solely because criminal cases are registered - The competent authority must arrive at a bona fide subjective satisfaction based on objective materials disclosing a discernible nexus to the apprehending mischief - An order lacking demonstrable reasons or objective material cannot pass muster. [Relied on *Nawabkhan Abbaskhan v. State of Gujarat*, (1974) 2 SCC 121; *Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority*, 2023 SCC OnLine SC 95; *Deepak v. State of Maharashtra*, (2023) 14 SCC 707; Paras 29 - 34]

For Appellant(s): Mr. Pallav Mongia, AOR Ms. Ishita Nayak, Adv. Ms. Kashish Lalwani, Adv.

For Respondent(s): Ms. Ankita Sharma, AOR Mr. Arjun D. Singh, Adv. Ms. Ishika Neogi, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. The High Court of Chhattisgarh at Bilaspur¹, by the impugned judgment and order dated 22nd January, 2026², has spurned the appellant's challenge in a writ petition³ to an order of externment and, while dismissing such petition, relegated him to the alternative statutory remedy of appeal under Section 9 of the Chhattisgarh Rajya Suraksha Adhiniyam, 1990⁴.

2. Appellant had approached the High Court assailing an *ex parte* order of externment dated 04th November, 2025⁵, passed by the District Magistrate, Raigarh⁶, whereby the appellant was directed to remove himself from the territorial limits of Raigarh district and contiguous districts for a period of one year.

3. The genesis of the impugned externment order lies in a memorandum⁷ dated 03rd April, 2019, submitted by the Superintendent of Police, Raigarh⁸, to the third respondent, recommending initiation of proceedings against the appellant to extern him under Sections 5(a) and (b) of the Adhiniyam. This was premised on the appellant's alleged involvement in ten criminal cases registered between the years 2009 and 2019. Acting on it, the third respondent by an order dated 3rd May, 2019 registered a case⁹ for externment of the appellant.

4. An order dated 06th October, 2025¹⁰ followed, whereby the case came to be closed by the third respondent. Recording that the appellant had been acquitted in the criminal cases referred to by the fourth respondent in the memorandum; that, no fresh police report had been submitted against him after the year 2019; and that, in the circumstances,

¹ High Court

² impugned order

³ WPCR No. 16 of 2026

⁴ Adhiniyam

⁵ impugned externment order or said order, as per contextual requirement

⁶ third respondent

⁷ No. Pu.A./Raig./Reader-1/Jila Badar/04/19

⁸ fourth respondent

⁹ Criminal Case No. 03/2019

¹⁰ closure order

initiation of externment based on the criminal cases registered between 2009 and 2019 was not justified, the third respondent closed the case by letting off the appellant with a warning to refrain from indulging in criminal activities in future.

5. Pertinently, two subsequent developments intervened, reigniting the controversy. *First*, an FIR bearing Crime No. 117/2023 was registered against the appellant and others under Sections 292 and 292-C(2) and (3) of the Chhattisgarh Municipal Corporation Act, 1956, in connection with the alleged unauthorised development of a colony on land admeasuring 2.13 acres at Boirdadar, Raigarh. *Secondly*, on 30th October, 2025, an FIR bearing Crime No. 483/2025 came to be registered against the appellant at Police Station Chakradhar Nagar under Sections 296, 299, 302, 352 and 3(5) of the Bharatiya Nyaya Sanhita, 2023¹¹ [corresponding to Sections 294, 295A, 298, 504 and 34 of the Indian Penal Code, 1860 (IPC), respectively] and Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989¹², on the allegation that he had recorded and circulated on social media a video containing abusive remarks against Baba Guru Ghasidas, a revered figure of the Satnami community. Appellant was arrested the same day and lodged in the District Jail, Raigarh.

6. Consequently, the fourth respondent submitted a fresh report dated 03rd November, 2025¹³ to the third respondent, bringing to his notice the aforesaid developments and seeking reconsideration of the closure order. Acting upon the fresh report, the third respondent recalled the order dated 06th October, 2025, and *vide* the impugned externment order recorded as follows:

“On the basis of the aforesaid report dated 03-11-2025 of the Superintendent of Police, Raigarh, upon reconsideration of the case, it is found that the non-applicant has clearly violated the order dated 06-10-2025 of this Court by committing the aforesaid criminal acts. Due to the said criminal acts of the non-applicant, there is resentment among the Satnami community, and there is public outrage among members of the Sindhi community, Agrawal community, and other communities as well. From the said conduct, it is clearly reflected that the non-applicant is a habitual offender. Even after the aforesaid action, there is no improvement in the conduct of the non-applicant, and if he continues to reside in the district while remaining involved in criminal activities, there remains an apprehension of occurrence of untoward incidents. The nonapplicant is hazardous to society, and if left free, there is every likelihood of adverse impact on society and commission of further offences. The criminal activities of the non-applicant have resulted in infringement of the fundamental rights of the general public and have adversely affected law and order as well as public order. For maintaining the security of the State and law and order, it has become necessary to extern the non-applicant from this district and adjoining districts.

Therefore, a separate order has been passed for externment (district banishment) of the non-applicant Vijay Kumar alias Vijju, son of late Mohanlal Rajput. A copy of the order be sent to all concerned for necessary action.

Let the case be consigned to the record room.”

(emphasis ours)

7. Aggrieved thereby, the appellant knocked the doors of the High Court *albeit* unsuccessfully as noted above.

8. Mr. Pallav Mongia, learned counsel appearing on behalf of the appellant, while assailing the impugned order has specifically drawn our attention to the manner in which

¹¹ BNS

¹² SC/ST Act

¹³ No. Pu.A./Raig./Reader-1/Jila Badar/04/2025

the impugned externment order was passed *ex parte*, contending that it constitutes a flagrant violation of the principles of natural justice. He submits that the said order was passed by the third respondent behind the appellant's back while he was in custody in connection with Crime No. 483/2025. According to him, the appellant was unaware of revival of the externment proceedings and only learned of the said order upon his transfer from District Jail, Raigarh, to District Jail, Bilaspur. The impugned externment order, according to him, stands vitiated owing to clear breach of the statutory safeguard, ingrained in Section 8, of being provided with a notice and/or an opportunity of hearing. He further contends that the factual foundation underlying the apprehension against the appellant has substantially eroded, *inasmuch* as the High Court has quashed Crime No. 117/2023 *vide* order dated 04th September, 2024¹⁴, and the appellant has since been enlarged on bail in the only surviving matter, namely, Crime No. 483/2025, *vide* order dated 22nd April, 2026¹⁵. He additionally submits that the third respondent lacked any statutory power, express or implied, to *suo motu* review, recall, or reopen his own closure order, by which the externment proceedings had been expressly closed. He, accordingly, submits that since the impugned externment order was *ex facie* vitiated by breach of the principles of natural justice as well as by want of jurisdiction, the self-imposed restriction of asking a party to exhaust the alternative remedy could not have operated as a bar to the exercise of writ jurisdiction by the High Court. The High Court, he finally contends, erred in relegating the appellant to the remedy under Section 9 of the Adhiniyam without examining these fundamental infirmities.

9. *Per contra*, Ms. Ankita Sharma, learned counsel appearing on behalf of the respondents, defends the impugned order by pointing out to Section 9 of the Adhiniyam. Placing reliance on the decision of this Court in **Jittu Yadav v. State of Chhattisgarh & Ors.**¹⁶, Ms. Sharma argues that the appellate remedy itself constitutes an integral procedural safeguard and a substantive right that should not ordinarily be bypassed. She strongly contends that the impugned externment order was not a *de novo* action or an impermissible review, but rather a continuation of the already initiated proceedings based on supervening events – specifically the appellant's blatant disregard of the prior warning and his subsequent involvement in fresh criminal acts. She further contends since the appellant had already been afforded an opportunity of hearing in the proceedings culminating in the closure order, there was no requirement in law to extend a fresh opportunity before passing the said order which, according to her, was merely in the nature of an order of reconsideration. Emphasizing the preventive, rather than punitive, nature of the externment jurisdiction, Ms. Sharma additionally submits that the registration of Crime No. 483/2025 (involving derogatory and abusive remarks against a revered saint of the Satnami community) sparked public outrage and created a severe, immediate threat to public order and social peace, thereby justifying the third respondent's preventive action irrespective of the subsequent grant of bail or the quashing of a separate FIR. Finally, she submits, in the alternative, that if this Court were satisfied that the High Court should not have relegated the appellant to the available statutory remedy of appeal provided by Section 9 of the Adhiniyam, an order of remand to the High Court would be most appropriate meeting the ends of justice.

10. Learned counsel for the parties have been patiently heard and the materials on record duly perused.

¹⁴ CRMP No. 2398 of 2024

¹⁵ CRA No. 841 of 2026

¹⁶ 2026 INSC 657

11. At the outset, we may note that undisputedly Crime No. 117/2023 (which formed one of the foundational grounds for externment of the appellant) stands quashed by the High Court and that the appellant, though figuring as an accused in Crime No. 483/2025, is not accused of murder but of a less heinous crime resulting in his enlargement on bail. It is equally not in dispute that the impugned externment order was passed upon revival of the closed case without prior notice to the appellant and without affording him an opportunity of hearing, at a time when he was in judicial custody in connection with Crime No. 483/2025.

12. Before we proceed further, it is indeed important to note the statutory scheme of the Adhiniyam. The Adhiniyam contemplates the making of externment orders under Sections 3 to 6 in specified circumstances. In the present case, the impugned externment order has been passed in exercise of powers conferred by Section 5 of the Adhiniyam. Section 5 is extracted below for ease of understanding:

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

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as 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 District Magistrate may, by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

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

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

13. However, once the District Magistrate is *prima facie* satisfied that circumstances do exist for ordering externment of an individual on any of the grounds mentioned in Section 5, such magistrate is required to follow Section 8. Again, for ease of understanding, we quote Section 8 below:

8. Hearing to be given before order under Section 3, 4, 5 or 6 is passed.

(1) Before an order under Section 3, 4, 5 or 6 is passed against any person, the District Magistrate 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.

(2) If such person makes an application for the examination of any witness produced by him, the District Magistrate shall grant such application and examine such witnesses unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay.

(3) Any written statement put in by such person shall be filed with the record of the case and such person shall be entitled to appear before the District Magistrate by any legal practitioner for the purpose of tendering his explanation and examining the witnesses produced by him.

(4) The District Magistrate 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 3, 4, 5 or 6 require such person to appear before him and to execute a security bond with or without sureties for such attendance during the inquiry.

(5) If the person fails to execute the security bond as required or fails to appeal before the District Magistrate during the inquiry, it shall be lawful for the District Magistrate to proceed with the enquiry ex parte and thereupon such order, as was proposed to be passed against him, may be passed.

14. The statutory ordainment is, thus, clear: before any externment order is passed, *inter alia*, under Section 5, an opportunity of hearing has to be given under Section 8 to the person proposed to be externed.

15. The procedures for presenting an appeal against any order passed under Sections 3 to 6 and for its disposal are provided in Section 9. For facility of reference, the same reproduced below:

9. Appeal.

(1) Any person aggrieved by an order under Section 3, 4, 5 or 6 made by the District Magistrate or any other officer specially empowered under Section 13 may appeal to the State Government within thirty days from the date of such order. Such appeal shall be decided as far as possible within a period of four months of the date of filing of the appeal.

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

(3) On receipt of such appeal, the State Government may after giving a reasonable opportunity to the appellant to be heard either personally or by a legal practitioner and after such further inquiry, if any, as it may deem necessary confirm, vary or rescind the order appealed against:

Provided that the order appealed against shall remain in operation pending the disposal of the appeal, unless the State Government otherwise directs.

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

16. The High Court declined to invoke its writ jurisdiction under Article 226 of the Constitution and dismissed the writ petition of the appellant on the specious ground that he has not pursued the efficacious statutory remedy of appeal provided by Section 9 of the Adhiniyam. In so holding, the High Court refrained from examining the appellant's plea on merits that the impugned externment order was rendered in breach of the principles of natural justice as well as without jurisdiction and, therefore, was liable to be invalidated on such grounds alone.

17. The sole substantial question of law involved in this appeal is whether impugned externment order passed by the third respondent is legal and valid, and also as to whether the High Court was justified in refusing to exercise its discretionary jurisdiction.

18. On consideration of the facts and materials on record vis-à-vis the law applicable to the grievance expressed by the appellant, we have absolutely no hesitation in rejecting the contention of the respondents that while passing an order under Section 5 upon reopening of a closed case, requirement of putting on notice the person proposed to be externed or affording him a hearing may not be insisted upon and can be dispensed with. Neither material nor authority has been placed on record in support of this contention. Even otherwise, after perusing the scheme of the Adhiniyam in its entirety, we find nothing therein which lends credence to this contention.

19. We may now advert to the scheme of Section 8 of the Adhiniyam. Subsection (1) thereof, as noted earlier, makes it abundantly clear that issuance of notice by the competent authority, namely, the District Magistrate, and affording the proposed externee a reasonable opportunity of hearing constitute conditions precedent for the exercise of power under Sections 3 to 6. The object of the provision is to ensure that a person, against whom an externment order is proposed, is made aware of the material allegations against him and afforded an effective opportunity to tender his explanation thereto. It necessarily follows that an order passed in derogation of these mandatory requirements would stand vitiated and liable to be declared *void ab initio*.

20. Sub-section (2) further confers upon such person the right to seek examination of witnesses in support of his explanation and casts a corresponding obligation on the District Magistrate to allow such request, unless he forms an opinion that the application has been made only for the purpose of vexation or delay. Sub-section (3) recognises the right of the person concerned to be represented by a legal practitioner in the proceedings. These sub-sections further underscore the importance of natural justice embedded within the legislative scheme.

21. Equally significant are sub-sections (4) and (5), which must be read conjointly. While sub-section (4) empowers the District Magistrate to require the execution of a bond, with or without sureties, to secure the attendance of the person concerned during the enquiry, sub-section (5) provides that where such person either fails to execute the bond or, having executed the same, fails to appear before the District Magistrate, it shall be lawful for the latter to proceed *ex parte*. The legislative scheme, thus, contemplates only these specified contingencies as exceptions to the general requirement of participation by the affected person in the proceedings. Save and except such situations, the statute does not authorise the District Magistrate to dispense with notice or hearing and proceed *ex parte*.

22. In the facts of the present case, the circumstances contemplated by sub-section (5) are admittedly absent. Consequently, there was no statutory basis for dispensing with compliance of the mandatory requirements of notice and opportunity of hearing before the impugned externment order came to be passed.

23. It would also be apposite to consider the decision of this Court against a similar factual backdrop in **Nawabkhan Abbaskhan v. State of Gujarat**¹⁷, which dealt with the legality of an externment order passed under the Bombay Police Act, 1951 vis-à-vis Section 59 thereof which mandated reasonable opportunity of hearing before such an order could be passed. Hon'ble Krishna Iyer, J. in his ever so inimitable style held as under:

14. Where hearing is obligated by a statute which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. Maybe that in ordinary legislation or at common law a tribunal, having jurisdiction and failing to hear the parties, may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and ab initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is, in its inception, void except when performed in accordance with the conditions laid down in regard to hearing. Maybe, this is a radical approach, but the alternative is a travesty of constitutional guarantees, which leads to the conclusion of

¹⁷ (1974) 2 SCC 121

postlegitimated disobedience of initially unconstitutional orders. On the other hand law and order will be in jeopardy if the doctrine of discretion to disobey invalid orders were to prevail. As Learned Hand observed:

“The idea that you may resist peaceful arrest ... because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine (the question is) not a blow for liberty but, on the contrary, a blow for attempted anarchy.”

The opposite view is expressed by the California Supreme Court in a case where one Yick came into the country unlawfully but was held by the deputy sheriff without authority. He escaped and his abettor in the escape was convicted but in appeal the Court held:

“An escape is classed as a crime against public justice, and the law, in declaring it to be an offense, proceeds upon the theory that the citizen should yield obedience to the law; that when one has been, by its authority or command, confined in a prison, that it is his duty to submit to such confinement until delivered by due course of law. But when the imprisonment is unlawful, and is itself a crime, the reason which makes flight from prison an offence does not exist. In such a case the right to liberty is absolute, and he who regains it is not guilty of the technical offence of escape.”

American case-law is conflicting and doubtful expressions like “void on its face” “transparently invalid” have been used. We must remember the words of Justice Frankfurter: “If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny”. We dwell on these possible views to underscore the difficulties of solution.

(emphasis ours)

24. *Ergo*, in our considered opinion, the impugned externment order is liable to be set aside premised on breach of the statutory mandate in Section 8 of the Adhiniyam alone, apart from breach of the *audi alteram partem* rule.

25. Turning to the point of jurisdiction, it is revealed from the aforesaid narrative of facts that the third respondent found no justification in initiation of the case based on the memorandum of the fourth respondent and, consequently, closed it with a warning. It is settled law that an administrative authority enjoys no power to review his earlier order, unless the statute empowers him to do so. We have not been shown any such empowering provision and, therefore, it has to be held that the third respondent exercised a jurisdiction not vested in him by law. We also hold that breach of the warning, if any, without anything more could not have clothed the third respondent with the power to reopen the closed case. Since a fresh report from the fourth respondent was received, the third respondent was statutorily obliged to repeat the procedure envisioned in Section 8 of the Adhiniyam. There being failure/omission/neglect in this behalf on the part of the third respondent, the impugned externment order cannot sustain law.

26. Having held that the impugned externment order fails on both counts of non-adherence to the rule of a meaningful and effective hearing guaranteed by Section 8 of the Adhiniyam and the lack of jurisdiction of the District Magistrate to open a closed case, as if it were having the power of review and exercising it, we are surprised that in a case of such egregious violation of law the High Court chose to maintain a hands-off approach and relegated the appellant to the alternative statutory remedy under Section 9 thereof. This Court, on a review of all precedents, in its decision in **Godrej Sarah Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority**¹⁸ has delineated the difference between “entertainability” and “maintainability” of a writ petition under Article 226 and reiterated the four situations when a writ court could justifiably entertain a petition under

¹⁸ 2023 SCC OnLine SC 95

Article 226 of the Constitution despite the party aggrieved not having exhausted the available statutory remedy.

27. This happens to be one such case where the High Court grossly erred in not entertaining the writ petition of the appellant. Relegation of the appellant to the statutory remedy under Section 9 of the Adhiniyam is plainly demonstrative of an abject failure to exercise a jurisdiction vested in the High Court.

28. Since it has been submitted that an order of remand would be appropriate owing to the merits of the challenge not having been examined by the High Court, we do not wish to rest our judgment here. We are satisfied, for the reasons following, that the impugned externment order cannot be sustained even on its own merits.

29. The impugned externment order, purportedly, was passed in exercise of powers under clauses (a) and (b) of Section 5 of the Adhiniyam. However, upon a plain reading of the said order and the statutory provision, we are of the considered view that invocation of Section 5(b) was wholly misconceived. *First*, the said order records that a criminal case had been registered against the appellant for offences punishable under Sections 292 and 292-C(2) and (3) of the Chhattisgarh Municipal Corporation Act, 1956. More significantly, the said order places substantial reliance on another criminal case registered against the appellant for offences punishable under Sections 296, 299, 302, 352 and 3(5), BNS and Section 3(1)(v) of the SC/ST Act. According to the District Magistrate, the registration of the said case, arising out of allegations of insulting a saint revered by a particular community, had generated resentment and public outrage amongst members of various communities and, consequently, constituted a violation of the closure order whereby the appellant was warned not to repeat his criminal activities.

30. In this context, it becomes necessary to notice the requirements of Section 5(b). The provision can be invoked only where there exists reasonable grounds for believing that the person concerned is engaged, or is about to be engaged, in the commission of an offence involving force or violence, or in the commission of specified categories of offences enumerated therein. Admittedly, none of the offences of which the appellant is accused and which have been relied on by the third respondent in the impugned externment order are offences involving force or violence. Equally, the offences alleged against the appellant do not fall within the categories contemplated by Section 5(b), namely, offences under Chapters XII, XVI or XVII of the IPC or offences punishable under Sections 506 or 509 thereof. On the contrary, the allegations against the appellant pertain to offences which correspond to the provisions contained in Chapter XV of the IPC relating to offences affecting religion. In the absence of commission of offences, as required for an order to be passed under Section 5(b), the conditions precedent for exercise of power were clearly not satisfied. The impugned externment order, therefore, cannot be sustained on the face of what Section 5(b) of the Adhiniyam provides.

31. Be that as it may, we now proceed on the assumption that the impugned externment order was intended to be founded solely on Section 5(a) of the Adhiniyam. The said provision empowers the District Magistrate to direct externment where the acts of a person are causing, or are calculated to cause, alarm, danger or harm to persons or property. The language employed in the provision is of wide amplitude and is capable of encompassing a variety of situations including, conceivably, the allegations levelled against the appellant in the present case. However, the breadth of the power is matched by the seriousness of its consequences. An order of externment directly impinges upon valuable fundamental freedoms guaranteed to a citizen and, therefore, cannot be made as a matter of routine or on mere *ipse dixit*. Further, merely because multiple criminal cases have been

registered against a person would not, *ipso facto*, be a ground for ordering externment. Before exercising such power, the District Magistrate is required to arrive at a *bona fide* and informed subjective satisfaction that the circumstances of the case warrant such an extreme measure and that externment is necessary to prevent the apprehended mischief. Although the authority is not expected to render a judgment in the manner expected of a court of law, the order must nonetheless disclose, at least in broad terms, the reasons which persuaded it to arrive at such satisfaction. The existence of objective material and a discernible nexus between such material and the conclusion reached are indispensable safeguards against arbitrary exercise of power.

32. Tested on the aforesaid touchstone, the impugned externment order falls short of the statutory requirement. Apart from recording that the conduct attributed to the appellant had generated resentment and public outrage amongst members of certain communities, the said order does not indicate the material on the basis of which such conclusion was reached. No reasons are forthcoming to demonstrate why the third respondent considered the situation to be so grave as to necessitate the appellant's externment. Furthermore, no material has been placed on record to show why the offences alleged require the appellant to be externed. More importantly, as noticed earlier, the appellant was neither served with notice nor afforded an opportunity to tender his explanation before the order came to be passed.

33. At this juncture, it would be apposite to note a recent decision of this Court in **Deepak v. State of Maharashtra**¹⁹, where again an externment order under the Bombay Police Act was under challenge. The relevant paragraphs from such decision are reproduced below:

8. 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 Pandharinath Shridhar Rangnekar v. Commr. of Police [Pandharinath Shridhar Rangnekar v. Commr. of Police, (1973) 1 SCC 372 : 1973 SCC (Cri) 341] in para 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.

9. 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 Chapters XII, XVI or XVII 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 subsection (1) of

¹⁹ (2023) 14 SCC 707

Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of subsection (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).

12. Considering the nature of the power under Section 56, the competent authority is not expected to write a judgment containing elaborate reasons. However, the competent authority must record its subjective satisfaction of the existence of one of the grounds in subsection (1) of Section 56 on the basis of objective material placed before it. Though the competent authority is not required to record reasons on a par with a judicial order, when challenged, the competent authority must be in a position to show the application of mind. The court while testing the order of externment cannot go into the question of sufficiency of material based on which the subjective satisfaction has been recorded. However, the court can always consider whether there existed any material on the basis of which a subjective satisfaction could have been recorded. The court can interfere when either there is no material or the relevant material has not been considered. The court cannot interfere because there is a possibility of another view being taken. As in the case of any other administrative order, the judicial review is permissible on the grounds of mala fides, unreasonableness or arbitrariness.

14. 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.

(emphasis ours)

34. In light of the aforementioned discussion, and whichever way one looks at it, the impugned externment order is infirm and indefensible and cannot be sustained for want of any cogent reasons in support thereof.

35. Respondents have relied on **Jittu Yadav** (supra). The question of law before this Court was whether Section 5 of the Limitation Act, 1963 stood excluded (either expressly or by necessary inclusion) in its application to a belated appeal presented under Section 9 of the Adhiniyam. This Court answered the question in the negative. We need not express any opinion since this decision does not have any bearing on the issues that we are seized of.

36. Therefore, in our considered opinion, the impugned order of the High Court as well as the externment order is liable to be quashed for the foregoing reasons. It is ordered accordingly.

37. Appellant is free to enter the districts from where his externment was ordered.

38. We, however, make it clear that none of our observations here shall be treated as findings on the merits of the pending case(s) in which the appellant figures as an accused.

39. The appeal stands allowed on the above terms. Pending application(s), if any, shall also stand disposed of.