

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1019 of 2026**

Rajesh Kumar Son of Janardan Prasad Resident of Village- Raitar, P.S.-  
Giriyak, District- Nalanda

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Deptt. of Home Affairs, Bihar, Patna Bihar
2. The Principal Secretary, Deptt. of Home Affairs, Bihar, Patna Bihar
3. The Director General of Police, Bihar, Patna Bihar
4. The Inspector General of Police, Central Range, Bihar, Patna Bihar
5. The District Magistrate, Nalanda, Bihar Bihar
6. The Senior Superintendent of Police, Nalanda, Bihar Bihar
7. The S.H.O. of Giriyak P.S., Nalanda, Bihar Bihar

... .. Respondents

**Appearance :**

For the Petitioner/s : Mr. Priya Ranjan, Advocate  
For the Respondent/s : Mr. Kinkar Kumar, SC-9  
Ms. Sushmita Sharma, AC to SC-9  
Ms. Vagisha Pragya Vacaknavi, AC to SC-9

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE KUMAR MANISH**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE KUMAR MANISH)**

**Date : 17-07-2026**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. The petitioner in the present writ application has  
assailed the order dated 20<sup>th</sup> March, 2026 (Annexure '1') passed  
by the District Magistrate, Nalanda in BCCA Case No. 06/2026  
whereby the petitioner has been asked to put his attendance in  
Silao Police Station on every Monday and Friday for a period of



one month. The counsel for the petitioner also prays for the relief of directing the respondent authorities not to harass the petitioner by invoking the provisions of Bihar Control of Crimes Act, 2024 (in short 'BCC Act') as the petitioner is a social worker and branding the petitioner as an anti-social element is curtailing his fundamental rights.

**Submissions on behalf of the petitioner**

3. Learned counsel for the petitioner submits that in the present case a notice dated 27.01.2026 (Annexure '2') was issued by the District Magistrate, Nalanda wherein it was directed to the petitioner to appear before the District Magistrate, Nalanda on 06.02.2026 and to show cause as to why an order under Section 3(3) of BCC Act should not be passed against the petitioner in as much as six criminal cases are pending against him. In the said notice it was also stated that there is a possibility of breach/obstruction of law and order by the petitioner. In view of the aforesaid show cause notice, the petitioner appeared before the District Magistrate, Nalanda on 06.02.2026 and filed a show cause.

4. Learned counsel for the petitioner submits that the grievance of the petitioner is that without considering his reply dated 06.02.2026 to the show cause notice, the District Magistrate,



Nalanda proceeded to pass an order contained in Memo No. 862 dated 20.03.2026 wherein the petitioner has been declared to be an 'anti-social element' on account of six pending criminal cases and a Sanha which are as follows:

(i) Giriyak P.S. Case No. 36/2021 under section 30(a) of Bihar Prohibition and Excise (Amendment Act), 2018,

(ii) Mufassil P.S. Hajaribag P.S. Case No. 138/2021 under section 379 Indian Penal Code,

(iii) Deep Nagar P.S. Case No. 339/2020 under section 30(a) of the Bihar Prohibition & Excise (Amendment) Act, 2018,

(iv) Akbarpur Nawada P.S. Case No. 154/2019 under sections 406/420/379/34 of Indian Penal Code,

(v) Giriyak (Pawapuri) P.S. Case No. 05/2016 under section 7 of E.C. Act,

(vi) Giriyak (Pawapuri) P.S. Case No. 287/2016 under section 11 of the Gambling Act, and

(vii) Giriyak P.S. Sanha No. 805/2026 dated 19/01/2026.

5. Further in the said order it was directed to the petitioner that he shall record his attendance before the SHO, Silao on every Monday and Friday and if for any reason, the petitioner was required to go outside the jurisdiction of the said Police



Station, the duration and the purpose for such period shall be clearly informed to the said Police Station.

6. It is also submitted by learned counsel for the petitioner that the District Magistrate, Nalanda did not consider the fact that there is not a single case registered against the petitioner after 2021 or chargeheeted within 24 months before initiation of a proceeding under BCC Act, and that he has a clean record for the last four to five years. The petitioner has not been convicted in any of the cases which is pending against him. It has also been pointed out by the counsel for the petitioner that the Silao Police Station is at a distance of twenty kilometer from the village where he resides coming under the jurisdiction of Giriyak Police Station.

7. Learned counsel for the petitioner submits that he had to suffer because of the impugned order which is marked as Annexure '1' to the writ petition. Therefore, he is entitled for the quashing of the order as well as compensation.

**Submissions on behalf of the State**

8. Per contra, learned counsel for the respondents (SC-9) submits that on the basis of the proposal received from the Superintendent of Police, Nalanda, a proceeding under Section 3 of the BCC, 2024 was initiated. The aforesaid proposal was based on the recommendation submitted by the SDPO, Rajgir, in which



it has been stated that the petitioner is an anti-social and a criminal minded element.

**9.** The counsel further submits that the petitioner has criminal antecedents pertaining to the offences of storage and transportation of illicit liquor, theft, forgery etc. and has remained involved in criminal activities for which he is on bail. Due to apprehension of breach of peace and damage to the communal harmony, on the eve of Holi and Ramanavami, a verification of the above-mentioned facts was made and thereafter Giriyak P.S. Sanha No. 805/2026 dated 19.01.2026 was registered against the petitioner. It is admitted that there is no verification report on the record.

**10.** The counsel for the respondents further submits that the petitioner had been involved in other six criminal cases and hence, due to the conduct of the petitioner, there is reasonable apprehension that the petitioner may cause disruption of law, order, public peace and tranquillity, on the eve of the upcoming festivals. In view of the aforesaid, the counsel for respondents submits that it is expedient that action under Section 3 of the BCC Act, 2024 against the petitioner is necessary to maintain law and order, public peace and tranquility.



**11.** It has been further submitted that in the light of the aforesaid proposal made by the S.P., Nalanda, the petitioner was asked to file his show cause vide Notice No. 16 dated 27.01.2026 (Annexure '2' to the writ petition).

**12.** The petitioner filed a show cause reply on 06.02.2026 (Annexure '3'), but no satisfactory explanation in his defence was given. Thereafter, considering the proposal as well as the recommendation of the police authorities, the District Magistrate, Nalanda, passed the order dated 20.03.2026 with a direction to the petitioner to mark his attendance at Silao P.S. on every Monday and Friday for one month. In the said order, the petitioner was declared to be an anti-social element.

**13.** Learned counsel for the respondent also submits that the petitioner was involved in the offences under Sections 379, 406 and 420 of the Indian Penal Code (in short 'IPC'), under Section 7 of the Essential Commodities Act, Section 11 of the Gambling Act and Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018. Therefore, the offences alleged under IPC were falling under Chapter-XVII IPC. It is also contended by the counsel for the respondent, that the externment order passed by District Magistrate, Nalanda has not been challenged by the petitioner before the appellate authority and, therefore, without



availing the alternative remedy, filing of this writ petition is not proper and justified.

**14.** The counsel for the respondent also disputes the fact that Silao P.S. is situated at a distance of twenty kilometer from the place where the petitioner resides, rather it has been contended that it is only at a distance of ten to twelve kilometer from the village of the petitioner. It is further submitted that a period of externment order has already been completed and the grievance of the petitioner does not stand presently in any manner whatsoever, therefore, the externment order does not require any interference.

**15.** It appears upon perusal of the records that the period of externment came to an end on 19.04.2026. This writ petition was filed on 03.04.2026, after the impugned order was passed. One of the stands, which has been taken on behalf of the respondents to oppose the maintainability of the present application is that since the period of externment has already expired, this writ petition has become infructuous and no useful purpose would be served by entertaining this writ petition any more.

### **Consideration**

**16.** This Court has heard learned counsel for the petitioner and learned counsel for the State, as also perused the



pleadings available on the record. In this case, challenge is to the order dated 20<sup>th</sup> March, 2026 passed by the District Magistrate, Nalanda, in exercise of his power under sub-section (3) of Section 3 of the BCC Act.

**17.** A perusal of the impugned order (Annexure ‘1’) would show that the District Magistrate has taken note of the six cases registered against the petitioner between the year 2016 and 2021. The cases registered under the provisions of the IPC which would fall under Chapter XVII of the IPC are Akbarpur Nawada P.S. Case No. 154 of 2019 dated 05.05.2019 registered under Section 406/420/379/34 IPC; Muffasil Hazaribagh P.S. Case No. 138 of 2021 dated 27.06.2021 registered under Section 379 IPC, in which the petitioner has been charge-sheeted under Section 379/411 IPC; and the case registered under the Bihar Prohibition and Excise Act are Deepnagar P.S. Case No. 339 of 2020 and Giriyak P.S. Case No. 36 of 2021, which would be covered under sub-clause (ix) of clause (b) of Section 2 of the BCC Act.

**18.** At this stage, since I find that the petitioner has been declared an anti-social element, it would be necessary to take a glance over the definition of the word “anti-social element” as occurring under clause (b) of Section 2 of the BCC Act. Clause (b) is being reproduced hereunder for a ready reference:-



“b. "Anti-social element" means a person who

(i) commits, or attempts to commit or abets the commission of any offence punishable under chapter XVI or Chapter XVII of the Indian Penal Code; or

(ii) commits or abets the commission of, any offence connected with trafficking in women and children under the Immoral Traffic (Prevention) Act, 1956; or

(iii) commits or abets the commission of any offence under the Protection of Children from Sexual Offences Act, 2012; or

(iv) by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes; or

(v) has been found passing indecent remarks to, or teasing women or girls; or

(vi) has been declared as a Goonda as per provisions of Bihar Police Manual, 1978; or

(vii) commits or attempts to commit or abets the commission of offence of manufacturing or selling or transporting or transferring or illicit trafficking or converting or repairing or testing or proving any firearm or ammunition, or being member of an organised crime syndicate or any person on its behalf possesses or carries firearm or firearms or ammunition in contravention to the provisions of the Arms Act, 1959.

Explanation—1: For the purpose of this sub-section, “illicit trafficking” means the acquisition, sale, delivery, movement or transfer of firearms and ammunition into, from or within the territory of India, if the firearms and ammunition are not marked in accordance with the provisions of the Arms Act, 1959 or are being trafficked in contravention of the provisions of the said Act including smuggled firearms of foreign make or prohibited arms and prohibited ammunition.

Explanation-2: For the purpose of this sub-section, “organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organized crime.

Explanation-3: “Organized crime” means any continuing unlawful activity by any person, singly or collectively, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person; or



(viii) commits or attempts to commit or abets the commission of any offence in respect of sand, punishable under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) or under the Bihar Minerals (Concession and Prevention of Illegal Mining, Transport and Storage) Rules, 2019 or any other law for the time being in force; or

(ix) distills, manufactures, stores, transports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Bihar Excise & Prohibition Act, 2016, Narcotics Drugs and Psychotropic Substances Act, 1985, as amended from time to time or any other law prohibiting such activities for the time being in force, and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing; or

(x) commits or attempts to commit or abets the commission of any offence, punishable under Chapter XI of the Information Technology Act, 2000 (Central Act 21 of 2000); or

(xi) either by himself or as a member of or leader of a gang illegally and unauthorisedly, by use of force or threat or by any other unlawful means, takes possession or attempts to take possession of any land or house or any other property whether belonging to the Government, local authority or any other person.”

**19.** Clause (f) and clause (g) define the phrase “commits an offence” and the word “abet” respectively which are being reproduced hereunder:-

“(f) The phrase “commits an offence” wherever used in relation to an anti-social element in this Act means a person, against whom, during twenty-four months immediately preceding the commencement of any action under this Act, not less than two cases in which police report has been filed in the Court of law showing his involvement in offences referred to in sub-section (b).



(g) the word “abet” shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code, 1861.”

**20. Section 3 of the BCC Act reads as under:-**

**“3. Externment, etc., of anti-social elements. –**

1. Where it appears to the District Magistrate that-

a. any person is an anti-social element, and

b. (i) that his movements or acts in the district or any part thereof or in any part of the State are causing or are calculated to cause alarm, danger or harm to persons or property; and

(ii) that his activities as mentioned in sub-clause (i) cannot be prevented without removing him from the specified place or places.

the District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them.

2. The person against whom an order under this Section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

3. The District Magistrate on being satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist, may by order in writing-

(a) direct him to remove himself outside the district or part thereof, or any part of the State as the case may be, by such route, if any, and within such time as may be



specified in the order and to resist from entering the district or the specified part thereof or of the State, until the expiry of such period, not exceeding six months as may be specified in the order;

(b) (i) require such person to notify his movements or to report himself or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order; until the expiry of such period, not exceeding six months as may be specified in the order.”

**21.** It is evident on reading of sub-section (3) of Section 3 of the BCC Act that this provision casts a duty upon the District Magistrate to be satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist. Thus, before passing an order, the District Magistrate has to take a view whether the person who is going to be declared an anti-social element is covered by the definition of the word “anti-social element” as envisaged under clause (b). I have seen that sub-clause (i) of clause (b) and most of the other sub-clauses start with the cluster of words “commits, or attempts to commit or abets the commission of any offence ...”. So, in order to understand this provision, I have to take aid of sub-clause (f) and sub-clause (g) of clause (b) under Section 2 of the BCC Act. When I read these provisions together, it may be easily



found that there must be at least two cases within a period of 24 months immediately preceding the commencement of any action under this Act, in which police report has been filed in the court of law showing the involvement of the person liable to be proceeded against in offences referred to in sub-section (b) (it seems clause (b) has been wrongly referred as sub-section (b)). In this case, the last case registered against the petitioner is that of the year 2021, therefore, on the date of issuance of notice, i.e. 27.01.2026 (Annexure '2'), the case of the petitioner was not covered under clause (b) of Section 2 of the BCC Act. After 2021, no case was registered against the petitioner and it is not the stand of the respondents that during 24 months immediately preceding the commencement of any action under this Act, in at least two cases, police report has been filed in the court of law showing his involvement in the offences referred to in clause (b) of Section 2 of the BCC Act.

**22.** The District Magistrate has recorded in the impugned order that the petitioner is charge-sheeted in many cases, but presently he is on bail. There is no allegation of breach of conditions of bail. No application for cancellation of bail has been filed. He has stated in the impugned order that if the petitioner is allowed to move freely, then there is a strong chance



of disturbance of law and order, public peace and social tranquility during the ensuing festivals. He has not mentioned that the petitioner has ever been involved in creating any disturbance in public order or social tranquility. No occurrence of recent time is noticed. In the notice (Annexure '2'), it is stated that because of the free movement of the petitioner, law and order, public peace and social tranquility may be disturbed in the ensuing Saraswati Puja, Holi, and Ram Navami, 2026. So far as this ground is concerned, in order to examine it, this Court would refer the judgment of the Hon'ble Supreme Court in the case of **Arjun vs. The State of Maharashtra and Ors.** reported in **2024 INSC 968**, wherein the appellant before the Hon'ble Supreme Court was sought to be proceeded under Section 3(2) of the The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981. The appellant was detained for a period of twelve months so as to prevent him from indulging in the activities of bootlegging thereby preventing the maintenance of peace. For this purpose, the detaining authority had basically relied on the six cases registered against the said appellant by the State Excise Department.



23. The Hon'ble Supreme Court took note of the six cases pending against the appellant alleging illicit manufacture of handmade liquor, these cases were registered during the period 29<sup>th</sup> January 2023 to 18<sup>th</sup> October 2023, but in none of these cases, the authorities had found it necessary to arrest the appellant.

24. The Hon'ble Supreme Court relied upon the observations of Hon'ble Justice Hidayatullah, J. (as His Lordship then was) in the case of **Ram Manohar Lohia vs. State of Bihar and Another** reported in (1966) 1 SCR 709 and also in the case of **Ameena Begum vs. State of Telangana and Others** reported in (2023) 9 SCC 587. Paragraph '12', '13' and '14', of the judgment rendered in the case of **Arjun** (*supra*) are being reproduced as under:-

“12. The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of **Ram Manohar Lohia v. State of Bihar and Another**<sup>1</sup>:

“54. ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival

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1. (1966) 1 SCR 709 : 1965 INSC 175



communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....

**55.** It will thus appear that just as ‘public order’ in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting ‘security of State’, ‘law and order’ also comprehends disorders of less gravity than those affecting ‘public order’. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.”

**13.** It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

**14.** Recently, a Bench of this Court has referred to various judgments of this Court while following the



law laid down by this Court in the case of **Ram Manohar Lohia** (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of **Ameena Begum v. State of Telangana and Others**<sup>2</sup>.

“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon’ble M. Hidayatullah, C.J. in *Arun Ghosh v. State of W.B.* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)

“3. ... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

**39.** In *Arun Ghosh* case [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67], the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read : the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (*Arun Ghosh* case [*Arun Ghosh v.*

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2. (2023) 9 SCC 587



State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)”

**40.** In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3)

“3. ... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its effect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

**41.** In Kuso Sah v. State of Bihar [Kuso Sah v. State of Bihar, (1974) 1 SCC 185 : 1974 SCC (Cri) 84], Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6)

“4. ... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of



law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ...

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6. ... The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.”

(emphasis supplied)”

**25.** The Hon’ble Supreme Court took note of the fact that even as six cases were registered, the excise authority did not find it necessary to arrest the appellant and it was not that the appellant had been arrested, released on bail and then again the appellant continued with his activities. The Hon’ble Supreme Court further observed that the statement of the two unnamed witnesses making allegations were vague and stereotyped statements.

**26.** In the light of above-mentioned judgment, when I examine the facts of this case giving rise to issuance of notice to the petitioner on the allegation that his free movement may cause danger to public peace and social tranquility, it is found that the District Magistrate has not referred any material at all in the show-cause notice. On what ground Giriyak P.S. Sanha Case No. 805 of 2026 was registered on 19.01.2026 and how the



District Magistrate would reach to a subjective satisfaction on the basis of the Sanha remains a mystery.

**27.** In the present case, the petitioner cannot be put into the category of an anti-social element even as six cases are said to be registered against him in different years with long and varying interval. The condition under clause (f) of Section 2 is not satisfied. Further, there has been a categorical statement made in the writ petition, that in response to the notice dated 27.01.2026, issued by the District Magistrate, Nalanda, the petitioner had filed a reply on 06.02.2026, wherein he had stated that he had been falsely implicated in all cases and has not been convicted till date in any of the cases. It has been stated that he had been victimized for political reasons and no case has been instituted against him after 2021. There is no denial of this fact in the counter affidavit.

**28.** Be that as it may, this Court is testing the correctness of the impugned order dated 20.03.2026, based on its own contents. It is a well settled principle that the correctness or otherwise, of an order passed by the statutory authority is to be decided on the basis of the contents of the order itself, which cannot be improved by filing of an affidavit.

**29.** Learned counsel for the petitioner appears to be correct in his submission that the impugned order has been passed



by the District Magistrate, Nalanda without considering crucial and significant facts that the petitioner has not been convicted in any of the offences and that no case has been registered against the petitioner after 2021. The law stipulated in section 2(b) of the BCC Act in declaring a person to be an anti-social element has also been overlooked by the said Authority. The impugned order is silent on the said explanation and, therefore, suffers from non-application of mind.

**30.** It is not out of place to mention the case of **Shiv Prasad Bhatnagar vs State of M.P., and Another** reported in **(1981) 2 SCC 456**, while dealing with the legality of an order of preventive detention the Court has held, in no uncertain terms, that such order must be proximate and not stale. The Hon'ble Supreme Court added that staleness and vagueness are the vices, any single one of which is sufficient to vitiate the ground of detention.

**31.** However, the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence, or no reasonable person could have, on the basis of the materials on record, been satisfied of the expediency/necessity of passing an order for externment.



**32.** In the aforesaid backdrop, it becomes abundantly clear that the petitioner cannot be made to fall within the definition of an anti-social element as given by section 2(b) of the Act, the power of directing the petitioner's externment by invoking section 3 of BCC Act, 2024 could not have been arisen.

**33.** This Court being a constitutional court is under obligation to protect the fundamental rights of the citizens and it cannot remain silent and a mute spectator where the life and the liberty of a citizen are curtailed without following the established procedure of law. Keeping in view all the aspects discussed in foregoing paragraphs, the conditions precedent for invoking a District Magistrate's jurisdiction under Section 3 of the BCC Act, 2024, having been not satisfied in the present case, no order of externment could have been passed against the present petitioner. Learned counsel for the petitioner is, therefore, not incorrect, when he submitted that the impugned order of externment is nullity in eyes of law and the contention of the counsel for respondent is not tenable in light of the discussions made hereinabove. This Court finds that the impugned order of externment dated 20.03.2026, is not sustainable and therefore, warrants interference.

**34.** Having noticed that the impugned order has been passed by the District Magistrate, Nalanda, in complete violation



of the statutory provisions, which has resulted in infringement of the fundamental rights of the petitioner embodied under Article 21 of the Constitution of India, I am of the opinion that the petitioner cannot be relegated at this stage to an alternative remedy of appeal.

**35.** This Court has noticed that the petitioner was ordered to mark his attendance every Monday and Friday at Silao Police Station, whereas he happened to be a resident within the jurisdiction of Giriyak Police Station. This is another illegality caused by the District Magistrate, Nalanda. In the case of **Rakesh Kumar Yadav @ Rakesh Yadav vs. The State of Bihar and Others (Cr.WJC No. 1667 of 2025)** reported in **2025 SCC OnLine Pat 3563**, this Court had occasion to take note of Rule 6 of the Bihar Control of Crime Rules, 1978. Paragraph ‘10’ and ‘11’ of the judgment in the case of **Rakesh Kumar Yadav @ Rakesh Yadav** (supra) are being reproduced hereunder:-

“**10.** We appreciate that learned SC-9 has himself placed before this Court Rule-6 of the Bihar Control of Crime Rules, 1978, which reads as under:

“6. While making an order under sub-section (3) of section 3 the District Magistrate may ordinarily require or direct the person affected by the order

(a) to notify his movements to Officer-in-charge of the Police Station (whether in the same district or any other district within or outside Bihar



State) nearest to his residence for the time being or to report himself to the said officer at such time and place as may be directed by such officer but not more than once in a day;

(b) to observe the prohibition or restriction about possession or use by him of any Lathi, fire-arm, sharp-edged weapon, any intoxicant, liquor, opium, Ganja, Charas or Bhang;

(c) not to be present within a specified distance from any specific educational institution, religious place, Mela Hat-Bazar, Cinema house or place of public entertainments such as public parks, restaurants and hotels, or around any public office on pay days;

(d) in case the Anti-social element removes himself outside Bihar also to inform the District Magistrate who made the order of his address at fortnightly intervals.”

11. Learned SC-9 has admitted at the bar that in terms of this Rule-6 the petitioner could have been asked to mark his attendance in the police station only once in a day.”

36. It is evident that the petitioner was asked to go to mark his attendance at a place away from his place of residence, leaving aside the jurisdictional police station, which has no rationale in the facts of this case. Before passing of the impugned order on 20.03.2026, the festivals like Saraswati Puja and Holi had already gone. There is nothing on the record that the petitioner had indulged in doing any act or **deed** so as to disturb public order of social tranquility. The District Magistrate remained completely



unmindful of miscellaneous facts. Thus, because of an illegal, arbitrary and illogical order, the petitioner's liberty had been curtailed for a month. The petitioner has been made to suffer hardships continuously during this period. Thus, I am of the considered opinion that the State Government must pay compensation of Rs. 1,00,000/- to the petitioner, besides the cost of litigation assessed at Rs. 10,000/-. The entire amount shall be paid to the petitioner within a period of one month from the date of production of this order.

**37.** Before parting with this judgment, it would be appropriate to record the disappointment of this Court on the manner in which the power under sub-section (3) under Section 3 of the BCC Act has been exercised by an officer of the State in the rank of District Magistrate.

**38.** From the impugned order, this Court has noticed that the proceeding was initiated on the basis of a letter written by one Inspector of Police-cum-SHO, Giriyak Police Station, to the Superintendent of Police, Nawada, in which he only referred the previous cases against the petitioner and made a vague statement that the activities of the petitioner is doubtful and in this regard, he recorded a Sanha. The said letter contained in Memo No. 305/2026 dated 19.01.2026 was submitted to the Superintendent of Police,



Nalanda, through proper channel. The endorsement made thereon shows that it was forwarded by the Inspector of Police, Giriyak Circle, Nalanda, who endorsed it, whereafter the Sub-Divisional Police Officer, Rajgir, wrote Letter No. 164 dated 19.01.2026 to the District Magistrate, Nalanda, through Superintendent of Police, Nalanda. He simply reiterated the same and one thing which were stated by the Police Inspector-cum-SHO, Giriyak Police Station. On receipt of the forwarding letter from the Sub-Divisional Police Officer, Rajgir, the Superintendent of Police, Nalanda, did no better than to simply reiterate the same thing and sent it to the District Magistrate, Nalanda.

**39.** Surprisingly, all these actions were taken on the same and one date, i.e. on 19.01.2026. The speed with which the report of the Inspector-cum-SHO, Giriyak Police Station, reached to the Inspector, Giriyak Circle, then the report of the Circle Inspector reached to the SDPO, Rajgir, the report of the SDPO reached to the Superintendent of Police, Nalanda and then the Superintendent of Police, Nalanda, wrote Letter No. 159 dated 19.01.2026 to the District Magistrate, Nalanda, would not inspire confidence into the efficiency of the entire system. An act done in haste smacks malafide in law if not in fact.



40. It is evident from all these correspondences, which are available on the record with the counter-affidavit, that none of these authorities have applied their mind, no verification of the fact has been done by the Circle Inspector, SDPO and also the Superintendent of Police. There is no mention of any material except the bald statement of the SHO, Giriyak Police Station that he has gathered some information in this regard while collecting information to maintain law and order problem. There is absolutely no basis and no statement of any person has been recorded or enclosed with the report of the SHO, Giriyak Police Station. If the action under the BCC Act may be taken on a mere desire or wish of a police officer, a citizen is likely to suffer hardships in his life in the nature of an irreparable loss of reputation.

41. Keeping in view the judgment of this Court in the case of **K.K. Pathak @ Keshav Kumar Pathak vs. Ravi Shankar Prasad & Other** reported in **(2019) 1 PLJR 1051**, if the State is saddled with cost and compensation due to misuse or excessive use of power by an executive of the State, it is open to the State to realise compensation and the cost amount, awarded by this Court, from the erring officials. The said judgment of this Court was subject matter of challenge before the Hon'ble Supreme



Court in **SLP (Cri) No. 003566 of 2019**, but the said challenge failed.

**42.** This Court, therefore, directs the State Government to realise the cost and compensation amount payable to the petitioner from the erring officials within a period of six months in accordance with law and report to this Court.

**43.** In result, this criminal writ application succeeds. The impugned order dated 20.03.2026 (Annexure '1') passed by the District Magistrate, Nalanda, is hereby set aside. Aspersions caste against the petitioner is expunged. The cost and compensation shall be paid as per paragraph '36' of this judgment.

**44.** The criminal writ application thus stands allowed.

**(Kumar Manish, J)**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

I have read the erudite judgment of my learned Brother in draft. I agree with his reasonings and conclusions. Before parting with this judgment, I wish to add a few words hereinbelow.

**2.** The object and reasons behind enactment of the BCC Act is to make special provisions for the control of anti-social elements acting in any manner prejudicial to the maintenance of public order and for matters connected therewith. The phrase “acting in any manner prejudicial to the maintenance of public



order” is defined in clause (a) of Section 2 of the BCC Act which reads as under:-

**2. Definition**

a. “acting in any manner prejudicial to the maintenance of public order” means a person is engaged, or is making preparations for engaging, in any of his activities as anti-social element, which affects adversely, or are likely to affect adversely the maintenance of public order,

Explanation: - For the purpose of this sub-section, public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in sub-section (b) directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system or disturb the life of the community thereby resulting in loss of confidence in administration.

**3.** It is in order to deal with such anti-social elements, who are acting in any manner prejudicial to the maintenance of public order, the legislatures have conferred some drastic powers upon the District Magistrate under Section 3 of the BCC Act. The District Magistrate has been vested with sweeping extraordinary powers under a legislative scheme which has been structured to bypass standard procedural delays in controlling organised syndicates. The administration which has to deal with the maintenance of public order has been conferred with power to pass order of externment and banishment. This provision has been made to tackle immediate threat to public order by an anti-social element. In a catena of judgments, the Hon’ble Supreme Court has been pleased to hold and declare that while exercising drastic powers the authorities vested with such powers have to base their decision on credible information. The



information required to be formed in the cases of the present nature cannot be formed based on imaginary grounds or wishful thinking. The District Magistrate must be able to show the materials on the basis of which the believe is formed. Drastic powers are to be exercised with all circumspection and care. A bald statement of a police officer without there being any reason to believe cannot be a basis to exercise the power conferred upon the District Magistrate under Section 3 of the BCC Act. The power of the District Magistrate cannot be left unbridled and uncanalised. It is draconian in nature because it has an effect immediately curtailing a citizens fundamental right to life guaranteed by Chapter-III of the Constitution of India. Exercise of power under this provision is dependent upon the formation of a subjective opinion by the District Magistrate that it is necessary so to do for the purpose of maintaining public order.

4. In the case of **Kuso Sah vs. The State of Bihar** reported in **(1974) 1 SCC 185** speaking for the Bench, the then Hon'ble Mr. Justice Y.V. Chandrachud held as under:-

“4. \*\*\* The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. \*\*\*



6. \*\*\* The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. \*\*\*”

5. To declare somebody as anti-social element would amount to casting legal and social stigma which is likely to affect a person in many ways even after he gets acquitted with honour in the criminal cases lodged against him. An executive action declaring a person anti-social element under the BCC Act can predominantly tarnish his reputation. Legal measures that inflict public stigma must meet strict constitutional scrutiny. In the cases of **Subramanian Swamy vs. Union of India** reported in (2016) 7 SCC 221, **State of Bihar vs. Lal Krishna Advani** reported in (2003) 8 SCC 361 and **Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni** reported in (1983) 1 SCC 124, the Hon’ble Supreme Court has held that right to reputation is an integral part of life and personal liberty under Article 21 of the Constitution of India. In such circumstance, the order of a District Magistrate under the BCC Act must ensure that he did not act mechanically.

6. In the case of **Subramanian Swamy**, the Hon’ble Supreme Court has quoted Lord Denning in paragraph ‘36’ of its judgment which I reproduce hereunder:-

“36. Lord Denning explained the distinction between character and reputation in *Plato Films*



*Ltd. v. Speidel*<sup>15</sup> in a succinct manner. We quote :  
(AC p. 1138)

“... A man's “character”, it is sometimes said, is *what he in fact is*, whereas his “reputation” is *what other people think he is*. If this be the sense in which you are using the words, then a libel action is concerned only with a man's reputation, that is, with what people think of him : and it is for damage to his reputation, that is, to his esteem in the eyes of others, that he can sue, and not for damage to his own personality or disposition. That is why Cave, J. spoke of “reputation” rather than “character”.

The truth is that the word “character” is often used, and quite properly used, in the same sense as the word “reputation”. Thus, when I say of a man that “He has always borne a good character”, I mean that he has always been thought well of *by others* : and when I want to know what his “character” is, I write, not to him, but to *others* who know something about him. In short, his “character” is the esteem in which he is held by others who know him and are in a position to judge his worth. A man can sue for damage to his character in this sense, even though he is little known to the outside world. If it were said of Robinson Crusoe that he murdered Man Friday, he would have a cause of action, even though no one had ever heard of him before. But a man's “character”, so understood, may become known to others beyond his immediate circle. Insofar as the estimate spreads outwards from those who know him and circulates among people generally in an increasing range, it becomes his “reputation”, which is entitled to the protection of the law just as much as his character. But here I speak only of a reputation which is built upon the estimate of those who know him. No other reputation is of any worth. The law can take no notice of a reputation which has no foundation except the gossip and rumour of busybodies who do not know the man. Test it this way. Suppose an honourable man becomes the victim of groundless rumour. He should be entitled to damages without having this wounding gossip dragged up against him. He can call people who know him to give

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15. 1961 AC 1090 : (1961) 2 WLR 470 : (1961) 1 All ER 876



evidence of his good character. On the other hand, suppose a “notorious rogue” manages to conceal his dishonesty from the world at large. He should not be entitled to damages on the basis that he is a man of unblemished reputation. There must, one would think, be people who know him and can come and speak to his bad character.”

7. In the present case, I fully agree with the views of my learned Brother that the manner in which a totally unverified statement of the SHO of the Giriyak Police Station changed hands one after another and reached to the table of the District Magistrate who passed the order impugned in the writ application is an example of “act in haste”. It has a tendency to cause damage to the reputation of the petitioner.

8. I, therefore, record my complete agreement with the judgment of my learned Brother.

**(Rajeev Ranjan Prasad, J)**

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