

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1144 OF 2022

Shaikh Ayyaz s/o Shaikh Rahim,
Age – 30 years, Occu. : Labour,
R/o. Husen Colony, Garkheda Parisar,
Aurangabad.
At present : Badnapur,
Tq. Badnapur, Dist. Jalna

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya, Mumbai-32.
2. Divisional Commissioner,
Divisional Commissioner Office,
Aurangabd.
3. Deputy Police Commissioner,
Parimandal-1, Aurangabad City
Aurangabad.
4. Police Inspector,
Chhawani Police Station,
Aurangabad

.. Respondents

Mr. Sahikh Kayyum Najir, Advocate for the Petitioner.
Smt. D. S. Jape, APP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 12th JANUARY, 2023.

ORAL JUDGMENT :-

. Learned advocate for the petitioner places reliance on the order passed by this Court in Criminal Writ Petition No. 652/2022 in the case

of co-accused namely Wasim Khan Hakimodding Khan Vs. The State of Maharashtra and others wherein, the similar action was taken on the basis of offences registered against the petitioner. Learned advocate submits that the petition can be allowed in view of order passed in that writ petition.

2. Learned A.P.P. submits that the main reason assigned by this Court while disposing of the Criminal Writ Petition No. 652/2022 was that the petitioner in that petition was chosen for taking action under Section 55 of the Maharashtra Police Act, 1951 while no action was taken against the co-accused. She submits that, in fact, against both the accused the action was proposed and the action was, as a matter of fact, taken. Inadvertently, in Criminal Writ Petition No. 652/2022 this fact was not pointed out to the Court and therefore, the order was passed.

3. This Court feels that it would not be proper to take any other view than taken in Criminal Writ Petition No. 652/2022 in respect of the co-accused. Though there is substance in the argument of the learned A.P.P. that the Court was considering that while taking action he can choose policy, but however, on going through the order it is seen that the order is passed even by considering the merits of the matter. In that view of the matter, this Court feels that this writ petition

deserves to be allowed.

4. The writ petition is hereby allowed.

5. Rule is made absolute in terms of prayer clause (B).

(KISHORE C. SANT, J.)

P.S.B.