

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 343/2023.

Sunil Ukandrao Pachare,
Aged about 38 years, Occupation
Cultivator, resident of Ward No.1
Padegaon, Tahsil and District
Wardha.

... **PETITIONER.**

VERSUS

1.State of Maharashtra,
through Chief Secretary,
Home Department, Mantralaya,
Mumbai.

2.Sub Divisional Magistrate,
Sub Division, Wardha,
District Wardha.

3.Sub Divisional Police Officer,
Wardha, District Wardha.

4.Assistant Police Inspector,
Police Station Sawangi (Meghe),
District Wardha.

... **RESPONDENTS.**

Mr. J.R. Kidilay, Advocate for the Petitioner.
Mr. V.A. Thakare, A.P.P. for Respondents.

Rgd.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES,, JJ.
DATE : JULY 05, 2023

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule is made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2. Being aggrieved and dissatisfied by the order of externment dated 07.02.2023 passed by respondent no.2 Sub Divisional Magistrate, Wardha in Externment Case No.23/2022, whereby the petitioner has been externed from the limits of Wardha District for a period of one year, he has approached to this Court in writ jurisdiction. The impugned order has been passed in exercise of powers conferred upon respondent no.2 under Section 56[1][b] of the Maharashtra Police Act.

3. The impugned order has been challenged primely on the

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ground that the externment proceeding is mainly based on the offences punishable under the Maharashtra Prohibition Act, and therefore, the order is not sustainable in the eyes of law. It is submitted that the impugned order infringes petitioners' fundamental right of freedom of movement, which is an arbitrary action of the Authority.

4. On the other hand, the learned A.P.P. has raised a preliminary objection that the petitioner ought to have approached to the Divisional Commissioner in statutory appeal. Moreover it is submitted that repeatedly the petitioner has been involved in the offences under the Maharashtra Prohibition Act from the year 2006. Despite registration of various offences and prohibitory action, the petitioner has continued his illegal activities which are dangerous to the safety of the society.

5. As regards to the initial objection in respect of maintainability of the writ, the learned Counsel appearing for the petitioner has relied upon the decision of this Court in case of

Darshan Arun Barhanpure .vrs. State of Maharashtra and others – Criminal Writ Petition No.599/2020 decided on 17.02.2021, which extensively deals with the issue. In paragraph nos. 5 and 6 of the aforesaid decision, it has been observed that the issue pertains to violation of principle of due process of law and therefore, writ is maintainable in absence of filing statutory appeal.

6. The impugned order contains a chart indicating 7 prior offences registered against the petitioner within a period from 25.11.2015 to 12.06.2021, apart from the prohibitory action initiated in the year 2019. The offences at Sr.Nos. 1 to 6 relates to the action under Section 65[e] of the Maharashtra Prohibition Act. True the last offence at Sr.No.7 pertains to the offence punishable under Section 326 falling under Chapter XVI of the Indian Penal Code. Besides said isolated offence, the authority has considered rest of the offences which are under the Maharashtra Prohibition Act. Time and again it has been ruled that the action of externment cannot be based solely on the offences registered under the Maharashtra Prohibition Act, meaning thereby, the offences which

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does not fall within Chapters – XII, XVI and XVII of the Indian Penal Code. Perusal of the impugned order indicates that the petitioner was indulging into sale of illicit liquor which caused concern for initiating action. The show cause notice does not specify the gist of in-camera statements. The impugned order does not disclose subjective satisfaction regarding externment on account of an isolated offences registered under Section 326 of the Indian Penal Code. Besides that there does not appear to be a live link in between the last offence and initiation of the impugned action.

7. In the circumstances, the impugned order would not sustain in the eyes of law. In view of above, Criminal Writ Petition needs to be allowed, hence, the following order.

ORDER

- [i] Criminal Writ Petition is allowed and disposed of.
- [ii] The impugned order of externment dated 07.02.2023 passed by respondent no.2 Sub Divisional Magistrate, Wardha in Externment Case No.23/2022, is hereby

Rgd.

quashed and set aside.

- [iii] Rule is made absolute in aforesaid terms, with no order as to costs.

JUDGE

JUDGE