

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

CRIMINAL WRIT PETITION NO. 849 OF 2022

Shankar Laxman Khandare, aged about
52 yrs, Occ. Labourer, R/o Uprai, Tq.
Daryapur, District Amravati.

... PETITIONER.

VERSUS

1. State of Maharashtra, through its
Secretary, Home Department,
Mantralaya, Mumbai – 32.
2. Police Station Officer, Police Station,
Khallar, Tah. Daryapur, District
Amravati.
3. Deputy Collector and Sub Divisional
Magistrate, Daryapur, District
Amravati.

... RESPONDENTS

Shri R.J. Shinde, Advocate for the petitioner.
Shri Thakre, A.P.P for the respondent/State.

CORAM : VINAY JOSHI AND BHARAT P. DESHPANDE, JJ.
DATED : 08/03/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith. Heard finally by consent of learned Counsel appearing for the respective parties.

2. The petitioner has been externed for the period of one year from the entire Amravati District vide order dated 14.06.2022 by respondent no.3 Deputy Collector and Sub Divisional Magistrate, Daryapur, District Amravati. The order has been passed in terms of Section 56(1)(a)(b) of the Maharashtra Police Act, 1951 (for short 'the Act').

3. The challenge is principally on the ground that the entire action has been based on six offences registered against the petitioner under the provisions of the Maharashtra Prohibition Act, 1949 ('the Act of 1949') and therefore, it does not meet the requisite criteria as specified under Section 56 (1)(a)(b) of the Act. In support of said contention, the petitioner relied on the decision of this Court in case of *Umar Mohamed Malbari vs. K.P. Gaikwad, Dy. Commissioner of Police and Anr.* 2000 ALL MR (Cri.) 578.

4. The respondent/State resisted the petition by filing affidavit-in-reply. It has been stated that the petitioner is habitual offender against whom six offences were registered under Section

65(e) of the Act of 1949. The petitioner used to indulge into illicit liquor business. Despite prohibitory action, the petitioner continued his activity and therefore, the action is sustainable in the eyes of law.

5. The petitioner was served with the notice under Section 59 of the Act, which he replied. The impugned order bears crime chart containing six offences registered against the petitioner under Section 65(e) of the Act of 1949 ranging from the year 2013 to 2021. All offences were shown to be subjudice. Besides that, prohibitory actions was taken against the petitioner however they were disposed of.

6. Perusal of the impugned order makes it abund clear that the action is totally based on the offences registered under the Act of 1949. This Court in above referred case, took a view that externment order cannot be based solely on the ground of prosecution under the Prohibition Act. The State is unable to point out any other ground to substantiate the order under challenge. Since the action is totally based on the offences registered under the Act of 1949, it is unsustainable in the eyes of law.

7. In view of above, writ petition is allowed. The order dated 14.06.2022 passed by the respondent no.3 Deputy Collector and Sub

Divisional Magistrate, Daryapur, District Amravati is hereby quashed and set aside.

8. Rule is made absolute in above terms. No order as to costs.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

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