

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

CRIMINAL WRIT PETITION NO.885 OF 2019

1. Sagar s/o Ravindra Malik,
Age- 25 years, Occ. Laborer,
R/o Subhash Colony, Ward No.6,
Shrirampur, Tq. Shrirampur,
Dist-Ahmednagar.

2. Sagar s/o Somnath Deshmane,
Age- 30 years, Occ. Laborer,
R/o Ambika Nagar, Lokhar (Bk),
Tq. Rahata, Dist. Ahmednagar.

... **PETITIONERS**

Versus

1. The State of Maharashtra,
Through Police Inspector,
Loni Police Station,
Tq. Rahata, Dist. Ahmednagar.

2. The Superintendent of Police,
State Crime Branch, Ahmednagar.

... **RESPONDENTS**

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Advocate for Petitioner : Mr. R.R. Karpe
A.P.P. for Respondent/State: Mr. A.P. Basarkar

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CORAM : MANGESH S. PATIL, J.

DATE : 30.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-State. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are the two of the accused from Crime No. I-12 of 2013 registered with Loni Police Station for the offence punishable under Section 395 of the I.P.C. and for the offence punishable under Section 25 read with Section 3 of the Arms Act which is currently pending before the Sessions Court at Kopargaon, after its committal.

3. During the pendency of the trial in the Sessions Court, the Investigating Officer submitted a request dated 29.01.2019 and sought permission of the Court to conduct lie detection, narco and brain mapping tests of the present petitioners.

4. The petitioners opposed the application by their respective say.

5. By the impugned order the learned Additional Sessions Judge allowed the request of the Investigating officer.

6. The learned advocate for the petitioners submit that no such scientific investigation can be had more so when the petitioners are not ready for it. He would further submit that even the request was being made at a very belated stage. The law is also well settled. In the case of **Selvi V/s. State of Karnataka; (2010) 7 Supreme Court Cases 263**, the law has been laid down and has been followed by this Court in the matter of **Mrs. Rajshree**

W/o Aman Hemani V/s. State of Maharashtra in Criminal Application no. 3657 of 2006 dated 22.11.2018 (Nagpur Bench).

7. The learned A.P.P submits that appropriate order may be passed.
8. The issue is no longer *res integra*. In the case of **Selvi** (supra), it has been specifically observed that a direction of this kind would tantamount to testimonial compulsion and cannot be allowed to be undertaken particularly when the petitioners are not ready for it. True it is that they had earlier consented but now have retracted it. Whatever may be the case as on today they are not ready to face the tests and cannot be compelled to do so. Following the principle this Court in the case of **Mrs. Rajshree W/o Aman Hemani** (supra) has in similar set of facts quashed and set aside the order passed by the trial Court and rejected the request of the Investigating Officer.
9. In view of such trite legal position, the learned Additional Sessions Judge ought not to have conceded to the request of the Investigating Officer. The impugned order is illegal and needs to be quashed and set aside.
10. The Writ Petition is allowed. The impugned order is quashed and set aside. The rule is accordingly made absolute.