

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

**927 APPLICATION FOR CANCELLATION OF BAIL NO.132 OF 2021
WITH ACB/131/2021**

SHESHRAO RAMBHAU JAYBHAYE

VERSUS

SUDHAKAR MADHAVRAO NAGVE AND ANR

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Mr. P.P. More, Advocate for the applicant

Mr. V.M. Kagne, APP for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17th FEBRUARY, 2022

PER COURT :

1 After making statements for a while, the learned Advocate appearing for the applicant, on instructions, seeks withdrawal of both the applications, with liberty to approach learned Sessions Judge, under Section 439(2) of the Code of Criminal Procedure, on the count that there is breach of terms of conditions of the bail granted by him.

2 At the outset, it can be said that for breach of terms of conditions the applicant shall firstly knock the doors of the Court, which has imposed those conditions. This Court can consider the application under Section

439(2) of the Code of Criminal Procedure, when it comes to challenge on merits, that means, to consider the alleged illegality or error of facts committed by the Court, which granted the bail. Therefore, when these two facts are required to be segregated, definitely, the liberty sought by the applicant needs to be granted.

3 In view of the submissions the applicant is allowed to withdraw the present applications with liberty to approach the Sessions Judge under Section 439(2) of the Code of Criminal Procedure for alleged breach of conditions of bail granted by Sessions Court.

(Smt. Vibha Kankanwadi, J.)

agd