

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

APPLICATION FOR CANCELLATION OF BAIL NO.163 OF 2022

Namoji Sadashiv Mule ...Applicant

Versus

1. Badam s/o Gulab Kale
2. Bharat s/o Gulab Kale
3. The State of Maharashtra ...Respondents

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.164 OF 2022

Namoji Sadashiv Mule ...Applicant

Versus

1. The State of Maharashtra
2. Sachin Yuvraj Kale ...Respondents

...

Advocate for Applicant : Mr. Pratap Vikhe Patil h/f Mr. Salunke
Sudarshan J

APP for Respondent/State : Ms. V.S. Choudhari

...

CORAM : S.G. MEHARE, J.

DATED : 21st SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant.
2. He would submit that the investigating officer did not produce the medical certificate before the Court. The learned Additional Sessions Judge has passed arbitrary and perverse order. Therefore, the order granting bail dated 28.07.2022 may be cancelled. The law is well settled that if the Sessions Court ignore the material before it and pass the order granting bail, that may be

arbitrary and perverse order. The Hon'ble Apex Court in the case of Gurcharan Singh & Ors vs State (Delhi Administration), 1978 AIR 179, has observed that where order granting bail is passed without considering the material, the prosecution may approach the High Court. Where the material was not available and if subsequently new material is found, then a remedy to the prosecution or person aggrieved is to approach to the Sessions Court for cancellation of bail. Herein the case, there were absolutely no medical reports placed before the learned Additional Sessions Judge while granting anticipatory bail. Now, the complainant is complaining not only against the learned Additional Sessions Judge but also against the investigating officer. Since the documents were not available on record while passing the order and granting bail, it cannot be accepted that the order passed by the learned Additional Sessions Judge is arbitrary, perverse and without considering the material before it.

3. In view of the law laid down by the Hon'ble Apex Court in the above cited case, this Court is of the view that the applicants have no ground to claim the cancellation of bail. Hence, Both the applications stand dismissed.

(S.G. MEHARE, J.)