

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

CRIMINAL WRIT PETITION NO. 1542 OF 2019

Saif Khan Asif Khan
and another

.. Petitioners

Versus

The State of Maharashtra
Through Police Inspector,
Vaijapur Police Station, Vaijapur
Tq. Vaijapur, District Aurangabad

.. Respondent

Mr. Avishkar S. Shelke, Advocate for the Petitioners.
Mr. S. W. Munde, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 16th DECEMBER, 2022.

P C. :-

1. This writ petition is filed against the order cancelling bail granted to the petitioners by the learned Sessions Judge, Vaijapur. The FIR was lodged in Police Station Vaijapur dated 01.11.2017 bearing No. 0543/2017 for the offence punishable under Sections 420, 468, 471 r/w Section 34 of the Indian Penal Code by one Sharifabee w/o Shabbir Shah. It is alleged that, she is the owner of the land which she purchased on 02.07.1996 admeasuring 15 Acre and 15 Guntha. The land was mutated in the names of sons namely Kalim and Salim. The land was being cultivated by other family members. However, Salim

sold land to the extent of two acres and seven guntha and left the house with one unknown lady and thereafter he is not found. On 22.09.2016 these accused started plowing land. On asking of the informant as to why these persons have come in the land, the accused told that he has purchased the land from her son namely Salim by sale deed in the Sub Registrar's Office, Vaijapur. On making enquiry, it was revealed that son of the informant namely Salim has sold the land with the help of some other lady who posed herself to be informant before the Registrar. Thus, the allegation is that offence is committed.

2. The petitioners filed application seeking anticipatory bail in the learned Sessions Court, Aurangabad. The learned Sessions Court by order dated 13.11.2017 was pleased to grant anticipatory bail to the accused persons. While granting anticipatory bail certain conditions were imposed upon the petitioners.

3. The Investigating Officer (I.O.) later on filed an application against the present petitioners seeking cancellation of bail alleging that these petitioners have committed breach of conditions imposed upon them while granting protection. It is alleged that, these petitioners have not co-operated the investigation. Notice was issued under Section 91 of the Code of Criminal Procedure (for short "Cr.P.C.") to the petitioners, however, they did not submit the original sale deed. He

submitted that the original sale deed is required for verification of thumb impression and signatures on the sale deed. This application was filed on 16.02.2019.

4. Notices were issued to the petitioners, however, unfortunately on the date of hearing of the application their advocate could not remain present. In the meantime, an order was passed. The charge-sheet also came to be filed. The learned Sessions Court observed that, in spite of specific order, the petitioners are not co-operating to the I. O. The I. O. was present in the Court and also orally submitted that the petitioners were not producing the original sale deed in spite of several requests and in spite of notice under Section 91 of the Cr.P.C. The Court thus recorded that the present petitioners are not co-operating and committed breach of conditions imposed upon them and cancelled the bail by its order dated 26.08.2019.

5. The main concern appears to be that the petitioners were not producing the original sale deed for the purpose of sending it to the handwriting expert for verification of thumb impression and signatures on the sale deed. This Court by order dated 23.01.2020 was pleased to pass an order. It is recorded that the present petitioners have found the original sale deed dated 16.11.2005 and they are producing the original along with their affidavits and their presence was discharged.

6. It is seen from the record that, now the affidavit is filed and the original sale deed is also produced on record. This Court thus finds that no purpose would be served by cancelling the bail which is already granted to the petitioners. It is trite that, bail once granted can be cancelled only in rare and exceptional circumstances as the accused is already granted liberty.

7. Learned advocate for the petitioners submits that as a matter of fact, the petitioners have committed breach of conditions even the sale deed could not be produced as that was misplaced and immediately after getting the same they have produced it before this Court. Noting the reasoning given by the learned Sessions Judge, the only reason assigned is that the petitioners have committed breach of terms and conditions imposed upon them while granting anticipatory bail and that because of non producing of the sale deed the I.O. unable to send the same for verification of the finger prints to the expert.

8. This Court finds that, now since the original sale deed is already produced on record, a care is taken of the interest of the prosecution. The petitioners are present in the Court. They undertake specifically that henceforth they will not commit breach of conditions and they will attend the police station as and when called. It is open for the I.O. to take the original sale deed which is produced on record in this case by

following proper procedure. The original sale deed is on record. The petitioners further undertake to hand over it to the I.O. within a period of eight (08) days from today. For that purpose, office to hand over the original sale deed to the petitioner No. 1 within a week. The petitioners shall keep it with them for further course of action.

9. With this, the writ petition stands allowed. No order as to costs.

(KISHORE C. SANT, J.)

P.S.B.