

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.142 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
MANZOOR KHAN S/O MASUD KHAN

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APP for Applicant-State : Mr. V. M. Kagne
Advocate for Assist to APP : Mr. K. D. Jadhav
Senior Counsel for Respondent : Mr. R. S. Deshmukh i/b.
D.R.Deshmukh

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Order :
30-03-2022**

**Date Of Pronouncing The Order :
08-06-2022**

ORDER :

1. Present application has been filed under Section 439 (2) of Cr.P.C. by the State to challenge the order of anticipatory bail granted by this Court to the respondent in Anticipatory Bail Application No.161 of 2019 dated 12-04-2019 (Coram : V. M. Deshpande, J).
2. Heard learned APP Mr. V. M. Kagne for applicant-State well assisted by learned Advocate Mr. K. D. Jadhav, and learned Senior counsel Mr. R. S. Deshmukh instructed by Advocate Mr. D. R. Deshmukh for respondent.

3. At the outset it is to be noted that the order under challenge is passed by this court itself, and therefore, how this application is maintainable before this Court, itself is a question. Such application can be entertained only if it is pointed out that the conditions to the bail have been breached. This Court cannot revisit the merits of the case though the application memo as well as the submissions were made in respect of the merits also. The application is considered only to the extent of the condition that was imposed by this Court. It has been submitted on behalf of the State that the condition that was imposed by this Court while passing the said order under Section 438 of Cr.P.C. that, "(iii) However, it may be open for the Investigating Agency to call the applicant for investigation as and when required by the Investigating Officer till filing of the charge-sheet, by giving him clear cut 48 hours written communication." When the liberty was given, notice was issued to the respondent on 20-06-2019 that he should attend the Crime Branch on 01-07-2019 at 11.00 a.m. along with the Will in question (वसीयतनामा). However, the accused neither attended Crime Branch nor submitted the said Will. Therefore, the respondent is not co-operating in the investigation and the investigation is hampered due to his non co-

operation. The Will can be recovered which is forged by the respondent, only after obtaining his custody, and therefore, the order deserves to be set aside.

4. The learned Senior Counsel Mr. R. S. Deshmukh appearing for the respondent objected the application and submitted that the applicant has co-operated the investigation. In his bail application itself, the respondent had stated in ground No. 'X' that the Will (वसीयतनामा) was to be effected after the death of its executant, and therefore, it was kept in the custody of the informant. The photocopies of the same were given to all the legal heirs including the respondent. The original Will is not in his possession, but due to the strained relationship now, a false contention has been raised by the informant and the other legal heirs that the said Will is in custody of the respondent. When this Court had granted the final relief also then it has been stated that whatever has been stated by the respondent in his application appears to be prima facie correct. Unnecessary pressure has been applied by the informant to the State authorities to file the present application. The learned Senior Counsel also relied on the order passed by this Court on 29-10-2020 in Criminal Writ Petition No.1364 of 2020. That writ petition was

filed to challenge order of learned Magistrate permitting respondent No.2 therein to conduct DNA Test and then it was inferred that when he has not made himself available for DNA Test, he has breached the terms of bail, when he was directed to co-operate with the investigation. However, it appears that it is in respect of certain other criminal proceedings and while releasing the present respondent on bail in that offence also, the condition was put and then it was stated that the respondent is not co-operating the investigation. He was directed to remain present before the Crime Branch on 01-07-2019. When in the another offence also the application for cancellation of bail was filed, documents were produced to show that the respondent was hospitalized and had undergone spine operation. So, there was medical ground for the respondent for not remaining present. Even the communication was made by the respondent on 18-07-2019 and then the Crime Branch by letter dated 13-08-2019 had asked him to remain present on 16-08-2019. When the disputed document is not in possession of the respondent, non production thereof cannot be taken as a ground for cancellation of his bail. He cannot be forced to produce a document which is not in his possession.

5. At the cost of repetition it is to be stated that this Court cannot go into the merits of the case. The documents on record as well as the order passed by this Court would show that a contention was made before this Court that the disputed document is forged by respondent No.2. However, paragraph No.4 of the order states that, "It is not in dispute that the disputed documents, except Wasiyatnama (Will), are already in possession of the Investigating Officer," and then it was considered that the basic nature of the case is civil dispute and then the ad-interim relief which was earlier granted came to be confirmed. The contention was raised by respondent in his bail application that he does not possess the original Will. If that document according to the accused is not in his possession, then his bail cannot be cancelled on the ground that he is not producing the said document. Another fact is also required to be noted is that the State has filed the application in the year 2019 and it appears that it was not pressed at all. The investigation cannot be conducted in such a snail speed and cannot be only dependent on co-operation by the accused. There was no hurdle for the Investigating Officer to take a search of the possible locations in the possession of the respondent when he could have found the original Will. The Investigating Officer is not doing those acts which

are in his power, he cannot therefore say that he can do that act only upon the cancellation of the bail. There is no merit in the present application, it deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.