

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

**APPLICATION FOR CANCELLATION OF BAIL NO.63 OF 2022
IN BA/1466/2020**

THE STATE OF MAHARASHTRA
VERSUS
SHAIKH ASHFAQ SHAIKH ISHAQ

...
A.P.P. for the applicant : Mr. S. B. Narwade
Advocate for respondent : Mr. A. K. Bhosale

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CORAM : S. G. MEHARE, J.
DATE : 10.04.2023

PER COURT :

1. Heard the learned A.P.P. for the applicant/State and the learned counsel for the respondent.
2. The prosecution is seeking cancellation of the bail granted to the respondent as he has breached the bail condition imposed by this Court while enlarging him on bail by order dated 8th June 2021. The bail condition was that the respondent should not indulge in any criminal activities.
3. The prosecution has a case that, after releasing the respondent on bail, he committed the crime on 24th Feb 2022, punishable under sections 336, 427 r/w Section 34 of I.P.C., Sections 4/25 of the Arms Act, Section 7 of the Criminal Law (Amendment) Act and Section 135 of Maharashtra Police Act.

Hence, Police Station City Chowk has registered crime No. 66 of 2022 against him. The eye witness, who is an independent witness, has also disclosed the role attributed to the respondent.

4. The learned A.P.P. would argue that *prima facie* evidence of violating the bail condition is available against the respondent. He was accused of the offence punishable under Section 302 of the Indian Penal Code. The violation of the bail condition has been proved, and hence his bail may be cancelled.

5. Per contra, the learned counsel for the respondent has vehemently argued that since there are two uncontrolled groups in the vicinity, the police have lodged the false report against the respondent on their own. The so-called witnesses did not come forward to lodge the report. In the circumstances, the possibility of levelling false allegations of breach of condition was the easiest way for the police to send the respondent behind the bar, as there was no cogent evidence against the respondent in the crime registered for murder. It was a trick played by the police to send him behind the bar again. The allegations of involvement in another crime are false and concocted. The contents of the F.I.R. are not believable. Therefore, it cannot be said that it is a breach of the bail condition of the order dated 8th June 2021.

6. It is to be ascertained whether lodging the report

subsequent to granting bail to the respondent *prima facie* proves a violation of the bail condition. The papers of enquiry of the subsequent crime registered against the respondent have been placed on record. Undisputedly, after release from an earlier crime, a fresh crime has been registered against the respondent for different offences. After registering the crime, the investigating officer opined that the respondent was there on the spot of the incident. The specific allegations have been levelled against the respondent, so crime has been registered.

7. The question is why the police would unnecessarily indulge the respondent in a false crime. F.I.R. is presumed correct unless the material in rebuttal has been produced. The specific evidence of an eyewitness *prima facie* shows the involvement of the respondent in the crime. The respondent and another accused appear to be disturbing law and order. The possibility of indulging in another crime in view of that matter cannot be denied. The respondent seems to have committed another offence in utter disregard to the bail condition imposed by this Court while enlarging him on bail.

8. The learned counsel for the respondent insisted to the Court that the allegations levelled against him in the earlier crime may also be considered. The Court is of the view that what happened in the earlier crime is immaterial and has no relevance with the

present applications as it were considered when he was granted bail. The Court has to consider the material produced by the prosecution proving the violation of the bail condition. This Court has considered the relevant material and believes that the prosecution has *prima facie* proved the violation of the bail condition. That is sufficient to cancel the bail.

9. In view of that matter, the application deserves to be allowed. Hence, the order:-

ORDER

- (I) The application is allowed.
- (ii) The order granting bail to the respondent by this Court in bail application No.1466 of 2020 dated 8th June 2021, is cancelled for violation of condition No.4 of the said order.
- (iii) The bail bonds stand cancelled.
- (iv) The surety stands discharged.
- (v) He shall surrender before the concerned police station on or before 2nd May 2023.
- (vi) The right of the respondent to seek bail on change in circumstances shall not be affected.
- (vii) The police shall not arrest the applicant till 2nd May 2023.

(S. G. MEHARE J.)

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