

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

CRIMINAL WRIT PETITION NO. 856 OF 2022

Dilip Ramnarayan Mundada

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. Rahul R. Totala a/w Mr. R. F. Totala, Mr. Rajat Malu, Ms. Riya Jariwala, Mr. Ganesh Yadav and Mr. Swapnil Lohiya, Advocates for the Petitioner.

Mr. P. N. Kutti, APP for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 07th JANUARY, 2023.

P. C. :-

. Though the matter is shown in order category as the report of service of notice of respondent No. 2 is not received, it is submitted by the learned advocate for the petitioner that in fact, she is only formal party who is accused against whom the trial is pending for the offence punishable under Section 302 of the Indian Penal Code. The present petitioner is the owner of Flat No. 702 situated in My Fair Apartment Ulka Nagari, Aurangabad which was given on rent to the victim. The accused-respondent No. 2 happens to be his wife who has allegedly committed murder of the victim in the said flat. It is for this reason the flat was sealed for some time for the purpose of investigation. Later on

the petitioner filed an application before the learned Sessions Court for release of the said property i.e. flat. The application was allowed subject to condition that this petitioner would execute a bond stating therein that he shall not dispose of the flat without prior permission of the Court.

2. The petitioner therefore filed Criminal Misc. Application No. 238/2021 in the Court of learned Sessions Judge, Aurangabad seeking modification of a condition and permission to dispose off the said flat. The respondent-State as well as the accused have given no objection to release the flat. However, the learned Sessions Judge observed that no case is made out to modify the condition and therefore, rejected the application.

3. The petitioner is therefore, before this Court. The respondent No. 2 though is not served, but since she has already given no objection in the Trial Court and even otherwise she need not have any interest in the said issue and therefore, may not have come to this Court as it is no relief claimed against her. So far as respondent-State is concerned, the State has also no objection to modify the condition and to release the flat in question. It is seen from the record that, flat is already video-graphed and the measurement and specification are already taken. There would be no use of keeping the said flat as it is when now

practically there is no purpose of keeping the flat as it is. The condition imposed at point No. 2 in order dated 05.11.2020 in Sessions Case No. 65/2020 thus needs to be deleted by allowing the Criminal Misc. Application No. 238/2021 in Sessions Case No. 65/2020 pending in the Court of learned Additional Sessions Judge, Aurangabad.

4. The writ petition is thus allowed in terms of prayer clauses (B) and (C).

5. The writ petition is disposed off.

(KISHORE C. SANT, J.)

PS.B.