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

**APPLICATION FOR CANCELLATION OF BAIL NO. 93 OF 2023
IN
BAIL APPLICATION NO. 1610 OF 2021
BALU @ BABURAO KAWALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.**

...
Mr. S.R. Sapkal, Advocate for the petitioner.
Mr. A.S. Gandhi, Advocate for respondent.

**CORAM : S.G. CHAPALGAONKAR, J.
DATE : 12th DECEMBER, 2023**

ORDER :-

1. By this application, the applicants are seeking cancellation of bail granted in favour of the respondent vide order dated 25th February, 2022 in bail application No. 1610 of 2021 in Crime No. 248 of 2019 registered with police station Badnapur for the offence punishable under section 302.308, 120B of IPC and, Section 3 and 25 of the Arms Act and U/sec. 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act.

2. Mr Sapkal, the learned counsel for the applicants would submit that the respondent/accused has been enlarged on bail vide order dated 25th February, 2022 in bail application No. 1610 of 2021 subject to condition that he shall not enter Jalna city till conclusion of the trial, except for attending the dates fixed during the trial. However, said condition has been breached by the accused. Therefore, the bail granted to him is liable to be cancelled. He would further submit that the accused entered Jalna city and executed a sale deed dated 15th March 2022 which clearly depicts breach of a specified condition.

3. Mr Gandhi, learned counsel for the respondent would submit that the applicants are neither the informant nor witnesses in the crime in question and they are totally stranger. He would submit that the applicants have no locus standi to seek cancellation of bail The Application itself is not maintainable. He would submit that even the statements made in the

application are factually incorrect. In fact, the applicant is permitted to enter Jalna City for the purpose of attending date fixed in the trial court. On 15th March 2023 such date was fixed. The respondent accused had been to Jalna for the purpose of attending hearing before the trial court and also executing a document.

4. Having considered the submissions advanced, it is apparent that section 439(2) of the Code of Criminal Procedure for Cancellation of bail. Such powers can be exercised by the court if it is brought to the notice that condition imposed while granting bail has been breached. Considering the language of section 439(2) of Cr.P.C., it can be gathered that the power for cancellation of bail can be exercised suo motu by the High Court. Reference to the observations of the Supreme Court of India in the matter of ***R. Rathinam Vs. State and others 2000(1) Crimes 211(SC)*** can be given at this stage, wherein, it is observed in para. 7 and 8 as under :-

“7. The frame of the sub-section indicates that it is a power conferred on the said Courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a public prosecutor moves for it by a petition.

8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court.”

Therefore, the first objection raised on behalf of the respondent/accused may not survive if the court suo motu considers it expedient to cancel the bail on account of breach of condition imposed on the accused while releasing him on bail.

5. Now coming to the contentions in the application seeking cancellation of bail, it can be observed that accused was allegedly present in the Jalna town on 15th March 2023, so also 17th April 2023. The perusal of the Roznama in the trial before the Session court, it can be observed that date of hearing was fixed before the Sessions Court on 15th March 2023. Obviously presence of the applicant in Jalna town cannot be treated as breach of condition. So far as presence of the applicant on 17th April 2023 is concerned, it is alleged that he presented a suit. There is allegation that the applicant was present personally in the court, however, no document in respect of such contention is filed. The learned counsel for the applicant relies upon copy of NCR No. 304 of 2023 which is lodged at the instance of the applicants who are unconcerned with the present criminal proceeding. In that view of the matter this court do not find any reason to suo motu cancel the bail granted to the applicant. Application stands rejected.

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[S.G. CHAPALGAONKAR]
JUDGE

grt/-