



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 3873 OF 2023
IN BA/104/2022**

Vasant S/o. Rameshwar Chavan,
Age: 52 years, Occ: Agril,
R/o: Khed, Ta. & Dist. Osmanabad.

..Applicant

Versus

1. Amit S/o. Mohanrao Patil,
Age: 35 years, Occ.: Service,
In Police Department, Osmanabad,
R/o. Behind Chhayadeep Lawns,
Osmanabad.

2. The State of Maharashtra,
Through Dhoki Police Station,
Ta. & Dist. Osmanabad.

..Respondents

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Mr. S. T. Veer, Advocate for Applicant.
Mr. M. B. Kolpe, Advocate for Respondent No.1.
Mr. P. S. Patil, APP for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON :- 21st FEBRUARY 2024.

PRONOUNCED ON :- 26th FEBRUARY 2024.

ORDER:-

1. The applicant/original complainant approaches this Court with following prayer:

“B. The order dated 20.09.2023 passed by this Hon’ble Court to the extent of partly relaxing the condition no.2 dated 21.02.2022 imposed by this Hon’ble Court in Bail Application No.104/2022 may kindly be confirmed and permitting the accused Amit Mohan Patil to visit his land for cultivation as and when required and for making entry in the said village Bavi and Khed for that purpose may kindly be set aside and earlier condition that, strictly he should not enter in village Bavi and Khed till the conclusion of trial may kindly be confirmed for the ends of justice.”

2. The respondent/original accused no.1 in Crime No.288/2021 has been released on bail vide order dated 21.02.2022. While releasing him, the condition was imposed that he shall not enter village Bavi and

village Khed till conclusion of the trial. However, vide order dated 20.09.2023 passed in Criminal Application No.3190/2023 such condition was relaxed and the he was permitted to visit his land for cultivation as and when required. However, the restriction on his entry in village Bavi and village Khed was maintained.

3. Mr. Veer, learned Advocate appearing for the applicant submits that the order dated 20.09.2023 thereby relaxing condition is passed without hearing the applicant/complainant. He would submit that when respondent/accused was released vide order dated 21.02.2022, the complainant was heard. After considering submissions advanced on behalf of respective parties, the specific condition was imposed to not to enter in village Bavi and village Khed till conclusion of the trial. However, Criminal Application No.3190/2023 was filed before this Court seeking relaxation of the condition without adding complainant as party. Consequently, the said application came to be allowed and condition has been relaxed thereby permitting the respondent/accused to enter in his land for cultivation. Mr. Veer, learned Advocate would further submit that false representation was made before this Court that there is no other person to cultivate the land. In fact, father of the respondent/accused is cultivating the land with the aid of other persons. He would further submit that in the interest of fair trial it is necessary to restore the condition and restrict the respondent/accused from entering into the village Bavi and village Khed.

4. Mr. Kolpe, learned Advocate appearing for respondent/accused contends that this Court relaxed condition after taking into account all the relevant aspects. Complainant is not necessary party, since it is a State case based on FIR. The respondent/accused is scrupulously adhering to the condition of the bail.

The application seeks review of the earlier order, which is not permissible under law.

5. Having considered submissions advanced, apparently the respondent/accused was released on bail vide order dated 21.02.2022 passed in Bail Application No.104/2022. The condition was imposed that he shall not enter into village Bavi and village Khed till conclusion of the trial. Thereafter, the respondent/accused filed Criminal Application No.3190/2023 seeking relaxation of the condition. This Court after considering the fact that the father of the respondent/accused was not in a position to cultivate the land, granted relaxation of the condition to the extent that the respondent/accused can visit his land for cultivation as and when required. However, prevention to enter in village Bavi and village Khed was maintained.

6. Pertinently, the case is based on FIR. The learned APP represented the State and after hearing the respective parties, Criminal Application No.3190/2023 was partly allowed. The absence of the complainant is not material in such circumstances.

7. The learned APP on instructions confirms that after passing order dated 20.09.2023 thereby relaxing the condition, there are no reports regarding breach of condition. Consequently, no ground is made out to recall the order dated 20.09.2023 passed in Criminal Application No.3190/2023. Further as rightly pointed out by Mr. Kolpe there is no provision under Criminal Procedure Code for review or recall order passed by this court in criminal application.

8. Application sans merit hence stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE