Neutral Citation No. - 2023:AHC:228841

Court No. - 78

Case :- APPLICATION U/S 482 No. - 41437 of 2023
Applicant :- Vaibhav Sharma
Opposite Party :- Central Bureau Of Investigation
Counsel for Applicant :- Nipun Singh
Counsel for Opposite Party :- Sanjay Kumar Yadav

Hon'ble Raj Beer Singh,J.

1. Rejoinder affidavit filed today is taken on record.

2. Heard Sri Nipun Singh, learned counsel for the applicant and Sri Gyan Prakash, learned Senior Advocate/Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I and perused the record.

3. The applicant is accused in Case Crime No. RC2172017A0010, under Section - 120-B I.P.C. read with Section - 8 of Prevention of Corruption Act, 1988 and Section - 8 of Prevention of Corruption, 1988 registered at Police Station - SPE/CBI/ACU-V/New Delhi, which is pending before the Court of Special Judge, (P.C. Act/CBI), Ghaziabad. The applicant was granted bail by this court *vide* order dated 26.04.2018, passed in Criminal Misc. Bail Application No. 12462 of 2018 subject to following conditions :-

> *"(i) The applicant shall surrender his passport with the trial judge during pendency of the trial;*
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> *(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.*
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> *(iii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.*
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> *(iv) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.*
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> *(v) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of*

> *the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law."*

4. In the present application under section 482 CrPC, the applicant seeks deletion of above referred first condition that applicant shall surrender his passport with the trial judge and release of his passport.

5. Learned counsel for the applicant submitted that the aforesaid case is pending since 2018 and during pendency of case, the applicant-accused has already visited abroad for two times with the permission of trial court but every time he has to seek release of his passport for going abroad and after travelling he is required to deposit the same with trial court, which causes unnecessary hardship to him. It was further submitted that the applicant has received an invitation from Perry Quality & Performance in the second half of December, 2023 to visit United Kingdom. The case would take sufficient long time in disposal and that the applicant-accused is often required to visit abroad to pursue his business pursuits, hence the aforesaid condition that *"The applicant shall surrender his passport with the trial judge during pendency of the trial;"* may be dispensed with, so that the applicant's business interest may not be affected.

6. Learned counsel for the applicant submitted that the instant application under Section - 482 Cr.P.C. for seeking prayer to waive the said condition is not hit by the provisions of Section - 362 Cr.P.C. and in this connection, learned counsel for the applicant has referred case of **Jagdish Arora vs. Union India** (MCRC NO.4923 of 2022), decided by the Division Bench of Madhya Pradesh High Court on 01.04.2022, wherein in the similar facts such condition was waived by the High Court. It was also submitted that it is case of no evidence and in this connection learned counsel has referred bail order of applicant, wherein it was observed that the prosecuting agency could not dispute that there is no evidence to indicate involvement of any public servant or government servant on whose behalf the applicant demanded and accepted money. It was submitted that in view of aforesaid facts, the passport of the

applicant-accused may be released during pendency of the said case by modifying the said condition.

7. Sri Gyan Prakash, learned Senior Advocate/ Deputy Solicitor General of India along with Sri Sanjay Kumar Yadav, learned counsel for the C.B.I submitted that the instant application under Section - 482 Cr.P.C. is not maintainable. It was submitted that once this Court has granted bail subject to conditions, this Court has no power to change the conditions of bail as it would be hit by the provisions of Section - 362 Cr.P.C. In this connection, Sri Gyan Prakash, learned Senior Advocate/ Deputy Solicitor General of India has referred the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa and Others,** reported in **(2001) 1 SCC 169** and **State of Madhya Pradesh vs. Man Singh**, reported in **AIR 2019 Supreme Court 5622**. It was further submitted that there is no urgency on the part of applicant to visit United Kingdom. In the same case, a separate application has been moved on behalf of co-accused Vinod Kumar Sharma, who is father of the applicant, and the grounds taken in that application for visiting abroad is nearly same, hence, the said claim of applicant for visiting abroad is not bonafide. There is every likelihood that he may flee out of country and would not be available for trial. The applicant has been charge-sheeted on the basis of evidence collected during investigation. The applicant has entered into criminal conspiracy with other co-accused persons and during trap, Rs. 50 lacs were recovered. If the alleged condition is waived or modified, as sought by the applicant, he may flee from justice. Regarding facts of the matter, it was submitted that there are 12 telephonic calls between the applicant, co-accused Vinod Kumar Sharma and Gaurav Saxena within a period of two days and during the same period, 53 calls were exchanged between applicant and Kunwar Nishant Singh and in those calls they have discussed about the issue of Medical College of co-accused Nishant. Applicant and co-accused Nishant Singh were caught red handed while they were accepting/delivering the illegal gratification of Rs. 50 lacs. The

applicant has not submitted any record viz itinerary of his proposed travel except a copy of letter shown received from Perry Quality & Performance and it may be tactic to flee from the country. Further, the applicant may give advice to the said firm through online/video conferencing and there is no need to visit in person for the said purpose. It was submitted that in view of these facts and circumstances, the instant application under Section - 482 Cr.P.C. is not maintainable.

8. I have considered the rival submissions and perused the record.

9. The perusal of record shows that the applicant was granted bail in the aforesaid case by this Court vide order dated 26.04.2018 and following order was passed :

> "Heard Shri Anurag Khanna, learned Senior Counsel with Sri Amitabh Singh, learned counsel for the applicant and Shri Gyan Prakash, learned Assistant Solicitor General of India appearing for the C.B.I.
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> This is second bail application. The earlier bail application was rejected by order dated 15 December 2017 passed in Criminal Misc. Bail Application No. 45906 of 2017 along with connected matters.
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> This bail application has been filed on behalf of the applicant involved in FIR No. RC2172017A0010, under Section 120B IPC read with Section 8 of Prevention of Corruption Act, 1988 and Section 8 of Prevention of Corruption Act, 1988, Police Station SPE/CBI/ACU-V/New Delhi.
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> It is urged on behalf of the applicant that in the meantime, CBI has filed supplementary charge sheet dated 5 March 2018 under Section 173(8) of Cr.P.C., wherein, it has been categorically stated that no evidence came on record during investigation that the accused attempted to contact any public servant in the Ministry or any other government servant with regard to the removal of debarment of World Medical College of Medical Science and Research and Hospital, Jhajjar, Haryana. Further, no evidence is available on record with regard to the involvement of any public servant or government servant on whose behalf applicant demanded and accepted the money. It is contended that on the basis of supplementary charge sheet, learned Special Judge (CBI) by order dated 14 March 2018 discharged Smt. Ritu Singh, mother of Kunwar Nishant Singh. However, in respect of the applicant and other co-accused, the case under Section 120B IPC read with Section 8 of Prevention of Corruption Act has been said to be made out.
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> In this back drop, the learned counsel submits that applicant is in jail since 4 August 2017, he has no criminal background or antecedent and it is, further, contended that the ingredients of offence under Section 8 of Prevention of Corruption Act is not made out as is evident from the supplementary charge sheet. There is no evidence in the charge sheet to indicate that applicant had any knowledge of or any conversation with Kunwar Nishant Singh. Applicant is

throughout cooperating with the Investigating Agency and there is no possibility of the applicant influencing or tampering with any evidence or witness.

Learned A.S.G.I. does not dispute that the supplementary charge sheet clearly states that there is no evidence to indicate involvement of any public servant or government servant on whose behalf the applicant demanded and accepted money, he submits that on raid, one crore in cash was recovered. In the counter affidavit filed by the CBI, it is nowhere contended or stated that on the applicant being enlarged on bail, there is likelihood of his tampering or adversely influencing any evidence or witness. The evidence against the applicant is primarily in electronic form and the witnesses are beyond influence.

Having due regard to the facts and circumstances of the case as recorded above, in my view, it is a fit case for bail.

Let the applicant-Vaibhav Sharma be released on bail in the above case on his furnishing a personal bond of Rs.15/- lakh and two solvent sureties each in the like amount to the satisfaction of Court concerned subject to following additional conditions, which are being imposed in the interest of justice:-

(i) The applicant shall surrender his passport with the trial judge during pendency of the trial;

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

However, It is made clear that in case the applicant indulges in intimidating or threatening any witness, the CBI would be at liberty to file an application for cancellation of bail."

10. The grievance of the applicant is that after grant of bail he has travelled abroad for two times with permission of trial court after release of passport but for each time he has to seek release of passport and after travelling to deposit the same with the trial court, whereas the applicant is

often required to travel abroad for his business pursuits. So far this contention of prosecution is concerned that applicant may flee from justice, it could not be disputed that earlier applicant has already visited abroad for two times with the permission of the trial court and there is no such case that applicant has violated any term and condition of the order of trial court. The case is pending since the year, 2018 and it is likely to take several years. In case of **Jagdish Arora** (supra), relied by learned counsel for the applicant, a similar issue was involved before the Hon'ble Madhya Pradesh High Court. In that matter, the High Court has passed order dated 18.08.2020 granting bail to petitioner subject to same condition and the petitioner has sought deletion of said condition for travelling abroad in furtherance of their business and professional pursuit and it was held as under :

> "6. A bare perusal of aforesaid provision, in particular Section 439(1) (b) of Cri.P.C. it is vivid that High Court is vested with the power to MCRC. No.4923 of 2022 - 5 - modify any condition imposed by a Magistrate while passing an order of bail u/S.437 of Cr.P.C. whereas Section 439(1)(a) of Cr.P.C. empowers the High Court to release a person on bail but when doing so in connection with offences punishable with imprisonment of seven years or more under Chapter VI, XVI and XVII of IPC or of abetment or conspiracy or attempt to commit such offences, then this Court in its discretion may impose any condition considered necessary in the attending facts and circumstances.
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> 6.1 In exercise of power u/S.439(1)(a) of Cr.P.C. the Coordinate Bench of this Court while passing order dated 18.08.2020 in MCRC. No.24219/2020 granted bail to petitioners inter alia subject to condition that petitioners shall submit their passports before the Trial Court and shall not leave India without permission of this Court. The said bail order was made subject to said condition after considering the gravity of offence and other relevant circumstances.
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> 7. The petitioners seek deletion of said condition for travelling abroad in furtherance of their business and professional pursuits as contended by them. It is not disputed that travelling abroad is one of the concomitants of right to liberty enshrined Article 21 of the Constitution subject to compliance of relevant laws which regulates such travel.
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> 8. The aforesaid fundamental right of personal liberty under Article 21 of the Constitution can admittedly be denied by procedure established MCRC. No.4923 of 2022 - 6 - by law. It is trite law that concept of bail flows out of fundamental right of personal liberty. The procedure for granting and denying bail or subjecting order of bail to conditions is governed by procedure statutorily laid down by Cr.P.C. and through judicial pronouncements rendered by Apex Court, which are law of the land under Article 141 of Constitution.

8.1 It is also settled that grant of bail is a rule whereas its denial is an exception. Once bail is granted subject to certain conditions by the High Court u/S.439(1)(a) of Cr.P.C. as is the case herein, the power to modify or delete the conditions subject to which bail is granted, is also inherently vested with the High Court.

8.2 The power of amending or deleting any condition, subject to which bail order u/S.439(1)(a) of Cr.P.C. is granted, is however not expressly provided in Cr.P.C. Thus, the only course available for seeking and granting modification/ deletion of such a condition is by invoking the inherent powers of this Court u/S.482 of Cr.P.C. to ensure the ends of justice.

8.3 Section 482 of Cr.P.C. saves inherent powers of this Court to be exercised inter alia to secure the ends of justice. The ends of justice can only be secured when in absence of any express provision this Court is not prevented from deleting/modifying any of the conditions subject to which an order of bail u/S.439(1)(a) of Cr.P.C. is passed. If such inherent powers are otherwise not available to this Court u/S.482 of Cr.P.C., then MCRC. No.4923 of 2022 - 7 - object of insertion of Section 482 of Cr.P.C. would stand defeated and this Court would be rendered a toothless tiger.

9. The Legislature while enacting the Code of Criminal Procedure could never have approved a situation where this superior Court is handicapped to exercise its inherent powers to modify/delete a condition imposed u/S.439(1)(a) of Cr.P.C. despite existence of compelling circumstances merely because of absence of enabling provision in the Cr.P.C.

9.1 The object behind bestowing inherent powers in this Court is to do complete justice and to prevent miscarriage of justice. The inherent powers are saved with this Court to be exercised in such circumstances where cause for doing complete justice or preventing failure of justice exists, but there is no express provision in Cr.P.C. As such Constitutional Courts are saved with such inherent powers to do complete justice without being inhibited or disabled by absence of enabling provision.

10. In view of above discussion, this Court is in respectful disagreement with the Single Bench verdict of Karnataka High Court in the case of Imran Khan (supra).

11. Accordingly, this Court deems it proper to invoke its inherent powers u/ S.482 of Cr.P.C. to substitute condition No.(v) of Para 40 of order dated 18.08.2020 in MCRC. No.24219/2020 to be replaced by following conditions:- MCRC. No.4923 of 2022 - 8 - (1) The petitioners shall file a written undertaking before the Trial Court disclosing the date of departure and return of foreign trip and shall inform the Trial Court at the earliest after returning to India. (2) The petitioners shall also file a similar undertaking before the Ministry of Foreign Affairs and relevant Embassy disclosing the fact of pendency of offence against them with full details and only after such condition is complied with, the petitioners may be allowed to proceed abroad subject to satisfying all other relevant provisions of law. (3) The petitioners shall also furnish additional security within 30 days from today in shape of fixed deposit receipt of Rs.10 lacs each in the Trial Court, which shall stand forfeited in case of default of any of the conditions contained in this order or in the bail bond."

11. In case of **Shyamjibhai Govindbhai Patel @ V State Of Maharashtra** (CRIMINAL APPLICATION NO.1492 OF 2018), decided

on 04.10.2018, the Bombay High Court has changed the bail condition that the accused deposit certain amount and bank guarantee. After considering various judgments it appears that if the accused is able to satisfy the court that he has followed all the bail conditions and cooperated with investigating authorities and during trial, the court may modify or relax the bail conditions. The Gujarat High Court in the case of **IMTIYAZ ABDULLA CHAKKIWALA & 2 Versus STATE OF GUJARAT** (Misc. Appli. No. 4966/2011), decided on 28.04.2011 has released and modified the similar condition. Similarly in **JAYDEVSINH PRATAPSINH ZALA Versus STATE OF GUJARAT;** (R/CR.MA/1305/2015), the accused approached the Hon'ble Gujarat High Court seeking modification of condition stating that he cannot leave State of Gujarat without prior permission of Sessions Judge concerned. The applicant submitted that view of business assignment and necessity to travel outside the State of Gujarat the above condition operates against the interest of the applicant and in the past he had applied either for modification or relaxation of such condition. The court has relaxed the condition and allowed the accused to travel outside of Gujarat while intimating the local police station. It may be observed that the provision for bail should not be used to detain and arrest an accused person; rather, it should be used to guarantee his appearance at the trial and ensure that, if the accused is found guilty, he will be able to face the legal consequences of the crime as it was done. This court has also modified conditions of bail in several matters. The conditions are imposed primarily with a view to ensure availability of the accused during investigation, enquiry or trial and his non-interference with the course of justice. Other conditions which Court may think fit can also be imposed but the purpose of the same is to ensure his presence as and when required and his non-interference with the investigation, enquiry or trial. Thus, from the aforesaid case laws, it is apparent that in appropriate cases the this court is empowered to modify a condition of bail if some hardship or some change

in circumstances has been shown. This Court is in complete agreement with the view expressed by the Division Bench of M.P. in the case of **Jagdish Arora (supra)** that in exercise of powers under Section 482 Cr.P.C., the court is empowered to modify such a condition imposed in bail order. The cases relied by the learned Dy. Solicitor General do not pertain about the issue of modification of conditions of bail. In case of **Hari Singh Mann vs. Harbhajan Singh Bajwa** (supra) the facts were that High Court has passed the order dated 07.01.1999 with direction to the S.S.P. to look into the allegations of petitioner and if some cognizable office was found to have been committed, for registration of case but if allegations were found to be false, to prosecute petitioner under Section - 182 Cr.P.C., but later on the High Court passed the order not to comply the said direction dated 07.01.1999 and it was in view of these facts that the Apex Court held that the Court cannot review its own orders. Similarly, in case of **State of Madhya Pradesh vs. Man Singh** (supra), the High Court in revision had affirmed conviction and sentence was reduced from one year to the period already undergone but thereafter in exercise of power under Section - 482 Cr.P.C. extended benefit to the accused by directing that sentence undergone by him would not effect his service career and in that regard the Hon'ble Apex Court held that the subsequent order was hit by the provisions of Section - 362 Cr.P.C.. Thus, none of the said case law deals with the issue of modification of bail condition. This court is in complete agreement with the view taken by the Madhya Pradesh high court as well by this court that the Court can modify such condition. In the instant matter, the case is pending before the trial court since 2018 and during pendency of case, the applicant-accused has already visited abroad for two times with the permission of trial court and that the trial of the case would take sufficient long time in disposal and thus a case for modification of said condition in bail order is made out.

12. In view of aforesaid, the condition regarding deposition of passport of applicant before the trial court is altered and it is directed that the passport of applicant shall be released by the trial court to the applicant subject to furnishing a personal bond of Rs. two lakhs, but the applicant shall not leave India without permission of the trial court. While granting such permission, the trial court may impose conditions as it deems fit and proper.

13. The application under Section - 482 Cr.P.C. is disposed of in above terms.

Order Date :- 2.12.2023
S Rawat/Anand

Digitally signed by :-
ANAND VERMA
High Court of Judicature at Allahabad