

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.260 OF 2017
IN
CRIMINAL REVISION APPLICATION NO.138 OF 2015
IN
C.B.I.SPL. CASE NO.42 OF 2014

Rajesh N. Bangawala)...Applicant

V/s.
C.B.I.B.S. & F.C.)...Respondent

Ms. Anjali Patil, Advocate for the Applicant.

Mr. Milind Sawant, Advocate for C.B.I.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 5th May, 2017.

P.C. :

Though prayer made in this application is to the effect that the applicant-original accused may be allowed to leave India without prior permission of the Court till disposal of the case, the learned advocate for the applicant-accused at the outset itself made it clear that she is only pressing clarification of the order passed by this Court on 3.2.2015 (**Coram: M.L.Tahaliyani J.**)

while releasing the applicant- original accused on bail.

2 Heard the learned advocate appearing for the applicant-original accused. She drew my attention to the operative portion of the order dated 3.2.2015 (Page 10-A) wherein it is recorded in paragraph 2 thereof that for the reasons to be recorded separately, this Court is passing the following order. It is apposite to incorporate the entire text of the operative order found in paragraph 2 which contains in all 7 clauses. They read thus:

“(i) The writ petition is allowed.

(ii) The order passed by the learned Special Judge (CBI) Greater Mumbai in Bail Application No.1 of 2015 in remand case No.RC/BSM/2014/E0002, is set aside.

(iii) The petitioner be released on bail in the sum of Rs.5,00,000/- (Rupees Five Lac) with one solvent surety in the like amount or cash deposit of Rs.7,00,000/- (Rupees Seven Lac) in lieu of solvent surety of Rs.5,00,000/- (Rupees Five Lac).

(iv) The petitioner shall attend the office of the investigating officer at Mumbai once in a fortnight i.e. on 1st and 15th day of every month, until further orders of the Court and also as and when required by the CBI on 24 hours prior notice.

(v) *The petitioner shall surrender his passport to the investigating officer immediately after his release from the prison.*

(vi) **The petitioner shall not leave India without prior permission of the trial Court.**
(emphasis supplied)

3 After pointing out this order dated 3.2.2015, the learned advocate for the applicant-original accused drew my attention to another copy of the same order of the same date i.e. 3.2.2015 wherein after giving detailed reasons, this Court has released the applicant-original accused on bail. This order is at record Page 5 of the application and the text of the operative order found at the end of the paragraph 8 of the judgment and order dated 3.2.2015 reads thus:

“i) The writ petition is allowed.

ii) The order passed by the learned Special Judge (CBI) Greater Mumbai in Bail Application No.1 of 2015 in remand case No.RC/BSM/2014/E0002, is set aside.

iii) The petitioner be released on bail in the sum of Rs.5,00,000/- (Rupees Five Lac) with one solvent surety in the like amount or cash deposit of Rs.7,00,000/- (Rupees Seven Lac) in lieu of solvent surety of Rs.5,00,000/- (Rupees Five Lac).

iv) The petitioner shall attend the office of the investigating officer at Mumbai once in a fortnight i.e. on 1st and 15th day of every month, until further orders of the Court and also as and when required by the CBI on 24 hours prior notice.

v) The petitioner shall surrender his passport to the investigating officer immediately after his release from the prison.”

4 By pointing out both these orders of the same date in the same matter, the learned advocate for the applicant-original accused argued that the order dated 3.2.2015 annexed at page 5 to this application which finally decides the matter with reasons needs to be held as governing the field and Condition No.(vi) about not leaving India without prior permission of the Trial Court should not be read as condition for release of the applicant on bail.

5 I have heard the learned advocate appearing for respondent no.1-CBI. He argued that the order dated 3.2.2015 found at Page 5 of the instant application which is giving detailed reasons for releasing the applicant on bail, while disposing the matter came to be uploaded after a period of about one and half

month from 3.2.2015 whereas the very same order dated 3.2.2015 in the same matter which only includes operative portion of the order (Page 10A) came to be uploaded immediately after deciding the matter. The learned advocate for the CBI further argued that the applicant-original accused was found to be trying to travel out of India without any permission from trial Court in pursuance to clause (vi) of the order dated 3.2.2015 (Page 10A) and, therefore, in pursuant to the look-out notice, he was detained at Delhi Airport. The learned advocate for the CBI further argued that thereafter the CBI has filed an application for cancellation of bail granted to the applicant-original accused before the learned Trial Court and the learned Trial Court has fixed the matter for hearing in the next week. The learned advocate for the applicant-original accused further argued that defrauded amount of about Rs.40 Millions is lying in the Hong Kong Bank.

6 I have carefully considered the rival submissions. It is seen that the Revision Petition bearing No.138 of 2015 is yet to be heard for 'Admission'. It is also seen that on 17.4.2015, this Court had granted ad-interim stay to the operation of Clause (2) of the

impugned order dated 6.2.2015 passed by the learned Trial Court below Exhibits 20 and 21. It is also seen that the said order is being continued from time to time and ultimately on 24.6.2015, this Court has recorded the statement of the learned advocate for the applicant-original accused to the effect that the applicant-original accused will not withdraw any amount from the accounts in the name of M/s. Design Point Tradelink Ltd, Hong Kong and its associated Accounts. It is further seen that thereafter also the ad-interim relief granted earlier has been continued by this Court from time to time. Considering the checkered history of adjournments in the Revision Petition wherein ad-interim order is still operating against the CBI, the Revision Petition needs to be kept for 'Admission' pre-emptorily.

7 Now let us come to the controversy in question. It is seen that while disposing the matter on 3.2.2015, it is seen that this Court (**Coram: M.L.Tahaliyani, J.**) has initially dictated operative portion of the order which was containing Clause (vi) to the effect that '*The Petitioner shall not leave India without prior permission of the trial Court.*' The reasoned order followed

which is not containing this clause.

8 Bare perusal of both orders of the very same date in the same matter goes to show that one order contains the clause that the applicant-original accused shall not leave India without prior permission of the Trial Court as one of the conditions of bail whereas another order of the same date in the same matter which is supported by the reasons does not contain this clause to the effect that the applicant-original accused shall not leave India without prior permission of the Trial Court. It is thus clear that two orders of the very same date in the same matter on the same subject passed by the same Hon'ble Judge of this Court are holding field which are containing same clauses except Clause No. (vi) in the reasoned order. The judgment and order dated 3.2.2015 (Page 5 of this application) is a reasoned order by which the matter came to be disposed of by directing release of the applicant-original accused on bail on certain conditions and while passing this reasoned order, this Court had not included the condition that the '*applicant-original accused shall not leave India without prior permission of the Trial Court*'. Broadly speaking, it is

a principle of criminal jurisprudence that the view which is favourable to the accused is required to be accepted. Even otherwise, it is trite that the order of the Court should not be prejudicial to anyone. Valuable reference to this proposition can be had from the ruling of the Hon'ble Apex Court in the matter of **S. Nagaraj and Others v State of Karnataka and Anr.** reported in **1993 Supplementary 4 SCC 599**. In this view of the matter, I am of the considered view that the order supporting the operative order with reasons found annexed at Page 5 to the instant application must be held to be holding the field so far as the question of releasing the applicant-original accused on bail is concerned and in the operative portion of this order, the condition that the applicant-original accused shall not leave India without prior permission of the Trial Court is not finding its place. With this clarification, the present application is disposed of.

9 Parties to act upon an authenticated copy of this order.

10 List the Revision Petition for 'Admission' 13.6.2017.

(A. M. BADAR, J.)