

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION (ST) NO.559 OF 2017

Rajesh Natwarlal Bangawala ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Ms.Anjali Patil with Mr.Arun Rajput, Advocate for the Applicant.

Mr.Limosin/A, Senior P.P. for the Respondent/CBI.

Mr.V.V.Gangurde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 12th OCTOBER 2017.

P.C. :

1 Heard. Rule. Heard finally with consent of the parties. By this revision petition, revision petitioner/original accused Rajesh Natwarlal Bangawala is challenging the Order dated 27/04/2017 passed by the learned Special Judge for CBI Cases on an application Exhibit 124 filed in CBI Special Case No.42 of 2014 along with connected matters. The application at Exhibit 124 is an application moved by the prosecuting agency/CBI for cancellation of bail of the present petitioner/accused Rajesh Natwarlal Bangawala.

2 Heard the learned Advocate appearing for the revision petitioner/original accused. She drew my attention to two Orders of the same date i.e. 03/02/2015 passed by this Court in Criminal Writ Petition No.112 of 2015, one of which is just operative Order, whereas the another one which is the entire text of the Order including the reasonings part as well as the operative part of the Order. The learned Advocate argued that in the complete Order containing reasons as well as operative portion thereof dated 03/02/2015 in Criminal Writ Petition No.112 of 2015, no restriction on the revision petitioner to leave India without prior permission of the learned trial Court has been imposed by this court. My attention is further drawn to the Order dated 05/05/2017 passed by this Court clarifying earlier two Orders dated 03/02/2015 passed in Criminal Writ Petition No.112 of 2015 by holding that the Judgment and Order dated 3rd February 2015 will prevail over the operative portion of the Order. It is argued that by three Orders of different dates, the learned Special Judge of the CBI had directed for return of passport to the revision petitioner. Still, he was apprehended and then the prosecuting agency has moved an application for cancellation of his bail on which the impugned Order is passed. The said Order is totally perverse and illegal in the wake of earlier Orders of this Court.

3 I heard the learned Advocate appearing for the CBI. He vehemently argued that the attempt to go to foreign country

i.e. Bangkok was made by the revision petitioner/original accused on 16/04/2017 i.e. the day on which one Order of this Court restricting to his journey to foreign country was holding the field. The learned Advocate for the CBI further argued that the revision petitioner/accused has given in writing to the Emigration Authority that he is permitted to travel abroad from the Court when there was no such permission. It is further argued that as on 16/04/2017, the position was not clear as two Orders from same date in the very same matter passed by this Court were holding the field. Those were reflecting different directions, and therefore, the prosecuting agency was constrained to apply for cancellation of bail granted to the revision petitioner/accused vide application at Exhibit 124.

4 I have carefully considered the submissions so advanced and also perused the Record and Proceedings made available.

5 The Criminal Writ Petition bearing No.112 of 2015 filed by the present revision petitioner/accused came to be decided by this Court on 3rd February 2015. The same was allowed with a direction that the revision petitioner/accused be released on bail. On 3rd February 2015, only operative portion of that Order came to be uploaded. It was containing a condition that the revision petitioner shall not leave India without prior permission of the

trial Court. Subsequently, the entire text i.e. judgment containing reasons and the operative order in the said Criminal Writ Petition came to be uploaded. In the operative portion of the Judgment and Order, this condition was not appearing. The revision petitioner/accused then applied for clarification and vide Order dated 05/05/2017, this Court has clarified the position by removing the anomaly of conflicting directions. It is held by this Court by an Order dated 05/05/2017 thus :

“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 findings its place.”

It is thus clear that this Court has clarified that the Judgment and Order of this Court dated 03/02/2015 passed in Criminal Writ Petition No.112 of 2015 should not be construed so as to include the condition that the petitioner shall not leave India without prior permission of the learned trial Court.

6 On 21/04/2015, the learned trial Court has decided an application at Exhibit 27 moved in CBI Special Case No.42 of 2014 at the instance of the present revision petitioner/accused and had

directed the CBI to return the passport of the present revision petitioner forthwith, if the investigation in all respect is over. This is seen from Clause (3) of the operative order passed below Exhibit 27. Again on 08/05/2015, vide Order below Exhibit 31 – an application moved by the present revision petitioner/accused in the said Special Case No.42 of 2014, the learned trial Court had directed the investigating agency to return the passport of the revision petitioner/accused on completion of all the purposes of the investigation. This is clear from Clause (2) of the said Order dated 08/05/2015. The learned trial Court was again on 28/03/2017, required to pass an Order below Exhibit 120 – an application moved on behalf of the present revision petitioner/accused directing the *sheristedar* of the said Court to deliver original passport to the revision petitioner/accused. This is clear from Clause (3) of the operative portion of the Order dated 29/03/2017 passed in CBI Special Case No.42 of 2014.

7 In the light of this position emerging on record, the impugned Order dated 27/04/2017 passed below Exhibit 124 will have to be viewed. From time to time several Orders were passed in the matter. This Court has already clarified that the Order dated 03/02/2015 passed in Criminal Writ Petition No.112 of 2015 should not be construed so as to restrain the petitioner from leaving India without prior permission of the trial Court. Then on three occasion in past, the learned trial Court had directed return

of the passport to the revision petitioner/accused. In the light of these judicial Orders, the impugned Order dated 27/04/2017 is obviously contrary to the record and therefore perverse. It is bereft of reasons. When this Court had not directed the revision petitioner/accused not to leave India, the learned trial Court, at an interim stage, is not justified in passing the Order on 27/04/2017 restricting the liberty of the revision petitioner/accused, and that too without recording the reasons for the same and without considering the orders passed in past dealing the subject matter.

8 In the light of foregoing discussion, the revision petition is allowed. The impugned Order dated 27/04/2017 passed below Exhibit 124 is quashed and set aside. The learned trial Court is directed to decide the application at Exhibit 124 according to the law.

9 The revision petition stands disposed of accordingly.

(A.M.BADAR J.)