

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1051 OF 2019
(FOR MODIFICATION)**

Shabbir Noor Mohammed Patel	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
INTERIM APPLICATION NO. 1 OF 2019
(FOR INTERVENTION)
IN
CRIMINAL APPLICATION NO. 1051 OF 2019**

Shadaab Patel	...Applicant/Intervener
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IN THE MATTER OF :

Shabbir Noor Mohammed Patel	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Kevic Setalwad, Sr. Advocate a/w Mr. Akhilesh Dubey, Mr. Vagish Mishra, Mr. Awais Ahmed, Mr. Uttam Dubey, Mr. S. Rajput i/b Law Counsellors for the Applicant in APL/1051/2019

Mr. Jayant Joseph Bardeskar for the Applicant/Intervener

Ms. Veera Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 27th SEPTEMBER 2019

P.C. :

1	Heard learned counsel for the parties.
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2 By the application, the applicant seeks relaxation/modification of condition No. (6) of the order dated 20th January 2017 passed in Anticipatory Bail Application No. 1838 of 2016 by the learned Sessions Judge, Mumbai, which was continued by the learned 69th Metropolitan Magistrate, Mazgaon Court, Sewree by its order dated 10th April 2019 passed below Exhibit 5 in CC No. 536/PW/2019.

3 Perused the papers. The applicant is the father of intervener-Shadaab Patel, who has filed the aforesaid intervention application, being Intervention Application No. 1 of 2019. The intervener/complainant is the son from the first marriage of the applicant. It appears that the applicant, is now married to one Shehnaaz Shabbir Patel, who lives in Dubai and they have a minor son, aged 10 years, who is studying in Dubai. There are several litigation pending between the parties, however, this Court is not concerned with any of the disputes in the present application. The applicant is aggrieved by the order dated 20th January 2017 passed by the learned Additional Sessions Judge, Mumbai in Anticipatory Bail Application No. 1838 of 2016 only to the extent of clause (6) of the said order and continuation of the same by the learned Metropolitan

Magistrate by order dated 10th April 2019. The said clause (6) of para 13 reads as under :

“6. Applicant shall not leave India without prior permission of the Court.”

4 Vide order dated 10th April 2019, the learned Metropolitan Magistrate, Mazgaon, passed the following order :

“Surety is continued as per compliance of A.B.”

5 The said orders were passed when the investigation was still in progress and charge-sheet was not filed. On 10th April 2019, charge-sheet was filed as against the applicant in the Court of the Metropolitan Magistrate.

6 The applicant filed an application in the Court of the learned 69th Metropolitan Magistrate, Mazgaon Court, Sewree, dated 15th June 2019 seeking modification of clause (6) of the order dated 20th January 2017 passed by the learned Sessions Judge and continuation thereof, by the learned Magistrate vide order dated 10th April 2019.

7 The applicant also filed an application in this Court being Criminal Application No. 324 of 2018 seeking modification of clause (6) of the order dated 20th January 2017 and continuation thereof by the learned Magistrate vide order dated 20th January 2017. This Court, vide order dated 14th June 2019 granted liberty to the applicant to file a fresh application before the appropriate Court, in view of the change of circumstance i.e. filing of charge-sheet on 10th April 2019, and for seeking modification/relaxation of clause (6) of the order dated 20th January 2017 passed by the learned Sessions Judge and continuation thereof by the learned Magistrate. The learned Sessions Judge was directed to decide the said application expeditiously. Pursuant to the liberty granted, the applicant filed an application being Exhibit 12 in the Court of the Metropolitan Magistrate, seeking modification of the said condition i.e. clause (6) of the order dated 20th January 2017 and continuation thereof by the learned Magistrate. The learned Metropolitan Magistrate, vide its order dated 26th June 2019 rejected the said application. Hence, the aforesaid application.

8 Learned senior counsel for the applicant submitted that the applicant is required to seek permission every time he travels to

Dubai, causing him tremendous hardships. He submits that the applicant is required to travel to Dubai every week for a period of few days, as his family resides in Dubai and is also required to be in Mumbai in connection with his business. He submits that the applicant has been seeking permission every time since 2017 and that the same is causing him tremendous hardships.

9 Learned senior counsel has tendered an affidavit-cum-undertaking of the applicant. The same is taken on record and marked 'X' for identification. In the said undertaking, the applicant has undertaken in Para 12 to inform the concerned Investigating Officer at Nagpada Police Station, the entire details of his itinerary i.e. date, travel details, the place of his stay and his local phone number, whenever he travels to Dubai. He has also undertaken to remain present before the Investigating Officer as and when required. The applicant has also undertaken to ensure that no adjournments would be sought before the trial Court on the ground that the applicant is not in India. He has also undertaken to remain personally present before the trial Court, whenever his presence is required.

10 Learned counsel for the intervener/complainant

vehemently opposes the application.

11 It is not in dispute that the applicant has been taking permissions of the trial Court as directed by clause (6) of the order dated 20th January 2017, before leaving India. The applicant has abided by the orders passed by the trial Court. It appears that the applicant's family lives in Dubai and that the applicant is required to travel every week to Dubai. The applicant also has residence in Mumbai and that he is required to attend to his business in Mumbai. Charge-sheet has been filed in the said case in April 2019.

12 Considering the aforesaid and in particular, the affidavit-cum-undertaking tendered by the applicant, the application is allowed and Clause (6) of the order dated 20th January 2017 passed by the learned Additional Sessions Judge, Mumbai and continued by the learned Magistrate vide order dated 10th April 2019 is modified/relaxed on the following terms and conditions :

ORDER

- (i) The applicant now need not seek permission of the trial Court before leaving India;

(ii) The applicant shall, however, before leaving India, hand over his itinerary to the concerned Officer of the Nagpada Police Station giving his travel details, place, where he intends to stay and telephone numbers and the period, for which, he intends to stay abroad;

(iii) The applicant shall personally remain present before the trial Court as and when directed by the trial Court.

13 The application No. 1051/2019 is allowed in the aforesaid terms and is accordingly disposed of.

14 In view of the above order, intervention application being Interim Application No. 1 of 2019 does not survive. The same is also disposed of.

15 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.