

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 404 OF 2021
IN
CRIMINAL APPLICATION NO. 6723 OF 2016**

Nitin Gitaram Kapse ... **Applicant**
Age 51 years, Occu: Agri & Business
R/o Pimplas Tq. Rahata
Dist. Ahmednagar

VERSUS

The State of Maharashtra, ... **Respondents**
Through Police Station Officer,
Rahata Police Station, Dist. Ahmednagar.

Mr S. S. Chapalgaonkar, Advocate for the applicant,
Mr. V. S. Badakh, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 26th August, 2021
PRONOUNCED ON : 6th September, 2021.

ORDER:

1. The present application seeks relaxation of Condition (ii) of the order dated 21st December 2016 passed by this Court in Criminal Application No. 6723/2016 whereby the applicant was directed that he shall not enter within the limits of Rahata Taluka, District Ahmednagar till completion of the trial.

2. Heard Mr. Chapalgaonkar, learned counsel for the applicant and Mr. V. S. Badakh, learned A.P.P. I have gone through the order

dated 21.12.2016 passed by this Court (Coram: A. S. Chandurkar, J.). The applicant was granted regular bail with certain conditions. One of the conditions i.e condition No.(ii) is that applicant shall not enter the limits of Rahata Taluka, District Ahmednagar till completion of the trial.

3. It appears from the submissions of learned counsel for the applicant that earlier also the applicant had moved an application for relaxation of the condition but the same came to be rejected on the ground that the trial was on the verge of completion and even had reached at the stage of recording of statements under section 313 Cr.P.C. of the accused, but somehow still the trial is not concluded. Moreover, according to learned counsel, by order dated 24.02.2020, learned Additional Sessions Judge, Kopargaon, who is seized with Sessions case (SC No.67/2016), has directed that record and proceedings in RCC No. 78/2020 pending on the file of learned Judicial Magistrate, First Class, Rahata be called for trial and disposal by his Court. It appears that said RCC No. 78/2020 is arising out of the same incident of which the sessions trial is pending before the learned Additional Sessions Judge, Kopargaon.

4. From the above, one thing is very much clear. As far as Sessions trial pending before learned Additional Sessions Judge is concerned, the same may be on the verge of completion but the fact remains that in view of the order of learned Additional Sessions Judge,

Kopargaon referred herein above, record and proceeding of counter case bearing RCC No.78/2020 pending on the file of learned Judicial Magistrate First Class, Rahata has been summoned with a view to club the same with the Sessions case which is reaching nearly completion. However, as per law, since both the matters have been clubbed, it is desirable that both the matters should be tried one after another and judgment also be pronounced accordingly. Now, since RCC No. 78/2020 has been requisitioned only on 24.02.2020 and the fact that evidence in that case is yet to begin, needless to say, it will take its own time to complete evidence in that matter.

5. The grounds canvassed before me by learned counsel is that recently requisitioned RCC No.78/2020 will consume unpredictable time. Secondly, mother of the applicant, who is 73 years old, is suffering from various diseases. There is nobody in the family to look after her. She requires constant care and medication apart from being the fact that he is also a Karta of the family.

6. In view of new development i.e. clubbing of RCC No.78/2020 alongwith the sessions case pending before learned Additional Sessions Judge, I am also of the view that it will take considerable time before both the cases are taken to their logical conclusion. Although learned A.P.P. has opposed the application by submitting that the investigating officer has his own apprehension of breach of peace if the applicant is

allowed to enter within the limits of Rahata Taluka but the said apprehension has not been supported by any cogent and reliable evidence.

7. Having regard to above facts, I am of the considered opinion that Condition (ii) imposed by this court deserves to be relaxed.

8. In view of above, I pass following order:

O R D E R

Condition (ii) of the order dated 21st December 2016 passed by this Court in Criminal Application No. 6723/2016 stands relaxed and withdrawn. However, it is clarified that remaining conditions shall remain intact.

9. Criminal application stands disposed of.

(V. G. BISHT, J.)

JPCm