

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 92 OF 2021

IN

INTERIM APPLICATION NO. 51 OF 2020

IN

CRIMINAL APPEAL NO. 360 OF 2016

Sachin Bhandudas Kotkar. ..Appellant/Applicant.

Versus

State of Maharashtra. ..Respondent.

WITH

INTERIM APPLICATION NO. 1416 OF 2020

IN

CRIMINAL APPLICATION NO. 1482 OF 2018

IN

CRIMINAL APPEAL NO. 361 OF 2016

Amol Bhandudas Kotkar. ..Appellant/Applicant.

Versus

State of Maharashtra. ..Respondent.

Mr. Aabad Ponda, Senior Counsel with Mr. Nilesh Tribuvan, Mr. Burzin Tribuvan, Ms. Alisha Pinto, Mr. Shreedhar Lad, Mr. Jehan Fulwadiwala i/b Mr. Abhaykumar D. Ostwal for the applicants.

Mr. V. B. Konde-Deshmukh, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : **February 18, 2021.**

P. C. :

1. At the outset, Mr. Ponda, learned senior counsel orally prayed for amendment to the applications. It was submitted by Mr. Ponda that while referring to the status of applicants in the title clause of the applications, permanent

address of the applicants is referred to, whereas the present address of the applicants has remained to be incorporated in the applications. Mr. Ponda, learned senior counsel, thus, prayed for an amendment to the applications by incorporating the present addresses of these applicants in the applications. Oral prayer is allowed. Necessary amendments be carried out during the course of day.

2. Both these applications filed at the instance of the applicants – appellants, are seeking modification of the condition imposed upon the applicants vide order dated 13th January 2020 passed by this Court in Interim Application No.1 of 2020 in Criminal Appeal No. 360 of 2016, restraining the applicants from entering Ahmednagar District during the pendency and till the final disposal decision of appeals.

3. It was submitted before this Court that the applicants have followed the conditions imposed upon the applicants and due to the unforeseen difficulties, i.e., the covid pandemic, business of the applicants has come to a standstill. It was also submitted before this Court that due to declaration of

lock-down, the businesses and enterprises of the applicants were closed down, resulting in rendering many persons jobless. It was also submitted before this Court that applicants are desirous of starting up their closed down businesses again by taking all necessary steps including engaging fresh employees in the enterprises / businesses. Thus, it is submitted by learned senior counsel Mr. Ponda that the modification or the relaxation in the condition would only permit the applicants to help their families financially by starting up businesses / enterprises again. It was also submitted before this Court that applicants – appellants have raised substantial grounds in their appeals and they have every hope of success in appeals.

4. Mr. Ponda, learned senior counsel further submitted that in view of the condition No.6(iii) imposed upon the applicants, the applicants have not entered in Ahmednagar district and to their residential places for a considerable length of time and this deprives the applicants to see their family members in general and particularly their wives and children for a long period. It is also submitted before this Court that the minor children of the applicants are pursuing their education and

it is a genuine and natural desire of the applicants to see their growing children and to provide necessary assistance to the family members in the course of academic activities of their growing children. By our detailed order dated 20th January 2021, learned APP was directed to file an additional affidavit within a stipulated period of two weeks in view of the certain facts stated in earlier affidavit in reply filed before this Court at the instance of prison authorities. Today, learned APP Mr. Konde-Deshmukh invited our attention to the additional affidavit in reply. It is submitted that the applicants have attended before the Registrar, District and Sessions Court, Nashik regularly on the fixed dates and a reference of their non attendance in the earlier affidavit in reply was an act of bonafide mistake and error. It is re-iterated in the report annexed to the affidavit in reply at Exhibit-A that the applicants have attended the officer concerned, and as such there is proper and regular compliance of the condition in respect of the attendance of applicants.

5. Now, considering the grounds raised in the present applications and oral submissions of learned senior counsel Mr. Ponda, we are of the opinion that insofar as the ground of merits

in appeals is concerned, certainly this is not a stage to assess and scrutinize the evidence thoroughly and in-depth so as to make a comment upon the merits of appeals. Insofar as other grounds submitted before this Court is concerned, we find considerable merit in the submissions of learned Senior Advocate and in our opinion, one application can be allowed by making necessary order of relaxation of condition on the ground of visit to the family members and providing necessary assistance to the minor children who are pursuing their studies for a limited period; whereas another application can be allowed by relaxation of condition with a condition to attend the Police Station, periodically.

6. In the light of above, insofar as Applicant-Amol Bhandudas Kotkar is concerned, condition of not entering into Ahemdagar District is relaxed for the period of two weeks, ie., 20th February 2021 till 7th March 2021. Insofar as Applicant - Sachin Bhandudas Kotkar is concerned, the application for relaxation of condition is allowed and the condition imposed upon the Applicant Sachin in paragraph 6(iii) of the order dated 13th January 2020 is accordingly modified. Applicant - Sachin Kotkar

is permitted to enter Ahmednagar district during the pendency and till the final decision of appeal. Applicant – Sachin Kotkar shall attend Kotwali Police Station, Ahmednagar District on every second Monday of the month from 10.00 a.m. to 2.00 p.m. and maintain a diary of his attendance duly counter-signed by the officer-in-charge of Kotwali Police Station or Senior Police Inspector attached to Kotwali Police Station, whichever the case may be. Needless to state that the other conditions imposed by the Division Bench of this Court vide order dated 13th January 2020 remain unchanged.

7. The applications are accordingly disposed of.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]