

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO.2106 OF 2021
IN
CRIMINAL APPLICATION NO.759 OF 2019
IN
CRIMINAL APPEAL NO.708 OF 2019

Narendra Chotalal Patel : Applicant.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Karl Rustomkhan for the Applicant.
Mr. S S Hulke, APP for the Respondent/State.
Ms. Ameeta Kuttikirshnan for Respondent No.2-CBI.

CORAM : S. S. SHINDE,
SURENDRA P. TAVADE, JJ
DATE : 11th October 2021

P.C.

1 This Criminal Interim Application is filed for the following substantial reliefs :-

- (a) *that clause (ii) of the operative part of the order dated 11/06/2019 passed by this Hon'ble Court be modified to the extent that the Applicant be permitted to use his passport to travel to the United States of America for a period of two months.*
- (b) *that the Respondent No.2 be directed to return the Passport bearing No.424630647 (issued by the United States of America) to the Applicant.*

2 The learned counsel appearing for the Applicant submits that the Applicant is a citizen of United States of America and holds a passport issued

by the United States of America bearing No.424630647. It is submitted that the family of the Applicant is in United States of America. It is also submitted that the Applicant desires to visit his ailing wife for a period of 2 months, who is presently residing in the United States of America, as the wife of Applicant has recently suffered a major cardiac arrest and was hospitalized at Morristown Memorial Hospital, NJ, and even though she has been discharged from the hospital, she is advised to visit the hospital once in a month. It is submitted that due to Covid-19 pandemic, the wife of the Applicant and considering her medical condition, she is not in a position to travel to India. The learned counsel for the Applicant submitted that the applicant and his wife both are senior citizens, and if the Applicant is permitted to travel to United States of America for a period of two months, he will furnish his undertaking that he will not misuse the liberty and shall furnish an itinerary and the address at which he will be residing at United States of America during the said period of two months. It is also submitted that pendency of the Appeal is not a ground to refuse the liberty to the Applicant to visit his ailing wife in United States of America. The learned counsel for the Applicant, therefore, prays that clause (ii) in paragraph 8 of the order dated 11/06/2019 may be modified to the extent that the Applicant be permitted to use his passport to travel to the United States of America for a period of two months.

3 The prayer of the Applicant is vehemently opposed by the learned

APP appearing for the Respondent/State and the learned counsel appearing for the Respondent - CBI. It is submitted that after giving full opportunity of hearing to the Applicant, the Division Bench (Coram : B. P. Dharmadhikari & Sandeep K Shinde, JJ) by order dated 11/06/2019 was pleased to impose condition (ii) while releasing the Applicant on bail. It is also submitted that in case the Applicant is permitted to travel to United States of America, and if his Criminal Appeal is dismissed and sentence is confirmed, in that case, the Applicant may not be made available to undergo the remaining sentence. It is also submitted that the Applicant was a under trial prisoner, and he was required to be arrested and brought before the Trial Court for trial.

4 We have given due consideration to the submissions advanced by the learned counsel for the parties. We have also perused the grounds taken in the Criminal Interim Application. We have also carefully perused the order dated 11/06/2019 passed by the Division Bench of this Court (Coram : B. P. Dharmadhikari & Sandeep K Shinde, JJ).

5 The Division Bench of this Court after adverting to the contentions raised by both the parties was pleased to impose condition (ii) by the said order dated 11/06/2019, which reads thus :-

“(ii) He shall surrender his passport to the U.O.I. and undertake not to use it during pendency of this appeal.”

6 We find considerable force in the arguments advanced by the learned counsel appearing for the Respondents that in case, the aforesaid condition (ii) is relaxed/modified, and if applicant would be allowed to travel to USA, the Applicant may not be available to undergo the remaining sentence in case the Appeal is dismissed by this Court. Admittedly, the Applicant is a citizen of United States of America and there may be possibility that he may not be available in case he is allowed to travel to United States of America.

7 In that view of the matter, we are unable to persuade ourselves to relax/modify the condition (ii) mentioned in paragraph 8 of the order dated 11/06/2019 passed by this Court. The Criminal Interim Application stands rejected.

[SURENDRA P. TAVADE, J]

[S. S. SHINDE, J]