

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Interim Application No. 2620 / 2021
in
Criminal Appeal No. 911 / 2019

Dr. Bhakti Arvind Mehare .. Applicant

Versus.

The State of Maharashtra and Anr. .. Respondents

AND

Interim Application No. 2619 / 2021
in
Criminal Appeal No. 911 / 2019

Dr. Ankita Kailash Khandelwal .. Applicant

Versus.

The State of Maharashtra and Anr. .. Respondents

Mr. Sarthak P. Shetty a/w Krishna Sarkate, Advocate
for Applicant in IA-2620/2021.

Mr. Sudeep Pasbola a/w Mr. Vaibhav Jagtap, Advocate
for Applicant in IA-2619/2021.

Mr. Pradip D. Gharat Spl. P.P. for State/ Res. a/w
Ms. M.R. Tidke, APP-State.

Ms. Aditi Saxena, Advocate for Respondent No.2.

Mr. S.S. Lokhande, A.P.I., Yavat Police Station Pune
Gramin.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 07th DECEMBER, 2021.
PRONOUNCED ON : 14th DECEMBER, 2021.

O R D E R. : -

1. In appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Appellant-Accused were directed to be released on the bail on certain conditions. Clause (iii) of the bail order, imposes the following condition.

"The Appellants shall not leave Mumbai without the permission of the Court. The Appellants shall report to the office of Crime Branch, Nagpada every alternative day till framing of charge."

2. Applicants are seeking relaxation of emphasised part of the condition. Thus, these applications.

3. Heard. Learned Counsel for the Applicants and learned Special Public Prosecutor for the State and learned Counsel for the Complainant.

4. Applicants are accused in the case arose from

Crime No. 49/2019 registered at Crime Branch for the offence punishable under Sections 306, 201 read with 34 of the Indian Penal Code, Section 4 of the Maharashtra Prohibition of Ragging Act, 1999 read with Section 3(1)(r)(s)(u)(za-E), 3(2)(v)(vi)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. That while releasing the Applicants on bail, besides condition contained in (iii), the Applicants were directed to attend the trial Court on everyday, unless their presence is exempted by the Hon'ble High Court and to file an Undertaking with respect to condition clause (iii) to (v) in the trial Court within two weeks from today on their release. AS such, the Applicants have filed Undertaking that they shall not leave Mumbai without permission of the Court. It appears in past, the Applicants were permitted to leave Mumbai by the learned trial Court on certain terms and conditions, which the Applicants had not flouted.

5. Applicant - Dr. Bhakti Arvind Mehare in I.A. No.2620/2021, is pursuing her post graduation in the field of Obstetrics and Gynecology and at present is Junior Resident 3 of OBGY Department in Nair Hospital at Mumbai. Presently she is residing in hostel facility of Nair Hospital; whereas her parents are residing at Amravati.

6. Applicant - Dr. Ankita Kailash Khandelwal in I.A. No.2619/2021 is post graduate student, presently Junior Resident-III, in Department of Obstetrics & Gynecology at Nair Hospital and residing in the Hostel Room at Nair Hospital, Mumbai.

7. Applicants would contend that their post graduation course, should be over by 10th December, 2021, after which they have to vacate Hostel room and will not be permitted to continue their stay. Applicants would contend that they have no other place to reside in Mumbai. Submission is that since

the trial is not likely to conclude in the near future, it may not be possible for them to continue to stay in Mumbai. In these circumstances, Applicants would urge that they may be permitted to reside at their respective to home-Districts. Thus, they have moved this application seeking relaxation of first emphasis part of Condition No. (iii) of the operative order.

8. Learned Special Prosecutor opposed the application and would contend that if the Applicants are permitted to leave Mumbai and reside at their native place, possibility of delay in trial, (may be on account of their absence) cannot be ruled out. Learned Counsel for the Complainant would submit that nearly all, Prosecution witnesses are the resident-Doctors and if trial is not concluded within reasonable time, these witnesses may leave the hospital and in that event it may not be possible to secure their presence for trial.

9. I have carefully considered the submissions of the learned Counsel for the respective parties. In the first place, the Applicants do not have a permanent place to reside in Mumbai, but have permanent residents of their respective districts. Applicants are Doctors by Profession. Till date the trial has not commenced. Indisputably, after their post graduation course gets over, Applicants have to vacate the hostel premises. In the circumstances, the Applicants cannot be compelled to stay in Mumbai, until the trial is concluded. Instead I deem it appropriate to permit the Applicants to stay at their native place and obtain Undertaking that they shall remain present in the trial, unless their presence is exempted by the trial Court. In my view, the Undertaking would take care of the apprehension of the Prosecution and of the Complainant as expressed by them. In that view of the matter, the underlined part of the condition (iii) is relaxed, meaning thereby, the Applicants

are permitted to leave Mumbai on following terms and conditions;

(i) The Applicants shall furnish the correct address of their proposed residence to the trial Court.

(ii) In case of change in place of residence, they shall furnish the particulars of new place of residence.

(iii) Applicants shall furnish contact details like Mobile Number to the trial Court.

(iv) Applicants shall file an Undertaking that they shall attend the Court on each day, unless their presence is exempted by the trial Court.

(v) The Undertaking and compliance of directions (i) to (iii) shall be made within two weeks from today.

10. The Applications are allowed in the aforesaid terms and disposed of.

MOHAMMAD
NAJEEB
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QAYYUM

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Date: 2021.12.14
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(SANDEEP K. SHINDE, J.)