

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO. 334 OF 2021

Shri Vaibhav Suryakant Jaipuria and another

vs.

State of Maharashtra throu PSO PS incharge, Ranapratap Nagar, Dist.
Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. P Bhandarkar, Advocate for petitioners.
Mr. S. A. Ashirgade, APP for respondent State.

CORAM : MANISH PITALE J.

DATE : 17/07/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioners.

3. The present petition arises out of orders passed by the Sessions Court at Nagpur, whereby bail was granted to the petitioner on certain conditions and thereafter an application was moved on behalf of the petitioners for relaxation of some of the conditions, which was partly allowed.

4. The petitioners were aggrieved, *inter alia*, for the reason that according to the petitioners, the investigation being undertaken initially at the Police Station, Ranapratap Nagar, Nagpur, was leading to their harassment and they made certain allegations against a senior Police Officer. It is an admitted position that thereafter, the investigation was transferred to the Economic Offences Wing (EOW) and presently the said Investigating Authority is proceeding with the matter.

5. A perusal of the order dated 18/02/2021, passed by the Sessions Court on the bail application filed by the petitioners shows that the Court came to the conclusion that the dispute between the parties appeared to be civil in nature and that the petitioners were entitled to grant of anticipatory bail. The operative portion of the said order reads as follows :-

“ORDER

i) The application (Exh.1) filed by the applicants for grant of anticipatory bail, is hereby allowed.

ii) The applicant Nos.1 and 2 namely, Vaibhav S/o Suryakant Jaipuria and Sanjay S/o Avtar Kaul, both R/o Nagpur be released on their executing P. R. and S. B. of Rs.50,000/- each with one solvent surety in the like amount each in the event of their arrest at the hands of non-applicant police in Crime

No.259/2020 for the offence punishable under Sections 406 and 420 R/w Section 34 of the Indian Penal Code, registered with Police Station, Rana Pratap Nagar, Nagpur.

iii) The applicants/accused shall not, directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court to any police officer.

iv) The applicants shall attend the Police Station, Rana Pratap Nagar, Nagpur on every Tuesday, Thursday and Saturday between 11 A.M. to 2 P.M. and co-operate in the investigation.

v) The applicants shall not leave the jurisdiction of this Court without prior permission and shall hand over their passports to the Investigating Officer.”

6. Thereafter, the petitioners moved an application for modification/relaxation of condition Nos. (iv) and (v) of the above quoted order. The Sessions Court partly allowed the said application and relaxed condition No.(iv) in the following manner :-

“ORDER

i) The application (Exh.1) filed by the applicants for modification of the of condition of attendance of police station, is partly allowed.

ii) The condition of attending the Police Station, Rana Pratap Nagar, Nagpur on every Tuesday,

Thursday and Saturday imposed upon the applicants vide order dated 18/02/2021 passed in Misc. Cri. Application No.3244/2020, is hereby modified, as under ;

iii) Instead of attending the the police station thrice in a week, the applicants Vaibhav Suryakant Jaipuria and Sanjay Avtar Kaul are hereby directed to attend the Police Station, Rana Pratap Nagar, Nagpur on every Sunday for one hour i.e. from 5 P.M. to 6 P.M. and co-operate in the investigation, till filing of the charge-sheet.

iv) Rest of the conditions imposed vide order dated order dated 18/02/2021 passed in Misc. Cri. Application No.3244/2020 shall remain as it is. ”

7. The petitioners were not satisfied with the their application being partly allowed, hence they filed the present writ petition before this Court. On 30/04/2021, this Court while issuing notice found that prima facie case was made out on behalf of the petitioners and accordingly made the following interim arrangement.

“12. As an interim arrangement, it is directed that instead of attending the concerned police station on three days specified, the petitioners shall attend the concerned police station as and when directed by a written communication, with 48 Hours notice. The condition that the petitioners shall not leave the jurisdiction of the Court without prior permission is substituted by the condition that the petitioners shall not leave India without the prior permission of the Court.”

8. The respondent State filed affidavit in reply in the present writ petition and stated in paragraph 6 that although the condition modified by this Court by way of interim arrangement could be maintained, but the petitioners ought to co-operate with the investigating agency as they had failed to produce copy of an agreement and certain bank details. In response to the said stand taken by the respondent State, the petitioners filed additional affidavit along with certain documents before this Court. It was brought to the notice of this Court that after the EOW took over the investigation, the petitioners had continuously co-operated with the investigation and that on 23/06/2021, the EOW recorded final statements of the petitioners. On this basis, it was submitted that there was no question of non-cooperation on the part of the petitioners. Copies of certain documents were also placed on record.

9. In response, when the present petition was heard today, the learned APP on instructions submitted that even till date, the petitioners had not submitted the copy of an agreement entered into with the original informant in respect of penthouse No.1102/1202 and that therefore, non-cooperation on their part was evident.

10. The learned counsel appearing for petitioners vehemently denied the allegations made against the petitioners in that regard. Since the learned APP, on instructions, insisted that the petitioners ought to produce copy of the said agreement, this Court perused the report lodged by the original informant leading to registration of the FIR dated 28/11/2020, against the petitioners. A perusal of the same shows that even in the oral report, all that the informant has stated is that on 30/08/2016, he visited the office of the petitioners when they allegedly made an offer to sale penthouse No.1102/1202 to the informant and in respect of the said offer, he allegedly parted with sums of money totalling Rs.90 Lakhs. Even in the aforesaid report there is no reference to a written agreement pertaining to the said penthouse.

11. As noted above, the Sessions Court while granting conditional bail to the petitioners observed that the dispute between the parties appeared to be of civil nature and that therefore, the petitioners were entitled to grant of anticipatory bail. In view of the aforesaid material on record, the respondent State does not appear to be justified in seeking dismissal of the writ petition on the ground that the petitioners have failed to produce the agreement allegedly

entered into between the petitioners and the original informant pertaining to the said penthouse.

12. Even otherwise, this Court is of the opinion that when the investigation agency i.e. EOW has already recorded final statements of the petitioners on 23/06/2021, no purpose would be served by keeping the present writ petition pending. The interest of justice would be met if the interim arrangement made by this Court by order dated 30/04/2021, is continued.

13. The learned counsel for the petitioners did contend that condition No.(v) imposed by the Sessions Court in its order dated 18/02/2021, is onerous to the extent that the passports were directed to be handed over to the Investigating Officer. It was submitted that the petitioners were not a flight risk and therefore, the said condition was required to be modified. But, this Court is satisfied that in the facts and circumstances of the present case, imposition of the said condition could be said to be warranted. The petitioners can certainly leave the jurisdiction of the Court by seeking permission of the concerned Court and the direction to handover the passports to the Investigation Officer cannot be said to be an onerous condition.

14. In view of the above, the writ petition is disposed of by partly allowing the same and modifying condition No.(iv) imposed by the Sessions Court for grant of bail, by confirming the interim arrangement made by this Court in order dated 30/04/2021 at paragraph 12, which is already quoted above.

15. Writ Petition stands disposed of. No order as to costs.

JUDGE