

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

**CRIMINAL APPLICATION NO.2592 OF 2021
IN
CRIMINAL APPLICATION NO.6305 OF 2017**

**SANJAY SUGANCHAND KASLIWAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Mr. A.P. Bhandari, Advocate for the applicant
Mr. V.M. Kagne, APP for the respondent No.1
Mr. N.T. Tribhuvan, Advocate for the respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 17th JANUARY, 2022
PRONOUNCED ON : 17th FEBRUARY, 2022**

ORDER :

1 Present application has been filed for relaxing condition No.(ii) (a) and (b) imposed while disposing of Criminal Application No.6305 of 2017 by this Court on 28.11.2017. The applicant also prays that he should be permitted to travel abroad with direction that the Economic Offence Wing should be directed to return the passport of the applicant, which has been submitted by him as per the condition that was imposed by this Court.

2 Heard learned Advocate Mr. A.P. Bhandari for the applicant, learned APP Mr. V.M. Kagne for the respondent No.1 and learned Advocate Mr. N.T. Tribhuvan for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that offence vide Crime No.342/2017 was registered against the applicant with City Chowk Police Station, Aurangabad, for the offence punishable under Section 406, 420, 465, 467, 468, 471 of the Indian Penal Code, 1860. The applicant was arrested during the investigation on 29.09.2017. This Court by order dated 28.11.2017 allowed the regular bail and the conditions were imposed, thus :

- (a) The applicant shall deposit his passport with officer in-charge of Economic Offence Wing, Aurangabad within one week from the date of his released on bail.
- (b) The applicant shall not leave the country without prior permission from this Court.
- (c) The applicant shall furnish names and addresses of his three close relatives with their contact numbers.
- (d) The applicant shall appear before the Investigating Officer as and when directed by the Investigating Officer to and cooperate in investigation.
- (e) The applicant shall not indulged into any act amounting to tampering of prosecution witnesses.

In view of that condition, he submitted his passport to the Economic Offence Wing, Aurangabad on 02.12.2017. Thus, since last four years the passport of the applicant is with the authorities. He could not travel out of India because of the same. The son of the applicant has completed his education in London and is presently employed with Atkins, Member of the SNC. Lavalin Group, London. The applicant has desire to meet him and also desire to travel around the world. The applicant has given the copy of the passport, degree and employment details of his son on record. The proceedings are pending for more than four years, without substantial development. The applicant has never breached the term of the bail and, therefore, he prays for relaxation of that condition. It is then also stated that date of expiry of the passport of the applicant was 29.08.2020 and the applicant wants to renew the same.

4 It will not be out of place to mention here that even it was tried to be mentioned that such order ought not to have been passed when the passport can be impounded by the authorities under the Passport Act only.

5 Learned APP strongly opposed the application and submitted that taking into consideration the allegations in the First Information Report and he had deceived the bank was required to be directed to deposit the amount of Rs.58,00,000/- and then the informant-bank was granted liberty

to make an application to withdraw the amount. Thereafter, by order dated 19.12.2017, this Court had permitted the bank to withdraw the amount of Rs.50,00,000/-, which was deposited by the applicant, in this Court. Taking into consideration the huge amount of fraud that was committed and also taking into consideration the other disputes pending, this Court had directed the applicant to deposit his passport. If the conditions are relaxed and the applicant is allowed to travel abroad, possibility of he getting absconding cannot be ruled out. Therefore, no relaxation need be given to the applicant.

6 At the outset, as regards imposition of condition to deposit the passport is concerned, that can be passed, as it does not *per se* amount to impounding. Reliance can be placed on the decision in **Gali Janardhan Reddy vs. The State of Andhra Pradesh, Miscellaneous Application No.528/2020 in SLP (Crl) No.7053/2013 dated 19.08.2021**. That application appears to be filed for relaxation of conditions imposed by the Hon'ble Apex Court while granting bail to the applicant. The relevant conditions, those were appearing, were –

- a) He shall surrender his passport, if not already surrendered, to the learned Principal Special Judge for CBI Cases, Hyderabad. If he has already surrendered his passport before the learned Principal Special Judge, that fact should also be supported by an affidavit.
- b) He shall not leave the country without the leave of the learned

Principal Special Judge.

- c)
- d)
- e)
- f)
- g)
- h)

7 In order to secure the presence of the applicant and to minimize the risk of such accused persons from fleeing away, sometimes taking into consideration the circumstances of the case, these conditions are imposed. Another important fact is that when the present applicant had made the bail application, he had given it in writing that he is ready to abide by the bail. Now, he cannot have any kind of objections to the conditions, which are, of course, in the discretion of this Court.

8 Contents of the First Information Report in the nutshell against the present applicant were that on 29.09.2017, Branch Manager of Malkapur Urban Co-operative Bank Ltd., having branch office at Gulmandi lodged complaint against the applicant alleging therein that on 24.12.2012 cash

credit facility to the extent of Rs. 4 crores was sanctioned to the applicant. As a collateral security, the applicant has created equitable mortgage of plot Nos.1 and 16 admeasuring 148.69 sq.mtrs. and 148.10 sq.mtrs. respectively being part Gat No.74 (Part) at village Satara. Before sanctioning the proposal, the bank has got scrutinized the title of the property offered as security through its Advocate Mr. Ghansham Pol. So also, the report of valuation was also obtained from the valuer of the Bank. Both of them issued respective reports. On the basis of report, properties were found to be free from encumbrances and marketable title. On fulfillment of requirement which include the execution of various documents and equitable mortgage, cash credit limit to the extent of Rs.4 crores was sanctioned to the applicant. The applicant has overdrawn the account. Inspite of repeated requests, the amount was not paid. Therefore, the complainant-Bank has invoked provision of SARFAESI Act, 2002 and issued statutory notice under Section 13(2) of the said Act on 30.08.2016 to the applicant. The applicant challenged that notice before Debts Recovery Tribunal by filing Securitization Application No.95 of 2017. Subsequent to receipt of notice from D.R.T., the officials of Bank perused the application filed before the D.R.T. by the applicant. On perusal of paragraph Nos.9 and 11 of the said application, it was revealed that the applicant had taken defence that plot Nos.1 and 16 are not form the part of sanctioned lay out. Therefore, officials of the Bank tried

to verify the factual position. It was revealed that on plot No.1, building has been constructed and the flats were also sold to various persons. Since the plot was mortgaged with the complainant-Bank, the complaint came to be lodged, which leads to registration of aforesaid offences against the applicant.

9 This Court had also taken note of the fact that the informant-Bank has invoked the provisions of SARFAESI Act, 2002 and also filing of proceeding before Debts Recovery Tribunal. The amount of Rs.50,00,000/- has been deposited by the applicant in the Court just to show his bona fides. It is not the cheated amount. The proposal that was put by the present applicant to the informant-Bank was for cash credit to the extent of Rs.4, crores, for which he had mortgaged certain constructions. But thereafter the informant found that he had sold some of the properties, without giving any kind of information or intimation to the informant-bank, which had disbursed him the Cash Credit. Definitely, taking into consideration the fact that public money is involved, this Court had thought it fit to impose the conditions, and accordingly, they are imposed.

10 No doubt, it appears that the trial has not progressed in the way it should have been, but that does not put the applicant in advantageous position. It can be seen that the son of the applicant who has taken

employment with the company at London, he can come down to India and meet the father. For that purpose the reason given by the applicant to relax that condition cannot be considered at all. Just to meet the father when son can come to India, it cannot be said to be an urgent situation for relaxation of condition. Further, it is stated that the applicant has also desire to travel around the world. The luxuries of accused persons cannot be considered by Courts. Another fact to be noted is that the informant-bank is contending that the applicant had not deposited the installments of loan as per schedule. Now, the question therefore arises, as to from where the applicant would collect amount to fulfill his desire to have a world tour. Those details are not given. Therefore, at the costs of repetition, it can be said that the luxuries of accused cannot be considered by the Courts of law, that too, at the peril of those customers of the bank, who had invested the amount with the bank or at the costs of public money.

11 Definitely, if any emergency arises, then, the applicant is at liberty to seek permission to travel abroad, who at present in this application whatever the reason has been given, is not just and proper to allow him to fly abroad.

12 The only thing is that the applicant's passport has expired on 29.08.2020. He had not approached this Court just prior to the expiry of his

passport. He filed the present application on 26.10.2021; yet, he has not prayed that he be allowed to renew his passport. Anyway, when the passport has already expired, then, he will have to adopt the procedure laid down under the Passport Act and also the rules and regulations for getting the said passport renewed. That can be done by him, when in future he wants to travel abroad. Therefore, there is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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