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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 94 OF 2022
IN
CRIMINAL APPEAL NO. 911 OF 2019

Dr. Hema Suresh Ahuja ..Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Shyam Dewani a/w Mr. Arjun Dev i/b Dewani Associates for the Applicant.

Mr. Pradeep D. Gharat, Spl. P.P. a/w Mr. A.R.Patil, A.P.P for the Respondent No.1-State.

Ms. Aditi Saxena for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 8th MARCH, 2022

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks modification/deletion/relaxation of condition No.(iii) imposed by this Court vide order dated 9th August, 2019, whilst granting bail to the applicant in the aforesaid Criminal Appeal No. 911 of 2019.

3. Learned Counsel for the applicant submits that a similar condition was imposed on similarly placed co-accused, and that the same has been modified by this Court vide order dated 14th December, 2021. Learned Counsel submits that the applicant will remain present before the Trial Court on every date, except in exceptional circumstances. He further submits that on formal dates, the applicant's lawyer would remain present and that, the applicant be exempted on the said formal dates. Learned Counsel for the applicant has tendered an affidavit-cum-undertaking of the applicant dated 8th March, 2022. The same is taken on record. In the said affidavit, the applicant had undertaken to remain present in the trial Court on every date, unless exempted.

4. Learned Spl.P.P. does not dispute the fact, that similar condition was relaxed by this Court. He, however, states that the applicant is the resident of Madhya Pradesh and as such, she should remain present on the dates given by the trial Court. Learned Spl.P.P. fairly states that he will not insist on the presence of the applicant on all formal dates and will not object if an exemption application is filed, seeking exemption of the applicant on such formal dates.

5. Perused the papers. The applicant is original accused No.2 in C. R. No. 157 of 2019 registered with the Agripada Police Station (subsequently transferred to Crime Branch, Mumbai and re-numbered as C.R.No.49 of 2019) for the alleged offences punishable under Sections 306, 201 read with Section 34 of the Indian Penal Code, Section 4 of the Maharashtra Prohibition of Ragging Act, 1999 r/w Section 3(1)(r)(s)(u)(za-E), 3(2)(v)(vi)(vii) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as Section 67 of the Information Technology Act, 2000. The applicant was arrested in the said case on 29th May, 2019 and was subsequently enlarged on bail vide order dated 9th August, 2019, subject to certain conditions. The operative part of the order enlarging the applicant alongwith two other co-accused on bail is reproduced hereinunder :

“ORDER

(i) The appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for seeking enlargement on bail is allowed after imposing certain stringent conditions.

(ii) The appellants be enlarged on bail on furnishing P.R.Bond in the sum of Rs.2,00,000/- (Rs.Two Lakhs only) each and one or more solvent local sureties.

(iii) 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.

(iv) The appellants shall not enter into the jurisdiction of Agripada Police Station and more particularly, Topiwala National Medical College (B.Y.L.Nair Ch. Hospital).

(v) *The licences of the appellants issued by Medical Council of India as well as Maharashtra Medical Council shall be remained suspended till conclusion of the trial.*

(vi) *The appellants shall attend the trial Court on every date unless exempted by the trial Court.*

(vii) *Upon committing breach of any condition imposed herein, the investigating agency would be at liberty to seek cancellation of bail.*

(viii) *The applicant shall be released on provisional cash bail of Rs.2,00,000/- (Rs.Two Lakhs only) each for a period of 8 weeks, within which they shall furnish solvent local sureties to the satisfaction of the Special Court, Mumbai.*

(viii) *It is made clear that even while on provisional cash bail, all the above said conditions would apply.*

(ix) *The appellants shall file an undertaking with respect to aforesaid clauses (iii) to (vi) in the trial Court within two weeks from the date of release.*

(x) *The Special Court, Mumbai shall not be influenced in any manner with the observations made by this Court in this Appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, as all the observations are restricted to the grant of bail and not otherwise.” (emphasis supplied)*

6. The applicant is aggrieved by clause (iii) of the aforesaid order. Learned Counsel for the applicant states that pursuant to the said order dated 9th August, 2019, the applicant has not left Mumbai without the permission of the trial Court. He submits that the applicant even attended the Crime Branch at Nagpada as directed vide the said order, which attendance was subsequently modified vide order dated 21st February, 2020. It is not in dispute that similarly placed co-accused i.e. Dr. Mehre and Dr. Khandelwal had filed similar interim applications seeking modification of

clause (iii) of the bail order. This Court (Coram: S.K.Shinde, J) vide order dated 14th December, 2021 allowed the said applications preferred by the said co-accused, on certain terms and conditions.

7. The applicant is a permanent resident of Satna, Madhya Pradesh. The applicant has completed her course at B.Y.L. Nair Hospital. After completion of her education, the applicant is now required to vacate the premises/accommodation in Mumbai and will not be permitted to continue her stay in the said hostel accommodation. The applicant has today tendered an affidavit-cum-undertaking wherein she has undertaken to remain present before the trial Court on every date, unless exempted. She has further stated that she will take exemption only in exceptional circumstances. It is not in dispute that, till date, charges have not been framed as against the applicant and as such, only formal dates are being given.

8. Learned Spl.P.P. fairly states that if on formal dates, an exemption application is filed, he shall not oppose the same. He, however, states that the applicant must abide by the undertaking and remain present on other dates given by the trial Court. Learned Counsel for the respondent No.2 also does not dispute the fact that the condition i.e. the clause (iii) of

the order dated 9th August, 2019 has been relaxed as against two other co-accused.

9. Considering the aforesaid, clause (iii) imposed by this Court vide order dated 9th August, 2019 passed in Criminal Appeal No.911 of 2019, stands relaxed i.e. the applicant is permitted to leave Mumbai on the following terms and conditions :

ORDER

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

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

(iii) The Applicant shall furnish contact details like mobile number to the trial Court.

(iv) The Applicant shall file an undertaking that she shall attend the Court on each day, unless her 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 application is allowed on the aforesaid terms and accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.