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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3315 OF 2022
IN
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Mukul Goyal S/o Arvind Goyal	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Dr. Abhinav Chandrachud a/w Ms. Swati B. Sharma
i/by Mr. Nitesh S. Patil for the applicant.

Mr. R.M. Pethe, APP for the respondent No.1/State.

Mr. Advait U. Shukla & Aditi Rajput for the respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 22, 2022

P.C.:

1. The husband who is facing prosecution under section 498A, 323, 504, 506 read with 34 of the Indian Penal Code and section 3(1)(p)(q) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter “the S.C. and S.T. Act”) is seeking permission to travel in terms of Condition No.6 imposed by this Court by order date 7th September, 2022 in

Criminal Appeal No.603 of 2022.

The facts relevant for adjudication of the issue involved are as under.

2. The applicant married with respondent No.2 on 4th February, 2020. On 3rd August, 2020 the respondent No.2 (wife) went to reside along with the applicant in United Kingdom. On 30th October, 2020, she came back to the India. On 25th November, 2020 the respondent No.2 filed F.I.R. for offences under sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code. In the said F.I.R., there were no allegations in relation to the offences under the provisions of SC. ST. Act. On 25th January, 2021, offences under the provisions of section 3 of the S.C. and S.T Act were added and on 6th January, 2022 remaining offences under the provisions of the S.C. and S.T Act were added.

3. This Court by order dated 7th September, 2022 protected the applicant by granting anticipatory bail under section 438 of the Code of Criminal Procedure, 1973, subject to conditions stated in the order. The condition relevant for the present application is Condition No.(vi) which reads as under:

“(vi) The appellant shall not leave India without permission of this Court.”

4. To comply with Condition Nos.3 and 5 in order dated 7th September, 2022, the applicant arrived in India from United Kingdom on 21st September, 2022. The investigating agency filed charge-sheet against the applicant on 4th November, 2022.

5. The applicant has filed present application seeking permission to travel to the United Kingdom where the applicant is in employment and according to him it is the only source of his earning and livelihood. The applicant placed on record e-mail addressed to the applicant by his employer informing that applicant's contractual entitlement has been exhausted and his absence would result in unpaid leave. The applicant is, therefore, seeking permission to travel to the United Kingdom.

6. The application has been opposed by respondent No.2. The learned counsel for the respondent No.2 submitted that the conduct of the applicant of opting for citizenship of the United Kingdom during pendency of anticipatory bail disentitles him from any relief from this Court. He submitted that the proceedings under section 482 for quashing first information report which is the subject matter of criminal proceeding has been dismissed up to the Supreme Court. He submitted that the applicant now being citizen of the United Kingdom, there is every likelihood that he may not return back to India to face trial.

7. The learned advocate for the applicant placed reliance on the judgment in the case of **Parvez Noordin Lokhandwalla Vs. State of Maharashtra** reported in (2020) 10 SCC 77 to urge that the Court while imposing restriction on the right of citizen to travel abroad must bear a proportional relationship to the purpose of imposing such condition, the nature of the risk which is passed by the grant of permission to travel abroad, which needs to balance public interest in the enforcement of criminal justice with the rights of the accused.

8. He submitted that considering the nature of accusation made against the applicant, and particularly in view of the fact that in the original first information report lodged on 25th November, 2020, no offences under the provisions of the S.C. and S.T Act which were added but subsequently on 25th January, 2021 and 6th January, 2022 said offences were added.

9. According to him, there was no intention to humiliate the respondent No.2 for the reason that she belongs to said caste. In support of his submission he relied on the judgment in the case of **Hitesh Verma Vs. State of Uttarakhand & Another** reported in (2020) 10 SCC 710.

10. Having carefully considered rival contentions made by both the sides, in my opinion, the applicant has made out a case for grant of permission to travel to United Kingdom.

11. It is not in dispute that the investigation as regards the offences alleged against the applicant is complete as charge-sheet has already been filed on 4th November, 2022. By attending the investigation, the applicant has complied with condition No.3 and 5 of the order of 7th September, 2022. The facts and record demonstrate that the applicant was working in United Kingdom on the date of registration of offences and had visited India for the purpose of co-operating with the investigating agency. The material in the form of e-mail issued by the employer of the applicant demonstrates that the applicant needs to resume his employment.

12. In the case of **Parvez Noordin Lokhandwalla** (supra) the apex

Court has interpreted expression “any condition... otherwise the interest of justice” observing that while imposing such condition, the Court has to be guided by need to facilitate the administration of justice, secure the presence of accused and ensure that liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice.

13. In the case of **Kunal Kumar Tiwari @ Kunal Kumar vs The State Of Bihar** reported in (2018) 16 SCC 74 the appellant therein was charged with offences under section 498A, 341, 323, 379, 506 read with section 34 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act.

14. The Apex Court while holding that the conditions imposed on the husband being onerous and arbitrator observed in paragraph 9 and 10 are read as under:

“9. ... clause (c) of Section 437(3) allows courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase “interest of justice” as used under the clause (c) of Section 437(3) means “good administration of justice” or “advancing the trial process” and inclusion of broader meaning should be shunned because of purposive interpretation.”

“10. ... from the perusal of the impugned order it is clear that the court exceeded its jurisdiction in imposing such arbitrary conditions. Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eye of the law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an overzealous exercise in utter disregard

to the very purpose of the criminal justice system.”

15. This Court is conscious of the fact that this Court is not called upon to consider validity of condition No.(vi) of order dated 7th September, 2022. At the same time, this Court needs to consider the parameters laid down by the Apex Court while imposing condition of restriction, right of a citizen to travel abroad. It is well settled principle of law that right to travel abroad is a facet of fundamental right under Article 21 of the Constitution of Indian. Such right needs to be protected zealously by the Court.

16. In the facts of the case, the apprehension expressed on behalf of the respondent No.2 that the applicant may flee from justice and may not attend the trial can be taken care of by imposing suitable condition.

17. The other submissions made on behalf of the respondent No.2 regarding conduct of the applicant and dismissal of proceeding challenging first information report has no relevance to adjudicate the right of the applicant to travel abroad to attend his employment.

18. Since the investigation is complete and the presence of applicant is not required for the purpose of investigation, hence, following order:

- a) The applicant is permitted to travel back to United Kingdom to continue his employment at London;
- b) The applicant shall file undertaking to this Court that he will attend the proceeding before the Trial Court as and

when is required by the Trial Court unless he is exempted;

c) Ad-interim order passed on 7th September, 2022 shall remain in force until further orders;

d) It is made clear that LOC issued by respondent No.1 against the appellant shall remain stayed until further orders.

19. The interim application stands disposed of in above terms.
No costs.

(AMIT BORKAR, J.)