

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

CRIMINAL APPLICATION NO. 336 OF 2023

Mayurkumar Jaysukhlal Gohel ...Applicant
vs.
The Union of Indian and Anr. ...Respondents

Mr. Vikram Sutaria a/w Mr. Agastya Desai - Advocate for the Applicant
Mr. Y. Y. Dabke- APP for the Respondent-State
J. B. Mishra a/w Ram Ochani - Advocate for the Respondent No. 1

CORAM : S. M. MODAK, J.

DATE : 05th APRIL, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-accused and learned Advocate for the Respondent.
2. The present Applicant is released on bail by the Court of the 11th Joint CJJD and JMFC Belapur, Vashi as per Order dated 19/01/2023. There is an allegation that the present Applicant through his Company namely M/s. Euphoria Technologies Private Limited, has indulged into issuance of the invoices without actual supply of the goods and availed benefit of the input tax credit to tune of Rs. 18.79 Crores.

3. After hearing both the sides, the Court was pleased to grant bail to the Applicant. One of the condition is as follows:-

“The Applicant will surrender his passport in the present court and shall not leave the Country without prior permission of this Court.”

4. The Applicant claims that he has complied with all the conditions imposed by the trial magistrate. The Applicant intends to travel to Dubai for business reason and for fulfilling his family commitments as his minor son and his wife are residing in Dubai. Whereas the Applicant is doing business in the Dubai and his company possesses a commercial license as per laws of that country. The Applicant and his minor son possessed the visa. The VISA granted to his minor son has expired on 08/03/2023 page no. 109. Whereas VISA granted to the Applicant expired on 18/01/2023 page no. 108. Various documents are annexed to show running business by the Applicant in Dubai.

5. My attention is invited to the observations made by the trial Magistrate in the order dated 06/03/2023. Said order is passed on the application of the present Applicant. He made following

requests:-

- (i) To return the passport of the Applicant and
- (ii) Grant him permission to travel to Dubai from 01/03/2023 to 15/03/2023.

6. The trial Magistrate rejected request as per above said order. It is submitted that right to travel abroad is fundamental right relating to personal life and liberty. In support of said contention learned Advocate relied upon the following judgments:-

- (i) *Paravez Noordin Lokhandwalla Vs. State of Maharashtra and Anr.*¹
- (ii) *Satish Chandra Verma Vs. Union of India and Others*²
- (iii) *Jitsingh Kalirai, Asstt. Collr. Of C. Ex. Vs. Kulbir Singh Ahuja*³
- (iv) *Shawn Anthony Mendonca Vs. State of Maharashtra*⁴

7. In order to rebut the contention of non co-operation of the Respondent, learned Advocate for the Applicant submitted that his client has co-operated and the correspondence made on his behalf is tendered. It is dated 11/03/2023, it is taken on record and marked as 'Annexure-X'.

1 2020 10 SCC 77

2 2019 SCC Online SC 2048

3 1989 SCC Online Bom 487

4 2019 SCC Online Bom 9175

8. There is opposition to the grant of prayers on behalf of the learned Advocate for the Respondent. Affidavit-in-reply is taken on record. Various contentions are raised including seriousness of the allegation, non co-operation given by the Applicant and not attending various summonses issued (mentioned para no. 26 of the reply). Even visiting India during relevant period and not co-operating and then returning back to Dubai, it is also opposed on the ground that they have moved the Court of the Sessions, Thane for cancellation of impugned order, by moving Criminal Misc. Application No. 70 of 2023.

9. Learned Advocate tried to explain under what circumstances the Applicant came to be arrested at the emigration. He also explained that the department was compelled to approach the concerned Court and that is how LOC was issued. It is also submitted that apart from criminal prosecution, the recovery proceedings will be initiated and it is under process. He placed reliance on the observations made in the case of *The Intelligence Officer Vs. Jaffer Sadiq and Anr.* in Criminal Application No. 632 of 2022 decided on 22/06/2022 by this Court.

10. Apart from the issue about entitlement to travel abroad,

the other contentious issue is about possession of the passport. The Applicant claims that at the time of his arrest the department has taken into possession of his passport. This is disputed on behalf of the Respondent. My attention is invited to the pleadings in para no. 3 of the application made before the trial court. It is mentioned that the Applicant has already complied with the terms relating to surrender of the passport and reliance is placed on the copy of the acknowledgment annexed at Exh. 'c' of that application. The said annexure is on page no. 45 of the present Application. This is titled as application for production of documents. It relates to furnishing bank guarantee and other documents as directed by the trial Magistrate. While granting him bail, one of the averment is about possession of the passport. According to the Applicant, there are two passports and they are in the custody of the department Belapur from the date of arrest. Whereas learned Advocate for the Respondent invited my attention to the reply filed by them before the trial magistrate wherein they have denied that allegations. It is there in para no. H, page no. 102.

11. It is true that learned Magistrate has not made any observations about this contentious issue as who is possessing the

passport. At this stage, I am refraining myself from making any observations on that disputed issue. The reason is I am not accepting the request for grant him permission to go abroad. I am rejecting the request only for one reason that the application filed by the department for cancellation of the bail is pending before the Court of the Sessions. One does not know what will be the order passed by that Court. Either that application may be rejected or it may be allowed. If that application is allowed then there will be difficulties in implementing that order because it results into taking Applicant into custody. So as long as that application is pending, I do not deem it proper to consider the request.

12. Hence I am refraining myself to make any observations about the contentions raised on behalf of both the sides. It is made clear that the Court of the Additional Sessions Judge seized of that application may decide that application as per its own merits. I do not think that the observations made herein will cause any prejudice to the Applicant or may favour the department. It is because this Court has not made any observations about the entitlement to travel abroad or even not made any observations as bail is required to be cancelled.

13. With these observations, application is rejected at this stage.

14. The Applicant is at liberty to move again if application for cancellation of bail is rejected. It is made clear that when this Court has rejected the application to travel abroad, it is expected that hearing of that application needs to be taken on priority basis.

15. Let the Respondent to prosecute that application punctually and the Applicant may request that Court to hear that application as early as possible.

[S. M. MODAK, J.]