

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

***CRIMINAL INTERIM APPLICATION NO.2203 OF 2023
IN
CRIMINAL WRIT PETITION NO.940 OF 2023***

Chaitya Rajesh Shah

...Applicant

Versus

Union of India and Ors.

...Respondents

Mr. Vijay Aggarwal a/w Mr. Rahul Agarwal, Mr. Yash Agarwal, Mr. Abhiraj Rai, Ms. Jasmin Purani, Mr. Mukul Malik & Mr. Yashwardhan Tiwari i/b Mr. Rahul Agarwal, for the Applicant.

Mr. S. K. Halwasia a/w Mr. S. S. Halwasia, Mr. Pradeep Yadav and Ms. Divya Gontia for the Respondent Nos.1 and 2.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent No.3 – State.

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.***

DATE : 22nd JUNE 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this interim application, the applicant seeks permission to travel abroad to Hong Kong for business purpose from 23rd June 2023 to 3rd July 2023, to enable the applicant to restart his businesses and regain livelihood.

3. Perused the papers. It appears that the respondent No.2 – Serious Fraud Investigation Office (SFIO), has started investigation in 2018 in the said case as against several persons including the present applicant. Admittedly, investigation has not been completed till date. It also appears that during the period from 2018 to 10th September 2020, the applicant has reported to the SFIO, as directed by the SFIO.

4. Learned counsel for the applicant submits that during the said period i.e. from 2018 to September 2020, till such time the LOC was issued against the applicant, the applicant traveled to Hong Kong, 11 times. He submits that the applicant's family has now returned to India and his wife and children are residing in Mumbai and that the applicant's children have been enrolled in a School at Mumbai.

5. Learned counsel for the applicant has tendered an affidavit-cum-undertaking on behalf of the applicant dated 22nd June 2023 duly affirmed before the Notary. In the said affidavit-cum-undertaking the applicant has given the itinerary of his travel to

Hong Kong i.e. places where he would be residing and his contact details. The air travel tickets have also been annexed to the said affidavit-cum-undertaking to show his departure from Mumbai to Delhi on 23rd June 2023 and thereafter from Delhi to Hong Kong on the same day at 22:55 hrs. The applicant has undertaken to return back to India not later than 3rd July 2023 and also that he will not seek any extension of his stay whilst abroad i.e. without returning to India. The applicant has also undertaken to deposit his wife's passport as well as the passports of his daughters, as may be directed by this Court, in view of the grievance made by the learned counsel for the respondent Nos.1 and 2. The applicant has further undertaken to abide by all the conditions that may be imposed by this Court. The said affidavit-cum-undertaking is taken on record. A copy of the said affidavit-cum-undertaking is also served on the learned counsel for the respondent Nos.1 and 2.

6. Infact, the matter came up in the first session and in view of the grievance made by the learned counsel for the respondent

Nos.1 and 2 and having regard to the order passed by this Court (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.) dated 17th November 2021 in Writ Petition No.3058 2021, we directed the applicant to file an affidavit-cum-undertaking. Learned counsel for the applicant stated that the applicant is ready to deposit his wife's and children's passport, as may be directed by this Court. Accordingly, we directed the applicant to bring the passport of his wife and children in the second session. The same were verified by the officer of the SFIO with respect to its validity. We are informed that all the 3 passports are valid and have not expired.

7. It appears that the applicant intends to travel abroad to Hong Kong for business purpose to attend the Jewellery & Gems Conference at Hong Kong. It is stated by the applicant that he wants to restart his bussiness and that his livelihood will be affected if he is not permitted to travel for the said purpose.

8. It appears that this Court vide order dated 17th November 2021 had dismissed the petition of the applicant for the reasons set out in the said order, essentially since at that time the applicant's wife and daughters were in Hong Kong. This Court did not accept the offer of the applicant to deposit his parents' passports. It also appears that the applicant's family was staying at the relevant time in Hong Kong and that the applicant had dual citizenship and therefore in case he decided not to return back to India it would be very difficult to bring him back to India. The applicant's family i.e. wife and children has now returned to India and they are residing in Mumbai and the applicant's children have been enrolled in a School at Mumbai and hence, the earlier apprehension does not survive.

9. Considering the aforesaid, we deem it appropriate to allow the application on the following terms and conditions;

ORDER

(i) The applicant – Chaitya Rajesh Shah is permitted to travel abroad to Hong Kong from 23rd June 2023 to 3rd July 2023 as per the itinerary set out in the affidavit-cum-undertaking;

(ii) The passport of the applicant's wife as well as his children be deposited by the applicant with the Registrar (Judicial-I), Appellate Side of this Court, today, during the course of the day. The same to be kept in a safe custody, till the next date;

(iii) To enable the applicant to travel abroad, the operation of the LOC issued against the applicant, is stayed from 23rd June 2023 to 4th July 2023;

(iv) The applicant on his return to India, to inform the respondent No.2 of his arrival within 72 hrs of his return;

(v) The Immigration Authorities on all points of departure, will permit the applicant to pass through immigration and to board his flight or flights, irrespective of whether the immigration system has been updated and whether the respondent No.2 has informed the Immigration Authorities or not.

10. Learned counsel for the respondent Nos.1 and 2 to communicate this order to the immigration authorities forthwith and in any event within 24 hours of this order being uploaded.

11. Interim Application is allowed and disposed of in above terms.

12. Stand over to **5th July 2023**, for recording compliance of the aforesaid order and for return of the passports of the applicant's wife and children.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.