IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2701 OF 2022
IN
CRIMINAL APPEAL NO. 183 OF 2022

Tayyabali Hussainbhai Lokhandwala
Age 53 years,
Occupation :- Service
R/at :- 64/32, North Rich
Chicago, Alinos (IL), America

At present address:-
Sun-City Apolo Hotel,
Room No. 205, Colaba,
Mumbai – 5. ...Applicant

Vs.

1. ABC
2. XYZ

Both York House near Electric House,
Colaba, Mumbai

3. State of Maharashtra ...Respondents

In the matter between:-

Insiya Kutubuddin Lokhandwala and Anr. ...Appellants

Vs.

Tayyabali Hussainbhai Lokhandwala and Anr. ...Respondents

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Mr. Amit Desai – Senior Advocate with Mr. Niranjan Mundargi i/by Veerdhawal Deshmukh – Advocate for the Applicant
Mr. Mihir Desai, Senior Advocate with Mr. Aditya Deolekar, Ms. Shivalee Satam and Bansari Bhanusali with Ms. Sejal Jain i/by TRSNA Legal - Advocate for the Respondent Nos. 1 and 2
Mr. Y. Y. Dabke – APP for the Respondent-State

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CORAM : S. M. MODAK, J.

RESERVED ON : 17th FEBRUARY, 2023
PRONOUNCED ON : 01st March, 2023

P. C. :-

1. I have heard learned Senior Advocate Shri Amit Desai for the Applicant and learned Senior Advocate Shri Mihir Desai for the Respondents/victims. The Applicant/acquitted accused wants return of passport and Overseas Indian Card. Those were deposited with trial Court as per condition imposed by the trial Court while granting bail. The Applicant was tried for the offence punishable under Sections 354, 354-A, 509 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act and acquitted on 21/12/2021. Though State has not preferred an appeal, present appeal is preferred at the instance of two victims. It was admitted on 21/12/2022.

2. While hearing present application on 23rd December, 2022, liberty was granted to the Applicant to file additional affidavit in respect of following :-

(i)	The details of his residential address in U.S.A., alongwith

	supporting documents
(ii)	Giving details of his various properties in India alongwith necessary documents
(iii)	Giving details about his occupation in USA
(iv)	Possibility of travel to other countries either as a visitor or as a part of occupation.

After that there are additional affidavit reply, rejoinder and sur-rejoinder and annexed with documents. I have read them. Learned Senior Advocate Shri Amit Desai relied upon following judgments:-

a) State of Rahasthan Vs. Abdul Mannan[1]

b) Parvez Noordin Lokhandwalla Vs. State of Maharashtra and Anr.[2]

c) Miss Marie Andre Leclerc Vs. State (Delhi Administration) and Others[3]

d) Mr. Ramesh Taurani Vs. The State of Maharashtra and Anr.[4]

e) Neelam Narayan Bansode Vs. The State of Maharashtra and Anr.[5]

3. No doubt, during pendency of trial/appeal right to travel through out India or abroad is recognized. Article 19 (1)(d) of the Constitution recognizes such right to move freely through India.

1 (2011) 8 Supreme Court Cases 65
2 (2020) 10 Supreme Court Cases 77
3 (1984) 2 Supreme Court Cases 443
4 (2015) SCC Online Bom 4311
5 (2018) SCC Online Bom 5735

Whereas right to travel abroad is recognized under Article 21 of the Constitution. So issue is :-

a) Whether to grant such permission?,

b) And if yes, then on what conditions?.

4. Considering the circumstances, I am inclined to grant such permission. This Court can certainly deal with such request. After acquittal, trial Court refused such permission on 02/07/2022 for the reason that appeal is pending. So the Appellate Court is seized of the matter. While admitting the appeal, substantive sentence was also suspended on 21/12/2022. The Applicant has also complied with the provisions of Section 390 of the Criminal Procedure Code and furnished bail before the trial Court.

5. Much is said on behalf of the Respondents about conduct of the Applicant during trial. There is emphasis on two aspects :-

a) Not remaining present on 26 occasions.
(Details are given in para no. (c) (ix) page no. 25 of affidavit in reply).

b) Several unsuccessful attempts made to go to U.S.A. when trial was pending.

6. It is a matter of record. But fact remains and it is that trial is completed. If the Applicant will not remain present, it is the domain of the trial Court to grant exemption or not. There are orders placed on record wherein the Applicant attempted to leave India with permission. They are as follows:-

a) *Vide order dated 22/08/2019, granted permission to leave India for temporary period and documents were returned.*

b) *This order was set aside by this Court on 11/09/2019 with liberty to renew the request after framing of charge.*

c) *The Hon'ble Supreme Court refused to interfere in the order.*

7. At the same time, it is true that now trial is over and it resulted into an acquittal. Learned Senior Advocate Shri Amit Desai is right in his submission that earlier presumption of innocence is reinforced with the judgment of acquittal. It is also true that Applicant though Indian origin now is U.S. citizen. Being a citizen there, he has got right to stay there. One does not guarantee how much time, it will take for conducting final hearing of the appeal. At present this Court is dealing with appeals of 2003 also. So detaining the Applicant in India till disposal of the appeal amount to unreasonable restrictions.

About the conditions

8. In case of ***Parvez Noordin Lokhandwalla (supra)*** the Hon'ble Supreme Court had an occasion to deal with reasonability of the conditions imposed at the time of grant of bail. The conditions imposed should be proportionate to the purpose sought to be achieved. The purpose is to secure the presence of the accused. So the Court has to balance the rights of the prosecution to go on with the hearing of the proceedings smoothly and right of the accused to follow his ordinary pursuit.

9. The Applicant has prayed for return of passport. Though he has not expressly prayed for grant of permission to travel to USA, he wants return of passport for that purpose only. Both the parties have understood it. The Applicant do not intend to go there temporarily but permanently only with an assurance that he will come to India as and when required apart from his usual family and business trips. So this Court has to consider this aspect while imposing conditions.

10. Normally, the Court may consider the following factors while determining whether an accused may return to India :-

a) His roots in India?,

b) Whether having properties in India?,

c) Whether he is likely to be traced in USA?.

11. No doubt the Applicant is of Indian origin. Kutubuddin Lokhandwala (father of the Respondents) is his real brother. Court is not aware about other relatives of the Applicant staying in India. There is a copy of leave and license.

12. Agreement dated 04/01/2023 is filed by the Applicant. One Mrs. Rashida Limidiwala licensed her premises situated in Mathiwala building, Bhindi Bazar, Mumbai. It is for 11 months.

There is lot of objections taken about this agreement by the victims including non registration of the agreement and about ownership of licensor. This premise has limited significance. Court is not aware whether the duration of this agreement is going to be extended or not. Even Court is not aware whether the Applicant is going to return to India prior to expiry of this agreement. Instead of these premises, properties owned in India are significant.

Occupation and Stay in USA

13. There are three documents filed by the Applicant. They are :-

a) *Copy of G-mail sent by Mr. Majeed Majeed dated 05/01/2023 informing that the Applicant is residing at the prescribed address.*
b) *Copy of letter of appointment by Employer Worldwide Trade LLC dated 29/12/2022, thereby appointing Applicant as Sales Manager and supporting documents.*
c) *Copy of driving license of the Applicant mentioning the Chicago address.*

14. Victims have their own version about these documents. They have also searched on google and they understood that the Employer is sham. To support their contentions, they have filed documents alongwith their sur-rejoinder dated 14/02/2023. They revealed following facts :-

a) *The website of the employer was created recently on 04/01/2023.*
b) *Some of the links available on the website are un-operational.*
c) *The responsible persons of the employer are not available on linkedin.*
d) *There are contrary claims made by the company about their operations i.e. Worldwide/Indian household.*

15. Victims contended that the Applicant has not provided information on following issues:-

a) *Any documentary evidence about his stay in USA.*
b) *His plan to travel to other countries having benefit as US passport holder.*

16. According to learned Senior Advocate Shri Amit Desai, the Applicant cannot be blamed for shortcomings if any in the employer's documents. He also criticized the approach of the victims to oppose the prayer by going to any extent.

Observation

17. The occupation of the Applicant in USA and furnishing its detail is one of the factor for determining the bonafides of the Applicant. The attempt of the victims to inquire about the claim is also laudable. Because it helps the Court in verifying the claim. It helps the Court in issuing necessary directions and modify them accordingly. But the shortcomings does not preclude the Court from rejecting the application, if the Applicant is otherwise entitled. The applicant has hidden some portion from the appointment letter. It is for the purpose of avoiding any correspondence by the victims with the employer. That is why unhidden portion copy of the employment letter is shown to the Court. I have seen it. But it does not dispel the doubts raised by the victims. Other objections do not appeal me except one. The appointment letter is dated 29/12/2022 (containing details of website) but in fact website is created afterwards on 4/1/2023.

18. It is also true that the driving license copy can only show place of residence. It will not show in what capacity the Applicant is residing on that address. The Court is not aware about the laws of USA about criteria for issuing driving license. Certain more directions are required. It will also overcome the shortcoming in the G-mail by Majeed Majeed. It is also true that at this stage, it is difficult to predict about travel plan of the Applicant to travel to other countries but directions can be given in that behalf.

Properties in India

19. From the rejoinder/undertaking (para no. 10), of the Applicant, there are details of properties purchased by the Applicant in his own name but misused by the father of the victims (FIR No. 4 of 2016 and F.I.R. No. 428 of 2016 are registered) and other properties (para iv). There are copies of F.I.R. registered at Colaba Police Station, seizure of documents filed alongwith rejoinder. One can understand that these properties are in dispute. There are copies of index -II extracts. They also evidenced that properties are purchased by the Applicant through power of attorney. Kutubinddin (father of the victims). There is description of properties (a to l) in para no. (iv). Para No. (iv) mentions about properties involved in those offences and other properties Exh. I contains documents (Index – II extract) of properties. Still some clarification is required which are not the properties involved in the offences and which are the documents. Index-II only denotes about registration of documents without any objection, property details and parties name. The Court is not apprised about development/change of hands in those properties after 2009. The certified copies of those index are of the year 2019. But copies are of limited entries only.

Observation

20. Owning properties in India is of paramount consideration. Only thing is that there should be proper clarification. There are certain judgments relied upon by the Applicant. Court is inclined to grant permission. In those matters permission was for limited duration. Here the Applicant do not want to travel to USA for limited duration but we can gather is that he wants to go to USA permanently with an assurance that he will come to India whenever required. So the Court has to be more cautious. So by giving certain directions, Court is inclined to grant permission. Hence following order is passed :-

ORDER

(i) **The Applicant is directed to** :-

a) Give some more authentic proof of the employment of the Applicant is USA.

b) Furnish documentary evidence showing the residence of the Applicant at Chicago (eg. any agreement, letter from the owner of the premises)

c) To furnish details of immovable properties (other than involved in those two offences) on affidavit and details of its documents of title in respect of those properties and which of them are in possession (Court will give further directions if any later on)

(ii) **On compliance of above direction, the application is allowed in terms of prayer clause (a)**.

(iii) The trial Court to return the passport and overseas Indian Card to the Applicant.

(iv) **Prior to accepting those documents the Applicant to comply following:**-

a) To give details of e-mail and mobile number in operation in USA on an affidavit and to inform the change to this Court.

b) When he will travel for any reason to Countries outside USA, inform Indian Embassy at Chicago/Washington DC about details of Country, duration and stay details on affidavit.

c) Also inform to this Court about details in above paragraph.

d) To visit the Indian Embassy twice in a year, on first Monday of month of April and November every year and keep record.

21. Interim Application is disposed of in above terms.

[S. M. MODAK, J.]

1. After this judgment is pronounced, learned Advocate for the Respondent-victims want to place reliance on one judgment in order to buttress his submission that one more condition about verifying local address though Embassy can be imposed. However, that judgment is not tendered. So also the Applicant cannot be heard for want of that judgment.

2. In view of that the Respondents are at liberty to take appropriate steps.

[S. M. MODAK, J.]