IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Interim Application No.2769 of 2023
In
Criminal Application No.638 of 2022.

Mr. Maiank Mehta
Age : 55 years, British National,
Residing at : Flat No.7A, Block 1,
Estoril Court, 55, Garden Road,
Hong Kong. .... Applicant.

Versus

1. Central Bureau of Investigation
Banking Securities Fraud Branch,
Plot No.C-35 A, G Block,
Bandra-Kurla Complex,
Mumbai – 98

2. The State of Maharashtra .... Respondents

Mr Amit Desai, Senior Advocate a/w Advocate Rohan Shah, Advocate Gopalkrishna Shenoy, Advocate Manavendra Mishra, Advocate Amey Mirajkar, Advocate Swati Singh, Advocate Ishwar Sethi i/b Khaitan & Co. for the Applicant.

Mr Raja Thakare, Senior Advocate a/w Advocate Akash Kavade i/b Advocate Kuldeep Patil for the Central Bureau of Investigation.

Mr HJ Dedhia, APP for Respondent No.1/State.

Coram : R. N. Laddha, J.

Reserved on: 17 October 2023
Pronounced on : 1 November 2023.

Order :

Heard learned Counsel for the parties.

2. In the instant interim application, the prayers of the Applicant are as follows:

> *i) This Hon'ble Court be pleased to acknowledge compliance to the conditions mentioned in paragraph 26 (iii) of the order dated 20 March 2023 passed by this Hon'ble Court in Criminal Application No.638 of 2022 ;*
>
> *ii) This Hon'ble Court be pleased to modify the conditions imposed in paragraph 26(iv) of the order dated 20 March 2023 passed by the Hon'ble Court in Criminal Application No.638 of 2022 ;*
>
> *iii) Any other and further reliefs as this Hon'ble Court deem fit and proper.*

3. For ready reference, the relevant directions in the order dated 20 March 2023 passed by this Court in Criminal Application No. 638 of 2022 are as under:

> *"24. Admittedly, the respondent has not supplied statement of his bank account No.91417600. So far as regards the other two bank accounts are concerned (M/s Pavilion Point Corporation), although he claimed to have supplied to the CBI the statements of accounts, it appears that the said statements of*

accounts are not for the period from opening of those accounts to the closure thereof. Let the bank concerned make such statement that the bank account statement supplied is complete in all respect, as has been asked for by the CBI. The respondent, in his response, submits that the CBI is taking efforts to obtain the same. This Court has, therefore, reason to observe that the respondent has not complied with the CBI requisition letter dated 13.10.2021 complete in all respects. So far as regards the notice dated 25.01.2022, the respondent cannot take shelter of the fact that he has not been supplied with the bank accounts number. According to him, USD 8.9 transaction dated 20.03.2012 has duly been reflected in the investigation made by the ED. This fact has specifically been denied by the CBI. The respondent is also, therefore, required to come clean and furnish the requisite information, as has been asked for vide notice dated 25.01.2022. The CBI would do well to give the respondent the bank account number in relation to the transaction dated 20.03.2012.

25. It is reiterated that this Court is not opposed to allow the respondent to visit Hong Kong for three months, but only after he complies with the notices/orders dated 13.10.2021 and 25.01.2022, to produce the documents.

26. In view of the above, the application is allowed in terms of the following order :-

> *"(i) The order dated 16.06.2022 passed by learned Special Judge (CBI) on application (Exhibit-144) in P.M.L.A. Special Case No.04 of 2018 and P.M.L.A. Special Case No.03 of 2019, permitting the respondent to visit Hong*

> *Kong for three months, is maintained.*
> *(ii) Schedule, if any, of respondent's proposed visit to Hong Kong is, however, deferred to or made subject to the respondent complying with the notices dated 13.10.2021 and 25.01.2022.*
> *(iii) The respondent is permitted to leave India for Hong Kong, fifteen days after he complies with the notices of the CBI dated 13.10.2021 and 25.01.2022 or the CBI receives the information from concerned banks. On such compliance having been made, the respondent shall report the same to this Court under intimation to the CBI.*
> *(iv) The respondent to furnish cash security in the sum of Rs.15 Crores and solvent surety in the sum of Rs.30 Crores, before the Special Court, eight days prior to leaving India for Hong Kong.*
> *(v) Rest of the terms of the impugned order dated 16.06.2022 to stand unaltered."*

4. According to the Applicant, he is a British citizen and resides in Hong Kong. He had voluntarily travelled to India to participate and cooperate with the Enforcement Directorate as an Approver in the instant proceedings. He claims that he has cooperated with the investigation of the E.D. at all given times. His cooperation and efforts were also observed by the learned Special Court while granting pardon to him by its order dated 4 January 2021 when he became an Approver for

the ED and returned to India. He is a businessman and has been in India since September 2021, away from his business, which is his principal source of income. Due to his absence from Hong Kong for the last two years, his business has suffered significant losses. Therefore, it is not possible for him to comply with condition No.26 (iv) in the order dated 20.03.2023 passed by this Court in Criminal Application No.638 of 2022.

5. According to the Applicant, he has complied with the conditions to the best of his ability and has provided the details sought in both the notices dated 13.10.2021 and 25.01.2022.

6. In the reply affidavit, the respondent/CBI claims that during the investigation, it was discovered that the Applicant received 8.9 million USD. A ledger entry was found during the examination of a Server seized by the CBI from the office premises of Nirav Modi. The Applicant was directed to produce the relevant documents related to the transactions of 8.9 million USD, and in this regard, a notice dated 25.01.2022 under Section 91 of the CrPC was issued. The details of these transactions are mentioned in the reply affidavit, which is as follows :

Date	Particulars	Voucher No.	Debit Amount (in USD)
22.3.2012	HSBC-USD Savings A/c being paid to the Applicant.	389	1,500,000
22.3.2012	HSBC-USD Saving A/c being paid to the Applicant	390	4,400,000
22.3.2012	HSBC-USD Saving A/c being paid to the Applicant	319	3,000,000
		TOTAL	8,900,000

7. According to these transactions, the Applicant received 8.9 million USD from Auragem Co.Ltd./Fancy Creations Co. Ltd., which are dummy companies and have base in Hong Kong. However, the Applicant could not explain these transactions or provide bank account details in response to a notice dated 25.01.2022. The Applicant also failed to comply with the order of this Court dated 20.03.2023 in this regard. The Applicant visited the office of CBI on 28.7.2023 and produced a photocopy of M/s Firestar Holdings under his signature, claiming that it explains USD 8.9 million worth of transactions; however, he was unable to explain the ledger entry pertaining to his name in the account of Deepak Modi.

8. The respondent CBI opposes any modification of conditions to furnish cash security of Rs.15 Crores and solvent surety of Rs.30 Crores, stating that they are

reasonable conditions and that no ground for modification with regard to the supply of information as asked by CBI has been made out.

9. It is stated in the reply affidavit that during the investigation, it was revealed that the Applicant was also maintaining his account with HSBC Bank, Hong Kong, during 2012-13. This account was in the same Bank where Firestar Holdings had an account. However, the Applicant has not provided his account number or statement for this account to date. It is highly likely that the joint account of the Applicant, along with his wife in HSBC Bank, Hong Kong, was used to rotate 8.9 million USD from dummy companies. This amount of fraudulent LOUs of PNB was transferred through these dummy companies. As the investigation progresses, it is probable that additional suspicious transactions or incriminating evidence related to the diversion of funds will be uncovered. The Applicant's contention that he cannot provide additional information regarding the statements mentioned in the notice dated 25.1.2022 without the bank account number is not a valid reason for modifying the order of this Court.

10. Mr Amit Desai, the learned Senior Counsel appearing on

behalf of the Applicant, drew the attention of the Court to para 24 of the order dated 20.03.2022. He submitted that, despite specific directions, the CBI has not been able to provide any bank account number in relation to the alleged transactions dated 20.3.2012, referred to in their notice dated 25.01.2022. The CBI claimed that these transactions were found in Deepak Modi's ledger. Learned Senior Counsel argued that the Applicant submitted a letter dated 26.7.2023, stating that he had complied with the notice dated 13.10.2021 in all respects by submitting the requisitioned statement of accounts with Barclay's Bank, Julius Baer Bank, UBS bank at Singapore, and statement of HSBC Bank, Hong Kong, account name-: Firestar Holdings for 29.02.2012 to 02.04.2012. He submitted that the respondent/CBI, in its letter dated 28.07.2023, did not dispute the compliance with the notice dated 13.10.2021.

11. The learned Senior Counsel invited the attention of the Court to the letter dated 28.07.2023 and submitted that due to the inability of the CBI to provide any other bank account number despite efforts made in this regard by issuing Letter Rogatory, it cannot be said that the Applicant is not cooperating or has not complied with the details requisitioned

in the notice dated 25.01.2022, at this stage. The learned Senior Counsel submitted that the ledger entry in question was in Deepak Modi's name, not of the Applicant's. According to him, the Applicant had provided a plausible explanation, supported by an HSBC Bank statement showing a proximate credit of the same amount to comply with the order dated 20.03.2023 and notice dated 25.01.2022. He further stated that if the respondent CBI provided details of any specific bank account belonging to the Applicant, he would cooperate and provide the bank statement without delay. The Applicant has also given an undertaking in para 11 of his application to be available for any further queries the respondent may have during his time overseas. It is more so when he categorically stated that he is not the beneficiary of the monies. Learned Senior Counsel stated that it is a matter of record and submitted by the Applicant before various Courts that all his accounts were unilaterally shut down by the banks. He possesses no information on these 11-year-old entries.

12. Learned Senior Counsel submitted that the Applicant is an Approver in the connected case of the Enforcement Directorate. The Special Court has appreciated his

cooperation and efforts and granted him pardon vide order dated 04.01.2021. The Applicant returned to India voluntarily and may not be denied the right to travel to his place of residence for a short period of three months.

13. Learned Senior Counsel has stated that neither the learned Special Court on 16.06.2022 and 20.06.2022 nor this Court, in its orders, have recorded any adverse finding of non-cooperation by the Applicant. He further submitted that it is undisputed that the Applicant attended the office of the CBI on 8.9.2021, 9.9.2021, 17.9.2021, 8.10.2021, 25.10.2021, 24.02.2022, 20.6.2022 and 19.9.2022. It is submitted that there is no risk of the Applicant not returning to India, as this would consequentially result in the survival of an international red corner notice against the Applicant, which would make it impossible for him to travel.

14. Mr Raja Thakare, the learned Senior Counsel appearing on behalf of the respondent CBI, made submissions reiterating the averments in the reply affidavit and submitted that during the investigation, it revealed that 8.9 million USD were given to the Applicant. The ledger entry was found during the examination of a server seized by CBI during a search of the office premises of Nirav Modi. The Applicant was directed to

produce the relevant documents related to the transactions of 8.9 million USD, and in this regard, a notice dated 25.01.2022 was issued. The Applicant, however, showed ignorance about this transaction and did not provide bank details pertaining to those transactions despite the order of this Court.

15. Learned Senior Counsel submitted that on 25.05.2022, the Applicant filed an application in the Court of Special Judge, CBI, Mumbai, seeking to set aside LOC issued against him and requesting permission to travel back to his place of residence. The Special Judge passed an order on 16.6.2022, suspending the LOC for a period of three months and allowing the Applicant to visit Hong Kong. The CBI filed Criminal Application No.638 of 2022 before this Court against the order passed by the learned Special Judge, Mumbai. This Court, by its order dated 23.08.2022, dismissed the application filed by CBI. Aggrieved thereby, CBI filed SLP No.8915 of 2022 under Article 136 of the Constitution of India. The Hon'ble Supreme Court, vide its order dated 09.02.2023, set aside the order of this Court and restored the Criminal Application No.638 of 2022 to the file of this Court and remanded the proceedings back to this

Court with a direction to reconsider the matter afresh. Subsequently, by an order dated 20.03.2023, this Court permitted the Applicant to travel abroad after complying with notices dated 13.10.2021 and 25.01.2022 issued by CBI.

16. By notice dated 25.01.2022, respondent CBI asked details of transactions worth 8.9 million USD that were discovered during the scrutiny of data available in the server seized from the office premises of Nirav Modi. The transactions revealed that 8.9 million USD were transferred from the account of Auragem Company Limited/Fancy Creation Company Limited to the Applicant's account. However, the Applicant failed to provide bank account details and could not explain the transactions/entries as per the notice dated 25.01.2022.

17. Learned Senior Counsel submitted that on 28.07.2023, the Applicant visited the CBI office and produced a photocopy of a one-page statement of account of M/s Firestar Holdings under his signature, claiming that this document explained USD 8.9 million transaction. The Applicant was unable to explain the ledger entry pertaining to his name in the account of Deepak Modi. During the investigation, it was revealed that the Applicant maintained an account with HSBC

Bank, Hong Kong, during 2012-13, in the same bank where M/s Firestar Holdings also maintained its account. Until now, the Applicant has not provided his account number or statement for HSBC Bank, Hong Kong, for the year 2012. It is possible that the joint account of the Applicant and his wife in HSBC Bank, Hong Kong, was used to rotate 8.9 million USD from dummy companies.

18. According to learned Senior Counsel, the Applicant's so called inability to furnish the information pertaining to the notice dated 25.01.2022, without the bank account number, does not constitute a valid reason for modifying the order of this Court.

19. This Court has perused the material available on record and has given anxious consideration to the rival contentions with reference to the applicable law.

20. The present interim application is preferred to seek a modification of the condition imposed vide order dated 20.03.2023 of this Court in Criminal Application No.638 of 2022. By the said order, this Court upheld the order dated 16.06.2022 of the learned Special Judge permitting the Applicant to travel to his residence, i.e. Hong Kong, for three

months. While permitting the Applicant to travel, this Court had directed the Applicant to comply with the notices of respondent CBI dated 13.10.2021 and 25.01.2022.

21. The Applicant claims that by letter dated 26.07.2023, he had furnished the statements as directed by notices dated 13.10.2021 and 25.01.2022 and, therefore, stands in compliance with the conditions imposed. The respondent CBI has admitted that there is a compliance of notice dated 13.10.2021, however, it raised its concern regarding the compliance of the notice dated 25.01.2022. It is stated that the respondent CBI vide notice dated 25.01.2022 had directed the Applicant to provide the statement of account in which 8.9 million USD was shown to be transferred in his name (in the ledger of Deepak Modi) pertaining to M/s Auragem Co. Ltd. and M/s Fancy Creation Co. Ltd. Hence, there is no compliance of notice dated 25.01.2022. In this respect, it is the contention of the Applicant that despite the direction of this Court to provide the relevant bank account number to him, the respondent CBI failed to provide him the same.

22. It is not in dispute that the Applicant submitted the statement of accounts with Barclays Bank, Julius Baer Bank,

and UBS Bank in Singapore and the statement of HSBC Bank, Hong Kong (Firestar Holdings) for 29.02.2012 to 02.04.2012 showing transactions aggregating the same USD 8.9 million and this was done in compliance with the notice dated 13.10.2021, subsequent to the order dated 20.03.2023.

23. In the order dated 20.03.2023, this Court observed that *"the CBI would do well to give the respondent the bank account number in relation to the transaction dated 22.03.2012*". However, to date, the respondent CBI has not been able to provide any bank account number related to the alleged transactions dated 22.03.2012 referred to in its notice dated 25.01.2022.

24. The Applicant has also placed on record a response dated 28.07.2023 from respondent CBI, which does not dispute compliance with the notice dated 13.10.2021 but disputes compliance with the notice dated 25.01.2022. In the said letter dated 28.07.2023, CBI stated that -

> *" -------- in order to get bank account details pertaining to Maink Mehta/Purvi Modi/Company LR has been sent to Singapore authorities. Further efforts have also been made to get bank account details through diplomatic channel from Singapore authorities. But till date, details of bank accounts have not been received by CBI from Singapore authorities and*

> *will be shared with you after receiving the same.*
>
> *In compliance of the order dated 20.03.2023 your Advocate submitted photocopies of documents to CBI on 26.07.2023 and receiving of the same was acknowledged, you personally visited CBI office on 27.07.2023 and on 28.07.2023.*
>
> *Documents got submitted by you are examined in your presence on 27.07.2023 and you yourself stated that second page of page no.425 of documents submitted by you i.e. statement of account of M/s. Firestar Holdings, Hong Kong was not given by you on 26.07.2023. Accordingly, you sought time and submitted second page of statement of above account on 28.07.2023.*
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> *Scrutiny of statement of account of M/s. Firestar Holding submitted by you revealed that it belongs to M/s. Firestar Holdings, Hong Kong maintained its account with HSBC Bank, Hong Kong. Whereas CBI vide notice dated 25.01.2022 had directed you to provide the statement of account in which 8.9 Million USD was shown to be transferred in your name (in the ledger of Mr.Deepak K. Modi, father of Nirav Modi) pertaining to M/s. Auragem Co. Ltd. and M/s. Fancy Creation Co. Ltd. and the account details as asked vide above notice are not available in the documents provided by you on 26.07.2023 and on 28.07.2023. Hence, there is no compliance of notice dated 25.01.2022".*

25. The Annexure E (at pages 492 to 493) submitted by the Applicant with his letter dated 26.07.2023 is a statement of HSBC Bank, Hong Kong of Firestar Holdings for 29.02.2012

to 02.04.2012, which also reflects the following credit entries in currency USD.

VALUE DATE	TRN TYPE	CREDIT AMOUNT(USD)
22.03.2012	FCCY C/A	4,500,000
23.03.2012	FCCY C/A	4,400,000
	TOTAL	**8,900,000**

26. The Applicant has sourced a copy of the HSBC Bank statement from the prosecution complaint No.3 of 2019 that bears a stamp of the Enforcement Directorate, the complainant therein. According to the statement, M/s Firestar Holdings was the beneficiary of USD 8,900,000. The vouchers No.319 and 389, both dated 22.03.2012, add up to USD 4,500,000/-, which is the amount credited on the value date 22.03.2012 in the statement of HSBC Bank, Hong Kong, produced by the Applicant. Further, voucher No.390 dated 22.03.2012 is for USD 4,400,000, the amount credited in value dated 23.03.2012 in the statement of HSBC Bank, Hong Kong, produced by the Applicant.

27. It is not in dispute that the CBI, despite specific directions vide para 24 of the order dated 20.03.2023, which stated that *"the CBI would do well to give the respondent the bank account number in relation to the transaction dated 22.03.2012"*, the CBI has not able to provide any bank account numbers related to the alleged transactions dated 22.03.2012 that were recorded in Deepak Modi's ledger and referred to in their notice dated 25.01.2022.

28. In the notice dated 25.01.2022 and the letter dated 28.07.2023, the CBI claimed that the bank account belonged to the Applicant. However, in the reply-affidavit filed later, the CBI contended that there is a possibility that it could be a joint account of the Applicant and his wife. The Applicant submitted a statement of HSBC Bank, Hong Kong, of Firestar Holdings for 29.02.2012 to 02.04.2012, showing transactions of the same aggregate amount of USD 8.9 million on the same and next day. However, the CBI has not been able to provide any specific bank account number to date. Therefore, CBI's stand is varying, and rather than being specific, it is *prima facie* based on conjunctures.

29. Therefore, even on *prima facie* basis, due to the inability of CBI to provide any other bank account number despite efforts stated to be made in this regard by issuing Letter Rogatory, etc. at this stage, it cannot be said that the Applicant is not cooperating or has not complied with the details requisitioned in the notice dated 25.01.2022 and was found in the server of Deepak Modi.

30. Significantly, the said ledger entries purported to be investigated by the CBI have been within its knowledge for the past four years. However, their efforts to obtain bank statements from HSBC Bank have not yielded any results. A request for issuance of Letter Rogatory was made on 02.12.2022 with respect to bank accounts in Singapore. Still, no information was sought regarding the transactions referred to in the notice dated 25.01.2022, perhaps due to the absence of a bank account number required for issuing the Letter Rogatory. Recently, more than seven months after the earlier order dated 20.03.2023 passed by this Court and after the filing of the instant application, an e-mail dated 20.09.2023 has been addressed by the CBI to one Mr Ajay Sharma of HSBC Bank in India requesting him to provide a bank account number in relation to the subject transactions. This e-mail has been sent after four years of having the alleged ledger entries, more than twenty months after the Applicant was issued a notice dated 25.01.2022, and more than six months after the directions given in the earlier order dated 20.03.2023 passed by this Court in Criminal Application No.638 of 2022 to provide the bank account number to the Applicant to enable him to cooperate as desired by CBI.

31. Sending this e-mail to HSBC Bank after a delay to request information cannot deprive the Applicant of his Constitutional rights conferred by Articles 14 and 21 of the Constitution of India. As per Article 21 of the Constitution of India, even an accused has the right to a speedy investigation, as laid down in the case of ***Dilawar Vs. State of Haryana***[1]**.**

32. In any event, at this stage, it cannot be lost sight of the peculiar fact that the ledger containing entry in the name of the Applicant is of Deepak Modi and not the Applicant. Furthermore, the alleged transactions referred to in the ledger are over eleven years old.

33. The Applicant has submitted that the ledger entries are not admissible as evidence, and therefore, the requisition at the very root is tainted and unwarranted. Even without going into the aspect of admissibility or otherwise of such entries, in the peculiar facts, by submitting a plausible explanation backed by the HSBC Bank statement showing proximate credit of the same amount of USD 8.9 million in some other HSBC Bank account, the Applicant has cast reasonable doubt on the alleged ledger entries in his name. By submitting the said HSBC Bank statement showing proximate credit of the

1 (2018)16 SCC 521.

same amount of USD 8.9 million in some other HSBC Bank account, *prima facie,* he has substantially complied with the directions contained in the order dated 20.03.2023 and notice dated 25.01.2022. If the information provided is not to the satisfaction of the CBI, it cannot be said at this stage, even on *prima facie* basis, that the Applicant has not cooperated and has not complied with the directions.

34. In view of the above, the allegation of CBI that the Applicant is not cooperating does not have merit so as to deprive the Applicant from travelling to his place of residence in Hong Kong for a period of three months.

35. It, however, goes without saying that if, in future, the respondent/CBI would provide details of any specific bank account number belonging to the Applicant, he would be obliged to cooperate and make sure to provide the bank statement thereof without any delay. The Applicant has also given an undertaking in para 11 of his application to be available for any further query that the respondent may have during his time overseas.

36. It may thus be held that *prima facie*, at this stage, the Applicant has complied with the notices dated 13.10.2021

and 25.01.2022 and the directions in para 26(ii) and (iii) of the order dated 20.3.2023 passed by this Court in Criminal Application No.638 of 2022.

37. Further, the Applicant seeks modification of the conditions for permitting him to travel abroad imposed vide order dated 20.3.2023 in earlier Criminal Application No.638 of 2022, which reads thus:

> *"(iv) The respondent to furnish cash security in the sum of Rs.15 Crores and solvent surety in the sum of Rs.30 Crores, before the Special Court, eight days prior to leaving India for Hong Kong."*

38. The learned Senior Counsel submitted that the Applicant arrived in India in September 2021 after the destructive second wave of COVID-19, which had a significant impact on business worldwide. During this time, the Applicant suffered substantial losses that could not be mitigated subsequently as he was away from his place of business. Additionally, the Applicant incurred significant legal expenses in relation to the Nirav Modi Scam in various legal proceedings before different jurisdictions since 2018.

39. Learned Senior Counsel has also referred to the provisional attachment order (PAO) No.2 of 2021 dated

18.03.2021 by which the savings of the Applicant in Julius Baer Bank account No.SG 06775997-01 in the name of Pavilion Point Corporation, which has funds amounting to Rs.44 Crores, has been attached. The learned Senior Counsel, on instructions, stated that the Applicant undertakes to abstain from taking any steps to release the said account from attachment and continue to keep it attached until his return to India after his travel to Hong Kong.

40. The learned Senior Counsel has stated that the Applicant's financial condition makes it impossible to provide cash security worth Rs.15 Crores and solvent surety worth Rs.30 Crores, conditions imposed on his travel. According to him, these conditions are not imposed for recovery purposes but to ensure that the relief granted is not misused. He submitted that an attachment of about Rs.44 Crores in the account of the Applicant by the Enforcement Directorate was not brought to the notice of this Court while imposing conditions by an order dated 20.03.2023.

41. Learned Senior Counsel submitted that the Applicant is an Approver in the connected case of Enforcement Directorate. The Special Court has appreciated his cooperation and efforts and granted him pardon vide order

dated 04.01.2021. The Applicant returned to India voluntarily and may not be denied the right to travel to his place of residence for a short period of three months.

42. Undisputedly, the Applicant is an Approver in the connected case of the Enforcement Directorate. He cannot be denied the right to travel to his place of residence for a period of three months. The conditions to be imposed have to balance the public interest in the enforcement of criminal justice with the rights of the person concerned. The human right to dignity and protection of Constitutional safeguard should not become illusory by imposition of such conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation, and eventually to ensure a fair trial. The conditions imposed by the Court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk posed by the grant of permission, as sought in this case, has to be carefully evaluated in the peculiar facts of the instant case.

43. Considering this, particularly the fact that attachment of about Rs.44 Crores in his account by the Enforcement Directorate was not brought to the notice while imposing conditions vide order dated 20.03.2023 in Criminal

Application No.638 of 2022 (the Applicant herein was the respondent in Criminal Application No.638 of 2022), and in view of the undertaking of the Applicant that until he returns to India after his travel to Hong Kong, the condition to furnish cash security in the sum of Rs.15 Crores is reduced to Rs.10 Crores. Rest of the conditions in para 26 (iv) of the order dated 20.03.2023 to furnish solvent surety in the sum of Rs.30 Crores before the Special Court eight days prior to leaving India to stand unaltered. The Applicant shall furnish an undertaking to the Registry of this Court that he will not take any steps to get the said account released from attachment, and the amount will continue to remain attached, as stated in para 39 of this order. The Applicant is permitted, as per order dated 20.03.2023 of this Court in Criminal Application No.638 of 2022, to travel. The Applicant shall furnish an undertaking to the Registry of this Court that he will come back to India during the said period.

44. The interim application stands disposed of accordingly.

45. The parties to act on authenticated copy of this order.

[R. N. Laddha, J.]