



Diksha Rane

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

CRIMINAL APPLICATION NO.256 OF 2024

WASIF DAUD HAMDULE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. D. S. Mhaispurkar i/b. Adv. B. A. Lawate for the applicant.

Ms. Megha S. Bajoria, APP for the State.

Adv. Nitin Shejpal a/w. Adv. Pooja N. Shejpal, Adv. Akshata Desai, Adv. Siddharth Gharat for the respondent no.2/complainant.

CORAM : M. S. KARNIK, J.

DATE : APRIL 1, 2024

P.C. :

- 1.** Heard learned counsel for the applicant.
- 2.** Learned APP for the State and learned counsel for the respondent no.2/complainant opposed the application.
- 3.** The challenge in this application is to the orders dated 30/1/2024 and 2/2/2024. Vide an order dated 30/1/2024, the application made by the applicant/accused for traveling abroad has been rejected on the ground that the applicant was not co-operating with the JMFC Court for committal of the case.

4. Now the committal order is made. The accused was present before the Court when the committal order was passed on 25/1/2024 to the District and Additional Sessions Court, Khed, vide an order dated 25/1/2024 passed by the JMFC, Khed.

5. An application No.4/2024 was made by the complainant before the Sessions Court for modification of condition no.4 imposed upon the applicant/accused. By an order dated 1/1/2020 in Criminal Bail Application No.197/2019, the JMFC had directed the accused not to leave India till conclusion of the trial. The application for modification was entertained. The Additional Sessions Judge, Khed, passed an order below Exhibit 1 in Criminal Misc. Application No.4/2024 that the applicant/accused shall not leave India without prior permission of the Court until the disposal of the case based on C.R.No.269/2019. Having perused the order, I see no reason to interfere with the order dated 2/2/2024 passed by the Additional Sessions Judge, Khed imposing a condition that the applicant/accused shall not leave India without prior permission of the Court. The condition is not unreasonable and the same is imposed

in the discretion of the trial Court.

6. Learned counsel for the applicant submits that the applicant is presently very much in India and willing to co-operate with the trial Court which in any case, he must. Learned counsel undertakes that he shall remain present before the trial Court on the next date which is 4/4/2024. Statement accepted.

7. Learned counsel for the applicant/accused submitted that as the earlier application for permission to travel abroad was rejected on 30/1/2024 by the trial Court, it would be futile to make an application before the trial Court again for seeking permission to travel abroad. I do not find the apprehension of learned counsel for the applicant is well founded. There is no reason why the trial Court will not consider the application for travelling abroad on its own merits and in accordance with law. I do find some substance in the contention of learned counsel for the applicant. On as many as four occasions when he made applications for travelling abroad, the permission was granted. There is no dispute that the applicant returned back to India in compliance with the permissions so granted. *Prima facie*,

the applicant does not appear to be a flight risk.

8. The grievance of learned counsel for the complainant is that this has resulted in delaying the passing of committal order, consequently the applicant is responsible for protracting the trial. Suffice it to observe that the applicant has travelled abroad on the basis of the permissions granted. In any case, the applicant has now assured that he will co-operate with the trial Court and attend on 4/4/2024. In this view of the matter, if an application is made by the applicant before the trial Court for permission to travel abroad, the same be considered expeditiously on its own merits and in accordance with law. The identity of the applicant is not in issue. The applicant is represented by an advocate. The applicant is even willing to appear through video conferencing on the date fixed. These are matters for the trial Court to consider in the first instance.

9. Learned counsel Shri Mhaispurkar submitted that the applicant wants to travel abroad for a period of six months to enable him to make arrangements for settling his employment obligations in Kuwait and return back thereafter permanently to India. In such view of the matter,

if an application is made pursuant to the order dated 2/2/2024 passed below Exhibit 1 in Criminal Miscl. Application No.4/2024, there is no manner of doubt that the application shall be considered on its own merits and in accordance with law without being influenced by the observations made in the order dated 30/1/2024 passed below Exhibit 1 in Criminal Miscl. Application No.3/2024.

10. If an application is made for traveling abroad, the same be decided expeditiously preferably within a period of four weeks from the date of its filing. During this period, the applicant shall remain personally present on the dates as may be fixed by the trial Court.

11. Needless to mention that the complainant shall also be heard by the trial Court.

12. Keeping all contentions open, the application is disposed of in the aforesaid terms.

(M. S. KARNIK, J.)