



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

BAIL APPLICATION NO. 2632 OF 2022

MOINODDIN GOLDER AMINODDIN GOLDER ..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Karim Pathan, for the applicant
Ms. Megha S. Bajoria, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 15, 2024

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 420, 465, 468, 471 read with 34 of the Indian Penal Code, 1860 registered vide C.R. No.9 of 2019 with DCB CID Unit 8, Mumbai. The applicant was arrested on 12/01/2021.
- 3.** This Court by an order dated 29/11/2022 in Bail Application No. 457 of 2022 enlarged the applicant Moinuddin Aminuddin Goldar on bail. The applicant also filed this Bail Application No. 2632 of 2022 in which there was no reference to the earlier bail application no. 457 of

2022. Moreover, on 13/03/2024 when the criminal Bail Application 2632 of 2022 was listed before the co-ordinate bench, Advocate Avnendra Kumar who was instructed by the advocate on record to seek an adjournment could not reply whether he has applied for transfer of membership of Bar Council of Maharashtra and Goa. For convenience, the order dated 13/03/2024 is reproduced which reads thus :

“1. Learned APP submits that the applicant has already been granted bail by the co-ordinate bench of this Court on 29th November 2022 in Bail Application No.457 of 2022. The said application was filed on 3rd February 2022.

2. The present Bail Application No. 2632 of 2022 is again filed before this Court on 19th August 2022 through Adv. A. Karim Pathan. Adv. A. Karim Pathan is not present today. However, one Adv. Avnendra Kumar holding for Mr.A.Karim Pathan seeks an adjournment. His request is rejected.

3. Upon being asked, Mr. Avnendra Kumar informed this Court that he is not duly registered with the Bar Council of Maharashtra & Goa. However, he submits that he has already applied for transfer of his membership to Bar Council of Maharashtra & Goa from Bar Council of Uttar Pradesh. He has not tendered any proof whether he has applied for membership of Bar Council of Maharashtra & Goa. However, he displayed his Bar Council of Uttar Pradesh Identity Card. The details are as under :-

"Bar Council of Uttar Pradesh

19, Maharshi Dayanand Marg, Allahabad-2

C.O.P. No. 161946

Name - Avnendra Kumar

Father Name - Shiv Shankar Yadav

Address - V & PO. Ahmadpur, PS Zafarabad, Jaunpur

Enrollment No. -UP02608/15

Enrollment Dt. -19/06/2015

Date if Expiry of

I-Card

-31/12/2022"

4. The Bar Council of Uttar Pradesh Identity Card issued in the name of Avnendra Kumar appears to have been expired on 31st December 2022.

5. Learned APP seeks time to take instructions in that regard. Learned APP invites my attention to a Notification regarding the conditions subject to which an Advocate can practice. Condition (3) contemplates;

"An Advocate who is not on the roll of Advocates of the Bar Council of Maharashtra shall not appear or act in any Court, unless he files a Vakalatnama along with an Advocate who is on the roll of Bar Council of Maharashtra and who is ordinarily practicing in such Court."

6. Vakalatnama of Adv. A. Karim Pathan which is filed on record on behalf of the applicant accused does not indicate name or signature of Mr. Avnendra Kumar, meaning thereby there is no Vakalatnama along with Adv. A. Karim Pathan who appears to be on the roll of Bar Council of Maharashtra, which is in breach of the aforesaid condition.

7. Let the copy of this order be immediately forwarded to the Chairman of Bar Council of Maharashtra & Goa to initiate appropriate action against Mr. Avnendra Kumar.

8. Conduct of simultaneously moving two different applications for bail before different benches in the same crime is indeed a very serious act, which needs to be deprecated. Since the co-ordinate bench has already granted bail to the applicant by an order dated 29th November 2022, Registry is directed to immediately place the matter and this order before the Hon'ble Justice Karnik."

4. The advocate on record Abdul Karim Pathan is a practicing advocate of this Court duly registered with the Bar Council of Maharashtra and Goa. An affidavit has been filed duly affirmed by Advocate Abdul Karim Pathan which

reads thus :

"I, Mr.Abdulkarim Pathan, age 41 years, Occ. Advocate, having current address at 7, Fountain Chambers, Fountain, Fort, Mumbai- 400001, do hereby state on solemn affirmation as under:-

1. I say that I am on record Advocate for the Applicant in the present case, I am a registered member of Bar council of Maharashtra and Goa since year 2007 and I have active membership. I say that the Accused hails from west Bengal and he was arrested in the present case. His family member including his brother in law came to Mumbai and they have appointed me as an advocate for filing of his bail application, however they were also not aware that the Accused from Prison have also appointed another advocate. Due to this lack of knowledge/miscommunication two bail Applications came to be filed before this Hon'ble court both were pending at the same time, out of which this Hon'ble court had granted bail to the Applicant in Bail Application no.457 of 2022 vide order dated 29.11.2022, whereas at the same time another bail Application bearing Bail Application no. 2632 of 2022 filed by me was remain pending and remained to be withdrawn. Which came up on causelist in the year 2024, as such the matter came up before His Lordship Justice Prithviraj Chauhan, on 08.03.2024, on that day I was not keeping well and suffering from Gastric Infection of which I am hereby producing medical papers also, so I asked Adv Avnendra Kumar to appear on my behalf, however, his lordship Justice Prithviraj Chavan asked his Bar council ID, which was found to be expired in the year 2022 and due for renewal and same is from Bar Council of UP, I further submit that in fact, even I was also not aware that Adv Avnendra Kumar's bar Council ID is expired whom I requested to appear for that date only, therefore His Lordship Justice Prithviraj Chavan had passed an order dated 08.03.2024. Hereto annexed and marked as EXHIBIT A (Colly) are the copies of order dated 08.03.2024, 29.11.2022 passed by the Hon'ble High Court, case status screenshot print out and medical paper.

2. I say that I am tendering my sincere APOLOGY to this Hon'ble court, since I was also not aware at the time of

filing of Bail Application that another Bail Application was pending, since I had acted as per the instructions of the family member of the Applicant. I have not intentionally committed the aforesaid mistake and the same was purely on the basis of miscommunication.

3. Therefore, in the interest of justice, I humbly prays that :-

a. My sincere apology may please be accepted.

b. The Application may allowed to withdraw.”

5. The explanation appears to be bonafide and therefore the apology needs to be accepted. The matter needs to be put to rest. The Bail Application No. 2032 of 2014 is allowed to be withdrawn on instructions.

6. So far as the advocate Avnendra Kumar is concerned, a copy of ‘Certificate of Practice’ of Bar Council of India duly indicating that he is enrolled as an Advocate under the Advocates Act, 1961 with SBC Enrollment No. UP/2608/2015 dated 21/05/2016 is produced. The ‘Certificate of Practice’ subsists and on instructions learned counsel Abdul Karim Pathan submits that the ‘Certificate of Practice’ is not suspended.

7. So far as the I-card is concerned, it is submitted that undoubtedly, I-card has expired. It is submitted that there was no intention of misguiding this Court. In the present matter, advocate Avnendra Kumar has not filed his appearance. He was asked by advocate on record Abdul

Karim Pathan to request for an adjournment. It is submitted that due to death of his father in the year November 2021 and in view of some personal tragedy suffered by him in the year 2022, he could not visit Uttar Pradesh to get the I-card renewed. The explanation appears to be bonafide.

8. In this view of the matter, in my opinion, the matter need not be precipitated any further. Learned counsel for the Bar Council of Maharashtra & Goa submitted that as Advocate Avnendra Kumar is not registered with the Bar Council of Maharashtra and Goa, it is not within their jurisdiction to take any action against him. In any case the Certificate of Practice issued by the Bar Council of India subsists, which could not be produced before the co-ordinate bench, hence any further action is now not necessary. The learned advocate on behalf of Advocate Avnendra Kumar tenders an unconditional apology. The matter is disposed of.

(M. S. KARNIK, J.)