

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

CRIMINAL APPLICATION (APL) NO. 587 OF 2024

Mr. Ajay Kishor Sadarangani
Aged : 44 years, Occupation : Business
R/at : C-1401 Raheja Atlantis,
G.K. Marg, Opp. Nerolac House, Worli,
Mumbai – 400018.

..... Applicant

v/s.

The State of Maharashtra
(Through Worli Police Station
In FIR No.280 of 2019 Mumbai.)

..... Respondent

Mr. Aabad H. Ponda, Sr. Advocate a/w. Mr. Karan L. Jain for the
Applicant in APL/587/2024.
Ms. P.P. Bhosale, APP for the State.
Ms. Tripti Shetty a/w. Ms. Preshita Parab for the Intervenor in
IA/2054/2024.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 19th AUGUST, 2024.

PRONOUNCED ON : 28th AUGUST, 2024

JUDGMENT :-

. Present Application seeks quashing and setting aside of the impugned Order dated 1st February, 2023 passed in Miscellaneous Application No.2601/2022 ('Misc. Appln.', for short) by the learned Additional Sessions Judge/Special Judge, City Civil and Sessions Court, Greater Mumbai and thereby to quash the condition no.2 (iv) of the Order

dated 19th July, 2019 (as modified by Order dated 23rd October, 2019), in Bail Application No.1758 of 2019 .

2) Heard Mr. Ponda, learned Senior Advocate for the Applicant, Ms. Bhosale, learned APP for the State and Ms. Tripti Shetty, learned Advocate for the Intervenor. Perused the Application.

2.1) Rule. Rule is made returnable forthwith and taken up for final hearing with the consent of the learned Advocates and learned APP.

3) The facts giving rise to this Application are that, the Applicant was arrested in C.R.No.280/2019 dated 15th July, 2019 registered with Worli Police Station, Mumbai for offences punishable under sections 323, 324, 354, 504, 509 of the Indian Penal Code, on the report of the Intervenor.

3.1) By Order dated 19th July, 2019 passed by the learned Additional Sessions Judge/Special Judge, City Civil and Sessions Court, Greater Mumbai in Bail Application No.1758 of 2019, the Applicant was released on bail on certain conditions. The condition no.2 (iv) in the operative part of the bail Order was as under :-

“(iv) The applicant/accused shall not leave the jurisdiction of the Court and shall attend the Court on each and every date of the trial.”

3.2) Thereafter, the Applicant preferred Misc. Appln. No.2606 of 2019 seeking modification of the said condition no.2 (iv) in the bail order dated 19th July, 2019. Hence, the same learned Judge by Order dated 23rd

October, 2019 modified the said condition no.2 (iv) as, “*the Applicant shall not leave the India without previous permission of the trial Court*” and cancelled the condition No. 2 (v) to attend the Police Station on alternate Sunday, for the reason of filing of the charge sheet.

3.3) The Applicant again preferred Misc. Appln. No.2601 of 2022 and prayed to modify the said condition no.2 (iv) of the bail order dated 19th July, 2019, (as was modified by said Order dated 23rd October, 2019).

The said prayer reads as under :-

“(a) This Hon’ble Court may be pleased to relax/modify and/or alter the condition no.2 (iv) contained in Order dated 19/07/2019 (as modified by Order dated 23/10/2019) passed in Bail Application No.1758 of 2019 to inform the Hon’ble Court and/or concerned Police Station prior to travelling abroad and further on such terms and conditions as this Hon’ble Court may deem fit and proper.”

3.3.1) The said prayer was based on the grounds that, the Applicant is a businessman and needs to travel for the purpose of his business on regular basis, however, the restriction on his movement in freely travelling outside India is a severe hardship and consequently the Applicant is not able to conduct his business properly; that, the Applicant has his registered business and ancestral properties in India; that, the Applicant’s wife also runs a salon and has her independent properties and roots in India; that the Applicant is falsely implicated in the said crime; that in order to show his *bonafide*, the Applicant is ready to give a

personal bond and/or to deposit the original title deeds of his house (for the sake of the Application); that the Applicant undertakes to inform the police concerned as and when he intends to travel abroad by providing his entire detailed itinerary containing details such as, time of leaving and returning, contact numbers of abroad, e-mail id and all other information as may be required by the trial Court; that the Applicant undertakes to remain present as and when called either personally or through Advocate, etc.

3.4) The Respondent-Police Station filed its say and objected the Application stating that, the Applicant is required to travel in and outside India; that, if the said condition 2 (iv) is cancelled, the Applicant would travel abroad; that, in case the Applicant does not return to India, the possibility of the aforesaid case remaining pending cannot be denied. Hence, the Application may be rejected.

3.5) The learned Additional Sessions Judge/Special Judge, City Civil and Sessions Court, Greater Mumbai heard the parties, noted the grounds stated in the Application, the reasons stated in the say and finally allowed the Misc. Appln. No.2601 of 2022 by the impugned Order dated 1st February, 2023. In this regard, the learned Judge held that, considering the fact that almost more than one year period has been passed after passing of the Order and the nature of the job of the Applicant, it is just and proper to modify the condition no.2 (iv) of the

Order dated 19th July, 2019. Hence, the learned Judge passed the following Order :

- “1. *The Miscellaneous Application No. 2601/2022 is allowed.*
2. *The condition No.2 (iv) of Criminal Bail Application No. 1758/2019 passed on 19/7/2019 is modified as under:*
“The applicant shall not leave India without prior permission of the Court.”
3. *Other conditions of order dated 19/7/2019 shall remain as it is.*
4. *In view of the above order, application is disposed off.*

xxxxxx (name)

1/2/2023.

Additional Sessions Judge,

.....

3.6) The modification of the condition No. 2 (iv) as above was unavailing, therefore, the Applicant was constrained to file Misc. Appln. No.830 of 2023, under Section 362 of the Criminal Procedure Code seeking review and modification of the Order dated 1st February, 2023. This relief was claimed on the grounds that, it appears from the final observation and Order that the trial Court allowed the Application, however, while giving the final observation it has modified the condition no.2 (iv) as contained in the Original Order to the extent that was already relaxed *vide* Order dated 23rd October 2019, passed in Misc. Appln. No.2606 of 2019. Even though the trial Court allowed the Application

thus, in the final direction it has granted the relief which the Applicant was already availing in the matter. It further states that, as the trial Court already reached the conclusion about the need for relaxing the condition, the above error appears to be a clerical and inadvertent error (*in the Order dated 1st February, 2023*). Therefore, the same can be recalled and corrected by invoking the jurisdiction under Section 362 of Cr.P.C. Hence it was prayed as under :

“(a) This Hon’ble Court may be pleased to review and modify its Order dated 01/02/2023 passed in Misc. Application No.2601 of 2022 and thereby modify the condition no.2(iv) contained in Order dated 19/07/2019 (as modified by Order dated 23/10/2019) passed in Bail Application No.1758 of 2019 so as to read to inform the Hon’ble Court and/or the concerned Police Station prior to travelling abroad and further on such terms and conditions as this Hon’ble Court may deem fit and proper; ”

3.7) The Respondent-Police Station and the Intervenor resisted the Application by filing their say, emphasizing an apprehension that modification of the condition would give a scope to the Applicant to flee from the jurisdiction of the Court, and in that event, the trial of the case will be hampered.

3.8) The same learned Additional Sessions Judge/Special Judge heard the parties, noted the grounds stated in the Application and the reasons stated in the say of the police and Intervenor. Ultimately, the learned Judge rejected the Misc. Appln. No.830 of 2023 for the reasons

that, the said condition No.2 (iv) was modified *vide* Order dated 1st February, 2023 passed in Misc. Appln. No.2601 of 2022; that there is no clerical error in the said Order; that the condition No.2 (iv) is already modified and hence, it cannot be modified again; that the condition imposed *vide* Order dated 1st February, 2023 cannot be modified or relaxed because the matter is pending before the Court; that the Applicant (accused) cannot be permitted to leave India without the permission of the Court.

3.9) Being aggrieved, the Applicant is before this Court by way of the instant Application.

4) Learned Senior Advocate Mr. Ponda for the Applicant submits that, the purpose behind the Misc. Appln. No.2601 of 2022 was not to seek retention of the already modified condition no.2 (iv) *vide* Order dated 23rd October 2019, but to modify the same further to allow the Applicant's travelling out of India/abroad with advance intimation to the Court and the police as this would help meeting his business demands on time. He submits that, by the impugned Order dated 1st February 2023, the learned Judge of the trial Court allowed the said Application, withal, maintained the condition No.2 (iv) as was modified earlier *vide* order dated 23rd October, 2019. He submits that, this is not only erroneous but also illegal. Even so, believing the same as one due to an inadvertence, the subsequent Misc. Appln. No. 830 of 2023 was filed with a prayer to

review the impugned dated Order 1st February, 2023 and modify the said condition No. 2 (iv) to suit the prayers in the Misc. Appln. No.2601 of 2022 and Misc. Appln. No. 830 of 2023. However, the learned Judge rejected this subsequent Application by the Order dated 3rd November, 2023. He submits that, the view taken for the said rejection is not only different but also contrary to the learned Judge's own view taken in the impugned Order dated 1st February 2023. Hence, the Order dated 3rd November 2023 is equally erroneous and illegal. As such, both the Orders may be set aside and the Misc. Appln. No.2601 of 2022 and Misc. Appln. No. 830 of 2023 may be allowed in terms of the relevant prayers therein.

5) Learned APP Ms. P.P. Bhosale for the Respondent-State submits that, considering the response of the Respondent-Police Station as noted in the aforesaid Orders, necessary orders may be passed in the interest of justice.

6) Learned Advocate Ms. Tripti Shetty for the Intervenor submits that, in the Order dated 03rd November, 2023 the learned Judge has firmly held that, there is no clerical error, therefore, the review is not permissible under Section 362 of Cr.P.C.; that, looking at the nature of the alleged offences the Applicant cannot be permitted to travel out of India without the permission of the Court; that, the condition No.2 (iv) is already modified and hence, it cannot be modified again. Therefore, rejection of the Misc. Appln. No.830 of 2023 is just. As such, the

aforesaid Orders are legal. Thus, present Application is devoid of merit and it be rejected.

7) Section 362 of Cr.P.C. deals with powers to review. Looking at the controversy involved in the case in hand, it is necessary to have a glance at said Section 362, which reads as under :-

Section 362. Court not to alter judgment.— *Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.*

8) From a plain reading of Section 362 of Cr.P.C., it is clear that, except correcting a clerical or arithmetical error, once a judgment or final order disposing of a case is signed by the Court concerned, then it is not open for alteration or review by the same Court, invoking powers of review under this Section.

9) On reading of the Misc. Appln. No.2601 of 2022 what one would get is that, it only sought for the modification that facilitates the Applicant to travel abroad by giving advance intimation only. This arrangement, undoubtedly would help the Applicant to meet his business requirements on time. The impugned Order dated 1st February, 2023 clearly indicates that, the learned Judge of the trial Court was totally satisfied with the grounds stated in the Misc. Appln. No.2601 of 2022, therefore, the learned Judge proceeded to allow the said Application.

Nevertheless, from the operative part of the same impugned Order it is evident that, instead of suitably modifying the said condition No.2 (iv) as prayed by the Applicant and to match the satisfaction of the learned Judge, the modified condition No.2 (iv) *vide* Order dated 23rd October 2019, was retained. This is nothing but an inadvertence or a *bonafide* mistake. However, it resulted into an illegality as the bail condition 2 (iv) intended to be modified was retained by the said Order, instead of its modification despite the Misc. Appln. No.2601 of 2022 was allowed.

10) Considering the Misc. Appln. No.830 of 2023, it is apparent that, it only sought for rectification of the operative part of the impugned Order dated 1st February 2023, in particular the condition no. 2 (iv) in item No.2 thereof, and not its reasoning which in fact persuaded the learned Judge to allow the Misc. Appln. No.2601 of 2022, as obvious from item No.1 of the very same Order. Nonetheless, the same learned Judge proceeded to take a different view for reasons that, the Applicant cannot be permitted to travel abroad without prior permission of the Court. Thus, this subsequent Order has a gloss of review of the reasons noted while allowing the Misc. Appln. No.2601 of 2022 by item No.1 of the impugned Order dated 1st February 2023. The said view resulted in negating the effect of the conclusion recorded in the impugned Order dated 1st February 2023. Considering the facts of the case, it seems that, the learned Judge concentrated more on words 'Section 362' stated in the

subject and the word 'review' stated in the prayer clause of the Misc. Appln. No.830 of 2023 and therefore decided to reject the said Application but not before implicitly reviewing the impugned Order dated 01st February, 2023. This is precisely forbidden in law.

11) One of the submissions by learned Senior Advocate Mr. Ponda is that on various occasions in the past, the Applicant was allowed to travel abroad by the trial Court. This submission is neither controverted by the learned APP nor by the learned Advocate for Intervenor. Therefore, it is reasonable to infer that, the Applicant is not a flight risk. Besides that, it is material to note that, the Applicant is ready to provide adequate security i.e., deposit of title deeds of his house property, to ensure his return to India after the intended travel period is over. By accepting this undertaking while allowing the Misc. Appln. No. 2601 of 2022, the trial Court also indicated that the Applicant is not a flight risk. Thus, on this count also the Applicant had made out the case to modify the said condition No. 2 (iv), as prayed in the said Applications.

12) Conspectus of the above discussion is that, if the Application seeking modification of a condition of bail is allowed, however, instead of modifying the condition in the operative part of the Order, the condition intended to be modified has been retained, subsequent modification of such inadvertently retained condition is not amount to review. Similarly, if a Court for satisfactory reasons forms a view and allows an Application

seeking modification of the bail condition accordingly, but subsequently in the same facts and circumstances of the case, records a contrary view not to modify the same condition, it is amounting to review. The learned Judge of the trial Court failed to consider the aforesaid.

13) In view thereof, the impugned Order dated 1st February, 2023 is liable to be quashed and set aside. The Applicant has not impugned and sought for quashing and setting aside of the Order dated 3rd November, 2023. However, said Order is orally impugned by learned Senior Advocate Mr. Ponda, during the course of the arguments. As held above, the Order dated 3rd November, 2023 has the effect of the review and therefore it is illegal. On quashing and setting aside of the impugned Order dated 1st February 2023, the said Order dated 3rd November, 2023 cannot be allowed to remain on the record of the trial Court, therefore, said Order is also liable to be quashed and set aside, in view of the prayer clause (b) in the instant Application.

14) As a result, the Application deserves to be allowed, accordingly. Hence, the following Order is passed :-

- O R D E R -

- (i) Criminal Application No.587/2024 is allowed.
- (ii) The impugned Order dated 01st February, 2023 passed by the learned Additional Sessions Judge/Special Judge, City Civil & Sessions Court, Greater Mumbai in

Miscellaneous Application Nos.2601/2022 and the Order dated 03rd November, 2023 passed by the learned Additional Sessions Judge/Special Judge under POCSO Act, City Civil & Sessions Court, Greater Mumbai in Miscellaneous Application No.830/2023, are quashed and set-aside to the extent of non-modification of the bail condition no.2 (iv), as was earlier modified by an Order dated 23rd October, 2019 passed by the learned Additional Sessions Judge, Greater Mumbai in Miscellaneous Application No.2606/2019.

(iii) Consequently, said condition no.2 (iv) is modified as under :-

“ 2 (iv) The Applicant shall inform in writing to the trial Court and the Police Station concerned two weeks prior to his traveling abroad.”

(a) The itinerary of such travel shall be enclosed with the said information coupled with the details of the place/s of stay at abroad and the contact number/s on which the Applicant can be contacted, during such travelling period.

(b) The Applicant shall furnish a Personal Bond of Rs.10,00,000/- and submit a certified copy of the title deed of his house property with the trial Court as security equal to the Personal Bond amount, to ensure his return to the India, whenever he travels abroad.

(c) The Personal Bond and the security shall be in force till the conclusion of trial and shall be forfeited if the Applicant failed to return from abroad.

(d) Before availing this Order, the Applicant shall submit before the trial Court an affidavit containing the details of the house property which he has offered as the security along with a declaration that, it is free from encumbrance/s.

(e) The Applicant shall undertake that, he shall not encumber, sale, transfer and/or create any third party interest in the said house property, without prior permission of the trial Court and until the disposal of aforesaid case against him. This undertaking shall be included in the aforesaid affidavit.

(f) The Applicant shall provide a copy of the aforesaid affidavit along with a certified or duly attested photocopy of the title deed of said house property to the Police Station concerned for verification of the genuineness of the said details. Thereafter, the police concerned shall submit the verification report before the trial Court, within two weeks.

(g) The police concerned shall provide a copy of this Order to the sub-Registrar/Authority concerned, to take a note of this Order, against the official entry of the said house property offered as security, to prevent its transfer until the trial in the aforesaid crime is over.

14.1) Criminal Application (APL) No.587/2024 stands disposed of in above terms. Rule is made absolute.

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(SHYAM C. CHANDAK, J.)