

Ajay

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

**INTERIM APPLICATION NO. 3323 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 960 OF 2022**

**WITH
INTERIM APPLICATION NO. 3359 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 959 OF 2022**

Kirti Vishwanath Kedia .. Applicant
Versus
Central Bureau of Investigation (EOB) and Anr. .. Respondents

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- Dr. Sujay Kantawala a/w. Ms. Sajal Yadav, Mr. Aishwarya Kantawala, Jeffry Caleb and Mr. Harsh Ghangurde, Advocates i/by Mr. Anukul B. Seth for Applicant.
 - Mr. Kuldeep S. Patil a/w. Dhavalsinh V. Patil and Mr. Yogesh A. Sukale, Advocates for Respondent No.1 – CBI.
 - Mr. Y.Y. Dabake, APP for Respondent - State.
 - Dr. Ashwini Takalkar, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.
DATE : AUGUST 22, 2025.

P.C.:

1. Heard Dr. Kantawala, learned Advocate for Applicant; Mr. Patil, learned Advocate for Respondent No.1 – CBI; Mr. Dabake, learned APP for Respondent - State and Dr. Takalkar, learned APP for Respondent No.2 – State.

2. Present Interim Application No.3323 of 2024 is filed by Applicant who is arraigned as Accused No.9 in charge-sheet filed by Respondent No.1 – Central Bureau of Investigation (EOB) (for short

‘CBI’) in CBI Special Case No.1643 of 2021. Application seeks modification of order dated 21.12.2022 passed by this Court (Coram: Bharati Dangre, J.) in Anticipatory Bail Application No.960 of 2022 to the extent of deletion of condition Nos.(c) and (d) stated in that order as conditions for bail *qua* the Applicant before me. It is seen that the order dated 21.12.2022 was a common order passed in 2 Bail Applications and 4 Anticipatory Bail Applications moved by Applicants in the said case.

3. Dr. Kantawala, learned Advocate would submit that Applicant was not arrested during investigation and his cooperation / availability for investigation with Respondent No.1 – CBI for purpose of investigation is not in dispute. He would submit that learned Trial Court after taking cognizance of order dated 15.02.2022 passed by this Court in Anticipatory Bail Application No.960 of 2022 issued summons to Applicant to appear on 04.04.2022 for investigation. He would submit that Applicant filed exemption Application for personal appearance on that date through his Advocate which was rejected and non-bailable warrant was issued against Applicant.

3.1. He would submit that in the meantime Accused Nos.3, 12, 18, 19, 23, 25 and 26 in the Special CBI case were arrested and sent to judicial custody and their Bail Applications were rejected by order dated 05.12.2022. In the above circumstances, Applicant was

constrained to approach this Court for seeking Anticipatory Bail by filing Anticipatory Bail Application Nos.160 of 2022 and 959 of 2022. He would submit that those Application were allowed alongwith 2 other Bail Applications and 3 other Anticipatory Bail Applications of other co-accused persons by common order dated 21.12.2022 appended at Exhibit 'B' – page No.26 of Interim Application No.3323 of 2024.

3.2. He would submit that in that order this Court allowed Anticipatory Bail Application of Applicant alongwith 3 other Anticipatory Bail Applications by directing all Applicants to surrender their passports, if any, before the Investigating Officer within one week of their release and directed them not to leave the country without prior permission of the Special CBI Court. These directions are contained in the operative part nomenclatured as 'Order in Anticipatory Bail Applications' as can be seen on page No.44 of the Application. In the present Interim Application, Applicant before me prays for deletion of the said twin conditions namely condition Nos.(c) and (d) imposed by Court regarding surrender of passport and seeking permission of Special CBI Court before leaving the country on the following grounds:-

- (i) According to Applicant, the said twin conditions are onerous conditions as they fetter the right of Applicant

to free travel and impose an embargo upon Applicant;

- (ii) That order dated 08.04.2022 which was interim order passed by this Court in Anticipatory Bail Application No.939 of 2022 did not have the said conditions curbing the travel freedom of the Applicant;
- (iii) That pursuant to passing of order dated 21.12.2022 Applicant has undertaken 12 trips out of the country for business purposes (3), family purposes (3) and for medical purposes (6) between 07.03.2023 to 21.07.2024;
- (iv) That Applicant has visited Dubai, UAE and the United Kingdom for business purposes and Singapore for his medical check-up and follow-up. That Applicant has on all occasions adhered to the twin conditions and on every occasion approached the CBI Special Court for release of passport and sought permission of Court to travel abroad for his business purposes, family purposes and his medical check-up / follow up.;
- (v) That not even once Applicant has derelicted or given an opportunity to prosecution and has always complied with all conditions of travel and returned back considering that Applicant has substantial business

interests, property and his family living in Mumbai / India.

(vi) That according to Applicant the twin conditions are onerous to in as much as Applicant is required to travel abroad for his business purposes and most importantly for his medical check-up/ follow up visits repeatedly at very short notice and it is extremely cumbersome for Applicant to approach the Court every time at the 11th hour for release of his passport and for seeking permission to travel abroad since this exercise is time consuming and on most occasions due to delay it leads to failure of his business meetings and cancellation of medical appointments;

(vii) Lastly, Applicant would submit that it is settled position of law concluded by Supreme Court in a subsequent judgment dated 16.05.2024 in the case of ***Tarsem Lal Vs. Directorate of Enforcement, Jalandhar Zonal Office*** in Criminal Appeal No.2608 of 2024 that once the Trial Court has taken cognizance of the matter and passed interim order dated 15.02.2022 (in the case of Applicant herein) seeking appearance of Applicant and Applicant having complied with the same then

Applicant would not have been taken into custody. He would submit that despite this order Applicant was constrained to file Anticipatory Bail Applications in view of the learned Special Court sending some of the other co-accused persons to custody during investigation at post-cognizance stage. He would therefore submit that the twin conditions imposed upon Applicant in the order granting Anticipatory Bail cannot be impose on Applicant since he had appeared before the learned Trial Court at post-cognizance stage as a free person and if that is the case then the Court has no option but to release such a person by accepting his bonds without sureties and without imposing any additional conditions.

3.3. He would submit that imposition of additional conditions while granting bail by relying on provisions of Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') is bad in law in the present facts and circumstances. He would submit that in the peculiar facts and circumstances of the present case, except what has been contemplated under Section 88 of the Cr.P.C., no other condition could have been imposed on the Applicant. Hence, he would submit that the twin conditions namely (c) and (d) in the order dated 21.12.2022 to the extent of the Applicant be quashed and set aside.

4. *PER CONTRA*, Mr. Patil, learned Advocate for Respondent No.1 – CBI would submit that imposition of the twin conditions in the present case is imperative in view of the apprehension that Applicant may misuse the liberty granted to him to travel abroad and may not return back to stand to trial at all.

4.1. He would submit that Applicant is an accused person in CBI Special Case No.1643 of 2021 arising out of offences registered under Section 120-B, 420, 468 and 471 of IPC. He would submit that the charges are serious and its gravity cannot be disregarded considering that there is loss of huge public money to the tune of Rs.2,200 crores which is a serious economic offence which affects the economic fabric of the country at large and therefore imposition of the twin conditions cannot be called as a fetter on the freedom to travel of Applicant. He would submit that whenever Applicant has approached the Special Court, it has granted permission to Applicant to travel abroad.

5. In his usual fairness, Mr. Patil would submit that in so far as multiple visits undertaken by Applicant abroad are concerned, it is an admitted fact that he has always complied with the conditions imposed and always returned back on time. He would fairly submit that it is not in dispute that Applicant was never arrested when he was interrogated during the course of investigation or that he has not participated in investigation. He would submit that reliance of Applicant on the

decision of Supreme Court cannot be indicative of the proposition that if the accused is not arrested during the course of investigation he can never be arrested on filing of the charge-sheet as such a case would vary on the facts and circumstances of each case. Hence he would submit that this Court be pleased to pass appropriate orders and in the event if inclined to grant the Application for modification may significantly ensure that the prosecution is always in the know-how of the whereabouts of Applicant as and when he travels abroad.

6. I have heard Dr. Kantawala, learned Advocate appearing for Applicant and Mr. Patil, learned Advocate for Respondent No.1 – CBI and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

7. At the outset, it is seen that investigation has been completed and charge-sheet has been filed in the subject Special Case filed by CBI. It is also borne out from the record that Applicant has duly participated in investigation as and when called for by prosecution and never derelicted from participation. Application of Applicant before Court is for deletion of the twin conditions namely (c) and (d) in the order granting bail requiring Applicant to deposit his passport with the Court and seek permission of the Court as and when he has to travel abroad. The contour of the Application is on the basis of two

submissions one of which is fact based and second being a legal submission.

8. According to Applicant, he is required to travel abroad repeatedly for various purposes. The details of his travel between March – 2023 and July – 2024 on 12 occasions which have been stated in Application alongwith all details including the dates and purpose. It is seen that Applicant has business interests in foreign countries for which he is required to travel frequently for business meetings as also recently one of the major reason for his travel abroad is for his medical check-up and follow-up to Singapore where he has travelled on 6 occasions in the past. Applicant is suffering from a kidney ailment and is treated abroad in Singapore, details of which have been appended to the Application and is required to travel at short notice on receiving the Doctor's appointment. Case of Applicant is that whenever he is required to travel, the onerous conditions of seeking release of his passport before travel filing Application for release of passport, applying for permission to travel abroad to Trial Court, awaiting filing of reply from prosecution, hearing of Application, awaiting final order from the CBI Special Court are all such incidents which are time consuming and most importantly they act as a fetter on his right to travel abroad either for business purpose or medical purposes or for his family reasons. Applicant's grievance is that the essence of his business trips / medical check-up visits is lost because of the delay which occurs

in the legal system from the point of Applicant making Application for seeking release of his passport until the Trial Court passes the order and Applicant receives it in his hand, Applicant's case is that in case of emergency and exigency when Applicant is required to travel abroad for the reasons, due to consumption of time either his schedule cannot be followed or complied with or his appointments get cancelled as there is very little time available on Applicant's hand to approach the Court for seeking release of his passport and permission to travel abroad.

9. That apart, in so far as travelling abroad for his medical check-up and follow-up visits are concerned, those visits critically depend upon availability of appointment of doctors who are treating the Applicant in Singapore for his kidney ailment and when such appointments are received at short notice undoubtedly it is a cumbersome on the part of Applicant to immediately undertake the process of applying for release of passport and seek permission to travel abroad within a short period of time which at many a times becomes impossible for Applicant since he has to manage his health condition simultaneously and seek such appointments based on his health condition. These submissions of Applicant on the factual aspect, *prima facie* appeal to the Court.

10. That apart it is seen that Applicant has deep roots in the Society, he has substantial properties and business interests in Mumbai and India and therefore the twin conditions of requiring Applicant to surrender his passport after every trip abroad and once again seek its release and permission to travel abroad is undoubtedly on the face of record cumbersome and therefore it possibly results in loss of short term business opportunities, but also acts as a curb and fetter of meeting deadlines by Applicant and more so regarding his frequent medical visits for his ailment.

11. From that perspective, I am in complete agreement and in consonance with submissions advanced by Dr. Kantawala in interfering with the twin conditions namely (c) and (d) in the Anticipatory Bail Application. Needless to state that appropriate directions can be passed requiring Applicant to share all his details of travel with prosecution and Investigating Officer before he undertakes any such travel.

12. The second reason advanced by Applicant is on account of a subsequent decision of the Supreme Court in the case of ***Tarsem Lal (supra)*** dated 16.05.2024 which interprets the provisions of Section 88 of Cr.P.C. viz-a-viz Section 205 of Cr.P.C.

13. Both these provisions are reproduced below for reference:-

"88. Power to take bond for appearance.

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons

or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."

"205. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. (2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

14. The operative conclusion in the said decision is contained in paragraph No.23 wherein the Supreme Court has held that an order accepting bonds under Section 88 of Cr.P.C. does not amount to grant of bail. It is seen that the object of Section 88 of Cr.P.C. is to ensure appearance of a person in Court and the only condition contemplated in Section 88 is for such person to execute a bond with or without sureties. In the case of Applicant before me due to interim order dated 15.02.2022 he was issued summons to appear on 04.04.2022 and hence he could not have been taken into custody. However because of a subsequent development of some co-accused persons having been taken into custody, the Applicant was constrained to file Anticipatory Bail Application. It is in this background that Anticipatory Bail Application filed by Applicant was heard and bail was granted with conditions imposed in the said order.

15. Considering the aforesaid background and submissions advanced by Dr. Kantawala about the application of the ratio of the Supreme Court order in the case of *Tarsem Lal (supra)* to the facts of the present case, it is seen that Applicant was not arrested till the filing of the charge-sheet as he was directed to appear on summons and he had appeared. In such a situation it was incumbent upon the learned Trial Court to direct Applicant to furnish bond as contemplated under Section 88 of the Cr.P.C..

16. Further it is seen that Applicant had a medical surgery in Singapore and is required to regularly do his follow-up visits with his treating Doctor in Singapore. It is seen that he has already undergone heart bypass surgery on 20.11.2013 by Dr. Lye Ywai Chong in Singapore. It is also seen that he is suffering from kidney ailment. It is also seen that Applicant is a businessman and has wide experience and expertise in the field of construction, finance and property development and therefore needs to travel abroad for business purpose at short notice. It is in this background that the order came to be passed against the Accused persons laying down the conditions regarding surrender of passport and seeking leave of Court to travel abroad.

17. Taking an overall view of the case in the peculiar facts and circumstances of the Applicant's case while accepting submissions

advanced by Dr. Kantawala on the factual grounds as also applicability of the provisions of Section 88 of the Cr.P.C. to the case of Applicant, I am of the opinion that the twin conditions namely (c) and (d) in the order granting anticipatory bail to the Applicant are required to be interfered with and deleted.

18. In view of my above observations and findings and the peculiar facts and circumstances of the present case of Applicant, the twin conditions namely (c) and (d) in the order dated 21.12.2022 qua the Applicant before me in so far as Anticipatory Bail Application No.960 of 2022 is concerned stand deleted. Passport of Applicant shall be returned back to Applicant if in the custody of the Investigating Officer or Trial Court forthwith.

19. However, deletion of the said conditions is subject to the following conditions which shall be scrupulously followed by Applicant whenever he desires to travel abroad until completion of trial:-

- (i) Applicant is directed to furnish all details of his travel abroad as and when he desires to undertake travel abroad to the Investigating Officer in writing by giving all such necessary details of his travel therein, details of his tickets and visa, details of his stay abroad, details of his return and also all such necessary details relating to his mobile phone number which he would be using

while being abroad, his Email ID and address where he would be staying while being abroad. This is to ensure that the whereabouts of the Applicant are known to the prosecution agency;

(ii) Applicant shall ensure that he appears on all dates of trial before the Special CBI Court in the Special case and if on the date of any hearing he is not available for any reason he shall ensure that his pleader/Advocate shall appear and seek appropriate exemption from appearance for his absence on that date in accordance with law; and

(iii) Liberty to apply to both parties in case of any difficulty.

20. With the above directions, Interim Applications are allowed in terms of prayer clauses 'a', 'b' and 'c'.

21. Both Interim Application Nos.3323 of 2024 and 3359 of 2024 are disposed.

[MILIND N. JADHAV, J.]

Ajay