

Ajay

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

CRIMINAL APPLICATION NO. 155 OF 2025

Ajay Ajit Peter Kerkar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Dinesh D. Tiwari a/w. Pulkeshi Gaikwad, Parveen Khan and Ms. Kanishka Sharma, Advocates i/by Dinesh D. Tiwari and Associates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State.
 - Mr. Rajendra Shinde, API – EOW, Mumbai present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2025.

P.C.:

1. Heard Mr. Tiwari, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. Present Criminal Application is filed by Applicant for seeking modification of bail order conditions in the bail order dated 15.02.2025 passed by the learned Trial Court in Criminal Bail Application No.2649 of 2024. Applicant thereafter filed Application seeking modification of conditions before the Trial Court itself. That Criminal Miscellaneous Application No.468 of 2025 came to be decided by order dated 15.03.2025 when the Trial Court after hearing the Applicant modified some of the conditions. Applicant is aggrieved by the conditions imposed in both the aforesaid orders and has

therefore moved the present Application before this Court seeking indulgence of this Court to modify the bail conditions to enable the Applicant to meet the same since according to him some of the bail conditions are onerous.

3. I have heard Mr. Tiwari on the grounds for seeking modification of the bail conditions. *Prima facie* what Mr. Tiwari would argue is that it is impossible for the Applicant to meet some of the bail conditions and if not so done, Applicant will be in breach of the bail order and will once again be incarcerated in prison. He would further submit that some of the bail conditions are such that Applicant will not be able to resurrect himself in business if those conditions are sustained as no prudent businessman will agree to do business with the Applicant in view of those bail conditions. He has taken me meticulously through each of the bail conditions of which modification is sought and explained the reasons for the same.

4. *PER CONTRA*, Mr. Karmakar, learned APP appearing on behalf of the State has vehemently opposed and objected to any indulgence being shown by the Court to the Applicant in modifying any of the bail conditions. His primary objection stems from the fact that Applicant had already approached the learned Trial Court seeking indulgence and the Trial Court already modified some of the conditions. He would submit that if the Applicant has any grievance,

he should once again approach the Trial Court otherwise the act of the Applicant to approach this Court in the background of the above facts should not be allowed by the Court.

5. I have heard Mr. Tiwari, learned Advocate for Applicant and Mr. Karmakar, learned APP for the State and with their able assistance perused the record of the case.

6. *Prima facie*, there is no prohibition for this Court in entertaining the present Application which is sought to be argued by the learned APP in view of the facts of the present case which are deliberated herein above.

7. In the order dated 15.02.2025 appended at Exhibit “B” – page No.29 of the Application, Applicant has requested for reducing the amount of personal bond from Rs.5,00,000/- to Rs.25,000/- in condition No.1. Reason for the same is that this Court while dealing with the bail order of the Applicant as also the Supreme Court has granted Rs.25,000/- as the personal bond amount to the Applicant for being released on bail. The other practical reason which Mr. Tiwari would submit is that the amount of Rs.5,00,000/- is very high and Applicant will not be able to meet the same in the present case due to his financial position and constraints. I am also aware about the orders passed by this Court in the case of the Applicant while enlarging him on bail in other matters.

8. Considering the grounds in the Application, the amount of personal bond of Rs.5,00,000/- stands reduced to Rs.25,000/-. Rest of the condition No.1 remains the same.

9. That apart, Applicant is also permitted by the Court to give solvent sureties of the like amount of the same persons who have stood as sureties for the Applicant in the other matters / cases wherein the Applicant has been released on bail.

10. Next condition No.3 in the above order is requested to be modified. That condition requires Applicant to attend the office of Economic Offences Wing (EOW), Mumbai every alternate Monday between 10:00 a.m. and 12:00 p.m., Mr. Tiwari would submit that the said condition is onerous and would request the Court to pass the same condition in that regard which is passed in other cases wherein Applicant has been enlarged on bail. Having considered the submissions of Mr. Tiwari, it is directed that condition No.3 shall stand substituted by the following condition:-

“3. Report to the Economic Offences Wing (EOW), Mumbai every first Monday of the month for a period of 3 months from today between 10:00 a.m. and 11:00 a.m. and thereafter as and when called by the concerned Investigating Officer of the EOW.”

11. Condition No.4 pertains to restriction of financial transactions above Rs.10,00,000/- without prior intimation to EOW.

Mr. Tiwari would submit that on the face of record the said condition is such that it virtually paralyses the Applicant from doing any business. He would submit that because of this condition no prudent businessman or financial institution or bank will be in readiness to do business with the Applicant and Applicant will never be able to resurrect himself in life despite being granted bail. *Prima facie* from this perspective, I see that the said condition is indeed onerous though Mr. Karmakar has vehemently objected and stated that EOW should always be in the know how of the financial transactions that Applicant is undertaking in view of various cases against him. *Prima facie*, I am of the opinion that once the Applicant is released on bail such a condition will virtually decimate his prospects of resurrecting himself in life. Hence, the said condition No.4 in the above order dated 15.02.2025 stands deleted.

12. Condition No.6 pertains to Applicant filing an undertaking not to leave Mumbai without prior permission of the Court. It is *prima facie* seen that whenever the Applicant has to leave Mumbai either for business purposes or to attend the Court cases in other States outside Mumbai or for medical reasons or to meet any family members or for social obligations, he will time and again be required to approach the Trial Court with an Application. The time taken in filing the Application, hearing the said Application and the ignominy attached to that is noticed by the Court.

13. This Court had the occasion of modifying such a condition in the past in Bail Applications. Hence, condition No.6 shall stand deleted and substituted by the following condition:-

“6. The Applicant is permitted to travel outside Mumbai but within India. However whenever he travels outside Mumbai, he shall inform the details of his travel itinerary, place of stay and date of return to the concerned Investigating Officer of the EOW in advance. If in case he has to travel in an exigency and emergency, he shall convey the details as aforesaid to the concerned Investigating Officer within a period of four days from the date of his departure from Mumbai.”

14. This order shall be read alongwith the order dated 15.02.2025.

15. Next Mr. Tiwari has drawn my attention to the order dated 15.03.2025 appended at Exhibit “A” – page No.21 of the Application. He would submit that condition No.1 relating to modification of surety was modified by the learned Trial Court from Rs.5,00,000/- to Rs.1,00,000/-. He would submit that Applicant’s financial position is such that he would not in a position to deposit any such cash security or even furnish two solvent sureties as directed. However, in view of the above order modifying condition No.1 in the original bail order, paragraph No.6.2 in the order dated 15.03.2025 stands deleted.

16. Next my attention is drawn to paragraph No.6.4 wherein the learned Trial Court had permitted the Applicant to travel within India for legal proceedings and medical treatment. Mr. Tiwari would submit that the same permission is required to be extended to all purposes for travel namely business purpose and other family obligations required to be undertaken by the Applicant within India. Considering the above order modifying the original bail condition No.6, the said paragraph No.6.4 stands deleted. However, it is clarified that Applicant is not permitted to leave India without the prior leave and permission of the Trial Court. I am informed that passport of the Applicant has already been deposited with the prosecution.

17. The present order shall be read alongwith the order dated 15.03.2025 passed by Sessions Court in Criminal Miscellaneous Application No.468 of 2025.

18. In view of the above, Criminal Application No.155 of 2025 stands allowed and disposed.

[MILIND N. JADHAV, J.]

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