

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO. 197 OF 2025

Ami Kotecha

.. Applicant

Versus

Union of India & Anr.

.. Respondents

.....

- Dr. Sujay Kantawala a/w Jeffry Caleb & Ms. Ayushi Jha, Advocates for Applicant
- Mr. Siddharth Chandrashekhar, Special PP for Respondents

.....

CORAM : MILIND N. JADHAV, J.**DATE : APRIL 30, 2025****P.C.:**

1. Heard Dr. Kantawala, learned Advocate for Applicant and Mr. Chandrashekhar, Special PP for Respondents.
2. On 25.04.2025 after hearing learned Advocates appearing for the parties, the following order was passed:-

"1. Heard Dr. Kantawala, learned Advocate for Applicant and Mr. Chandrashekhar, learned SPP for Respondents.

2. Present Application seeks modification / deletion of bail condition, inter alia, requiring Applicant to deposit / surrender her passport in the Trial Court and as and when she desires to travel to claim the same by making Application to the Trial Court.

*3. Prayer clauses (a) and (c) are oriented towards this particular condition of which modification / deletion is sought for by Applicant. Case of Applicant prima facie in so far as these two prayers are concerned is covered by the decision of this Court in the cases of **Mohammad Hanif Nurani Vs. The State of Maharashtra and Anr.**¹ and **Manish Gulabchand Birawat Vs. State of Maharashtra and Another**².*

4. I see no impediment in so far as allowing prayer clauses (a) and (c) are concerned, since this Court has considered a similar situation qua the

¹ 2025(2) TMI 220 (Criminal Application No.434 of 2024 decided on 05.02.2025).

² 2023 SCC OnLine Bom 530.

provisions of the Passport Act and on the basis of various citations determined the said issue.

5. *The bone of contention however is with respect to prayer clause (b). Due to rejection of the said prayer by the learned Trial Court, Applicant is before this Court.*

6. *Mr. Chandrashekhar, learned SPP enters appearance for Respondents. He would submit that Respondents be permitted to place on record their objections to the Application specifically prayer clause (b) since in the opinion of Respondents Applicant would be a flight risk and therefore the Court should hear the Respondents.*

7. *The grounds for grant of relief are stated in paragraph Nos.8 to 14. Principally, it is seen by the Court that there are two specific reasons. One, Applicant is suffering from a medical ailment, the details of which alongwith prescription and appointment schedule and all such other necessary details have been appended to the Application at Exhibit "E" collectively and the second reason is that Applicant's daughter's graduation ceremony is on the anvil for which Applicant would like to remain present in the United States. Applicant is ready and willing to co-operate with the investigation as informed by Dr. Kantawala.*

8. *Mr. Chandrashekhar, learned SPP would submit on instructions that Applicant has been issued a summons to attend some hearing on 30.04.2025. Applicant is infact not even aware about same. It is prima facie seen that Applicant has annexed the entire details to the present Application.*

9. *That apart, if Respondents desire to verify the veracity of the said details from the Applicant, Respondents can undoubtedly do so. Considering the request made and grounds in the Application, I direct the Applicant to attend the office of the Respondents and meet the concerned Investigating Officer on 28.04.2025 at 11:30 a.m. and furnish all such necessary details of her travel which she intends to undertake as mentioned in the Application including details of her medical ailment and details of her appointment with the concerned doctor / hospital including her itinerary.*

10. *Considering that this is a post-bail scenario, the aforesaid directions are passed. However, the objections raised by Mr. Chandrashekhar, inter alia, pertaining to conduct of Applicant which is seen from page Nos.38 and 42 of the reply filed by Respondents before the Trial Court shall be considered by the Court on the next date of hearing.*

11. *Needless to state that if any Reply is required to be filed by Respondents, the same shall be filed positively before the next adjourned date. It is clarified that there are two replies which are filed before the Trial Court which are appended at page Nos.38 and 42 of Application. I have perused the same. Needless to state that undoubtedly Respondents shall be heard by the Court and their objection to the Application will be considered.*

12. *In that view of the matter, present Application is kept for hearing on the next adjourned date.*

13. *Stand over to 30th April, 2025. To be placed under the caption 'First on Board'.*

3. In compliance of the said order, Respondents have filed affidavit in reply dated 30.04.2025 through Respondent No. 2. The same is taken on record. It is seen that Respondents have opposed the Application of Applicant. Applicant desires to visit USA for treatment of her prevailing medical condition and to attend graduation ceremony of her daughter who is studying in an University in USA. She has sought permission to travel to USA and also for return of her passport. Prayer clauses (a) to (c) of the present Application pertains to condition No. 6 in bail order dated 20.03.2025. According to prosecution, Applicant was arrested by prosecution officers at the airport along with gold which she was allegedly trying to smuggle / import into India without declaration. Thereafter Applicant has been enlarged on bail on certain conditions including condition to seek prior permission to travel abroad. Applicant desires to travel to USA for medical checkup, monitoring and treatment and the daughter's school programme. Details of her medical ailments, monitoring, treatment and appointment of doctors are all placed on record to support the case of Applicant. *Prima facie* it appears that Applicant was already taking treatment in USA before her arrest. However prosecution through learned Special PP Mr. Chandrashekhar has vehemently opposed the Application. Their opposition is reflected in

paragraph Nos. 11 and 13 of their affidavit in reply. According to Respondents, treatment of Applicant can be undertaken by her in India as well as adequate treatment including the concerned drugs are all available in India in multiple reputed hospitals and therefore for that reason, Applicant need not to travel to USA. This is what is stated in the reply affidavit and argued across the bar. This submission and argument on the face of record is preposterous as prosecution cannot force the Applicant to undertake medical treatment in India and resist her request to undertake treatment in the USA when she desires to travel to USA for that reason and return back.

4. I have perused the record of the case and heard the rival submissions.

5. *Prima facie*, it is seen that Applicant is suffering from Complex Regional Pain Syndrome. She is currently experiencing persistently increased upper extremity pain and will get benefit from Stellate Ganglion Block (SGB) under Ultrasound Guidance. This treatment is needed every 3 months which can only be administered by the Doctors. It is seen that even though the said treatment may be otherwise available in India, however insofar as Applicant is concerned she is an Overseas Citizen of India (OCI) which means that she is a citizen of USA and was taking this treatment in the USA in the past. Hence prosecution is opposing the Application due to fear that she will

be a flight risk. *Prima facie* it is seen that Applicant has been taking treatment for her medical ailment in USA even prior to her arrest. Even the trial Court has noted in the bail order that Applicant is a sick person and that has also been weighed with the trial Court.

6. It is seen from the affidavit that prosecution is in the process of issuing Show-Cause-Notice to Applicant for which her presence is required in India and therefore her Application is opposed by prosecution. Applicant can always co-operate with the investigation after she returns back in July 2025 as stated by her. In the bail order, it is noted by the Court that when she was in custody since 21.02.2025 she was not at all interrogated. Applicant can always co-operate with the investigation after she returns back in July 2025 as stated by her. That apart across the Bar Mr. Chandrashekhar would argue that pursuant to the previous order delineated herein above, Applicant has admittedly visited the office of Respondent No. 2 on 28.04.2025 as directed by the Court and answered several questions of the prosecution during investigation. He would submit that Applicant has been called upon by prosecution officers to submit the details of her bank accounts and LIC policies to enable the prosecution to investigate further. To this submission, Mr. Kantawala has replied that Applicant has co-operated in the investigation and she is ready to give the entire details of her bank accounts and LIC policies to the prosecution

officers as desired by them. What is stated in the affidavit in reply is that Applicant has been asked to submit various documents to the prosecution officers such as bank statements etc. What is argued across the Bar is that Applicant is required to submit her bank statements and LIC policies in her name to the prosecution. Though the prosecution has objection to the present Application, I am of the opinion that the case of Applicant in respect of prayer clauses (a) & (c) seeking modification / deletion of condition No. 6 is covered by the decisions of this Court in the cases of ***Mohammad Hanif Nurani (supra)*** and ***Manish Gulabchand Birawant (supra)***. Needless to state that Applicant will have to furnish all such necessary details to the prosecution before she embarks upon her travel to USA at this time and at all times in future. I am also inclined to consider the request made by Applicant for one more reason and that is the request made by her to remain present for the graduation ceremony of her daughter on 30.05.2025 on which date she desires to remain present in North Montessori School, West Division Street, Chicago, Illinois.

7. Insofar as Applicant's medical condition is concerned, *prima facie* adequate documentation has been appended to the Application and all such necessary details have already been given to the prosecution by her. If any further details are required to be informed, it is directed that Applicant shall inform the same and all such

necessary details pertaining to her itinerary, date of travel, date of return, details of the place where and with whom she will be residing during her visit, details of the places which she intends to visit during her visit to USA etc. It is seen that Applicant is having deep roots in Mumbai and *prima facie* she is having the medical ailment for which she desires to take treatment from her home country i.e. USA, details of which have already been given to the prosecution and appended to the Application. It is also seen that she has been taking medical treatment for her ailment in the USA even earlier. *Prima facie* I do not have any reason to disbelieve the same. Equally the contention of prosecution that Applicant should be compelled to undergo treatment in India solely on account of the present case filed against her, in the light of the observations delineated herein above cannot be accepted. Applicant is an OCI holder and has a citizenship of USA and had undertaken medical treatment in USA in the past also, the details of which have also been placed on record. In that view of the matter, I am inclined to accept the request made by Applicant.

8. In view of the aforesaid observations and reasons condition Nos. 6 and 7 both in the bail order dated 20.03.2025 stands deleted by issuing clarification that as and when Applicant desires to travel abroad, it shall be mandatory for Applicant to inform in writing all such necessary details in writing on affidavit about her itinerary, date

of travel, date of return, details of the place where and with whom she will be residing during her visit, details of the places which she intends to visit during her visit to abroad, her phone number, email ID etc. to the prosecution officer before she undertakes to travel abroad on affidavit and that she will undertake to respond to them in an emergency and shall fully co-operate with the investigation in the present case. This order shall be read along with order dated 20.03.2025. It is clarified that, if there is any breach of this order by Applicant, liberty is given to the prosecution to apply for revocation of this order by applying to this Court. In view of this order, passport of the Applicant is directed to be returned back to her by the prosecution / Department immediately on she presenting a server copy of this order. Applicant shall ensure that all details of renewal of her passport shall be informed to the prosecution in advance in future as applicable.

9. In view of my above order, order dated 15.04.2025 passed by the learned Magistrate in Misc. Application No. 1256/2025 stands quashed and set aside and Applicant is accordingly permitted to travel abroad to USA as delineated in the bail order as corrected / modified by the present order subject to she abiding by the directives contained in the present order.

10. With the above observations, Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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2025.05.02
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