IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Interim Application No.264 of 2025
in
Criminal Writ Petition No.1593 of 2024

Rishikesh Subodh Sapre
Age 50 years, Occ. Service,
R/o. 26/27, Goodwill Assurance
Building, Manmala Tank Road,
Near Starcity Cinema,
Mahim, Mumbai – 400 016. … Applicant

versus

1. Union of India
Through Shri S S Prasad,
ITO (TDS) 1(1)(3), Mumbai
Shri K C Mittal Ayurvedic Hospital
Building, Charni Road (West),
Mumbai – 400 002.

2. The State of Maharashtra … Respondents

Mr Nitin Pradhan, along with Ms S D Khot, Mr Antony Nadar, and Mr Danish Patel, for the applicant.

Mr YS Bhate, along with Mr DP Singh, for respondent No.1.

Mr MG Patil, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.
Date: 11 March 2025

P.C.:

The facts in brief giving rise to the present application are as follows: The applicant, arraigned as accused No.4, is prosecuted for the offences punishable under Sections 276B read with 278B of the Income Tax Act, 1961 ('IT Act'), in CC No.186/SW/2019, pending before the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai. By an order dated 5 April 2024, the trial Court enlarged the applicant on bail. Since the applicant's passport was set to expire on 16 September 2024, he filed a criminal miscellaneous application bearing No.345 of 2024 before the trial court to renew the passport. By an order dated 9 August 2024, the trial Court permitted the applicant to renew the passport by imposing conditions. The operative part of the order dated 9 August 2024 reads as follows:

> *"a. The application of applicant/accused No.4 Rishikesh Subodh Sapre for renewal of his passport is hereby allowed.*
>
> *b. Regional Passport Authority is directed to renew the passport of the applicant, as per the rules of Indian Passport Act.*
>
> *c. The applicant/accused shall submit verified copy of his passport and other relevant documents in the pending case.*
>
> *d. Applicant/accused is directed not to leave the country without prior permission of the court."*

2. In the meantime, the applicant preferred a writ petition before this Court praying for the quashing of the criminal

proceedings and the order of issuance of process. During the pendency of the writ petition, the applicant filed an interim application bearing (stamp) No.21524 of 2024, seeking permission to travel abroad, which was allowed on 22 October 2024. By the present application, the applicant seeks relaxation of condition (d) imposed by the trial Court vide the order dated 9 August 2024.

3. Mr Nitin Pradhan, the learned counsel representing the applicant, contends that at the relevant time, the applicant held the position of non-executive director at Brainmatics Solutions Pvt Ltd and was not involved in the company's daily operations or management. He emphasises that the applicant does not qualify as the principal officer under Section 2(35) of the IT Act. Furthermore, the learned Counsel highlights that the applicant is an expert in product design within the field of artificial intelligence and is currently employed at Mantle Labs Ltd. His role necessitates travel to the company's offices in both the United Kingdom and the United States, and the UK government has issued a work permit and residence permit for the applicant. The applicant has travelled abroad after receiving permission from this court and adhered to the court's order by returning to India. However, due to the nature of his work, the applicant is frequently required to report to the company's international offices, making it increasingly challenging for him

to seek court approval each time he needs to travel abroad. The learned Counsel further submits that if condition (d) imposed by the trial Court is not deleted/ relaxed, the applicant would lose his job and face financial difficulties.

4. Mr YS Bhate, the learned Counsel appearing for respondent No.1, and Mr MG Patil, the learned Counsel representing the respondent No.2, jointly oppose the applicant's request, citing the gravity of the offence.

5. This Court has given anxious consideration to the rival contentions.

6. It is a settled position in law that to prosecute a company under Sections 276B read with 278B of the IT Act, unless the person is a secretary, treasurer, manager or agent of company, the Assessing Officer is required to serve a notice of his intention of treating any person connected with the management or administration of the company as the principal officer thereof in terms of Section 2(35) of the IT Act. A profitable reference in this regard can be made to *Anish Modi v. Union of India*[1].

7. The crux of the allegations is that the applicant, as a

[1] (2024) 469 ITR 487

director of accused No.1 (Brainmatics Solutions Pvt Ltd), failed to deposit the tax deducted at source with the Central Government before the stipulated date and committed an offence punishable under Sections 276B read with 278B of the IT Act. It is undisputed that the accused company deposited the TDS amount belatedly. Upon a perusal of the records, it appears that from 22 October 2007 to 26 August 2011, the applicant was a director of accused No.1 when the alleged offence occurred. In terms of Section 2(35) of the IT Act, respondent No.1 was required to serve a notice upon the applicant, thereby intimating him of being treated as a principal officer for the alleged offence. Before filing the complaint, although respondent No.1 issued notices to the accused to show cause as to why they shouldn't be prosecuted under Sections 276B read with 278B of the IT Act, these notices *prima facie* do not indicate that any intimation was given to the applicant of being treated as a principal officer.

8. The prosecution's objection to restrain the applicant from travelling abroad for employment merely on the ground of the seriousness of the offence violates the applicant's fundamental rights enshrined under the Constitution of India, especially when, the non-compliance of Section 2(35) of the IT Act by respondent No.1 goes to the root of the matter. In these circumstances, this Court finds it appropriate to delete

condition (d) imposed by the learned Additional Chief Metropolitan Magistrate by an order dated 9 August 2024 in Criminal Miscellaneous Application No.345 of 2024.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)