

Ajay

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

**INTERIM APPLICATION NO.355 OF 2025  
IN  
CRIMINAL BAIL APPLICATION NO. 5 OF 2005**

Kiran Vitthal Vaidya .. Applicant  
**Versus**  
The State of Maharashtra .. Respondent

- .....
- Mr. Sachindra B. Shetye, Advocate for Applicant.
  - Ms. Mahalaxmi Ganpathy, APP for Respondent – State.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 05, 2025**

**P. C.:**

**1.** This Interim Application is filed in Criminal Bail Application No.5 of 2005 wherein Applicant was enlarged on bail *vide* order dated 18.11.2005 subject to the condition *inter-alia* of retention of his passport with the Investigating Agency (hereinafter “**said condition**”) with liberty to seek further reliefs after filing of chargesheet. Applicant. This Application is filed seeking Applicant’s passport to be returned in perpetuity or in the alternative for a period of 10 years.

**2.** The charge alleged against the Applicant in the C.R. which forms the subject matter of Bail Application No.05 of 2005 is under Maharashtra Protection of Investors and Depositors Act, 1999

(for short “**MPID Act**”) as well as Section 406, 420 read with Section 34 of Indian Penal Code, 1860 (for short “**IPC**”).

**3.** Mr. Shetye, learned Advocate appearing on behalf of the Applicant would bring to my attention previous orders of this Court where the said condition has been relaxed on multiple occasions and thereafter the Applicant has subjected himself to trial and abided by to the conditions subsequent to the respective orders. He would fairly point out one instance where the Applicant had failed to return the passport owing to an oversight. He would pray to this court to not misconceive the aforesaid oversight as a breach of this Court’s order since the Applicant had shortly thereafter *ex proprio motu* submitted his passport to the Investigating Authority. He would submit that the act of returning the passport on his own accord after an oversight in fact establishes his credibility and exhibits his *bona fides*. He would further state that even thereafter, the Applicant has visited various foreign destination for work and has returned back to the assistance of the Investigating Agency. He would submit that the Applicant, owing to the nature of his employment as CEO of a company is required to visit different countries for business purposes and that over the years the condition has acted as an impediment to his business prospects. In the light of aforesaid submissions, he would pray for reliefs as described hereinabove.

**4.** Ms. Ganpathy, learned APP would submit that the Applicant has been indicted for serious offences involving public monies, the offence qualifies as an offence against the State. Without prejudice, she would submit that the monies in question is yet to be returned to its lawful owners (contentiously) and thus such conditions have been consciously imposed by the Court in order to secure the interests of the aggrieved parties. She would submit that considering the network of Applicant in foreign countries and his position as a CEO of a company, he qualifies as a 'flight risk'. She would submit that the nature of the crime and him being a 'fight risk' makes it a case where such conditions are imperative. She would hence submit & pray that in the light of facts of the case and the foregoing arguments, the present Application is superfluous and thus be rejected.

**5.** I have considered the submissions and grounds in the Application. *Prima facie*, it is seen that any condition while granting bail ought not to be onerous to the extent that it would defeat the purpose of bail. The ethos and essence of bail has been laid down as far back as in the year 1923 in the case of ***In Re: Nagendra Nath Chakravarthi***<sup>1</sup> by the Calcutta High Court wherein it has been stated that the final purpose of granting bail is to ensure and secure presence

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1 1923 SCC OnLine CAL 318

of accused for conduct of trial before Trial Court and if that purpose is seen to be served then in that case bail should be granted.

**6.** Applicant before me has over the years been diligently abiding by the condition subsequent to various orders passed by this Court save on one occasion, and even on that occasion, he has sufficiently established his *bona fides* by reconciling his mistake. Considering the Applicant's past record, the Application made before the Court and the grounds stated therein deserve consideration. In today's time when territorial and international borders for the purpose of business have become fragile and are such that parties are required to travel consistently either for their business, future prospects or other related purposes.

**7.** Here is the case of Applicant before me who is a leading consultant in automobile industry having distinction in diesel engine technology. His endeavor is to bring about a revolutionary development in diesel engine technology that would save major foreign currency from going out of the country. Owing to the nature of his work, Applicant is required to travel to foreign locations and imposing such a condition as the one sought to be relaxed thereby making him repeatedly come before the Trial Court and seek permission whenever he intends to travel outside the territorial jurisdiction the country is *prima facie* onerous, especially when the

said condition subsists for a prolonged period of 24 years and the conduct of the Applicant has been obedient. Such condition, when not relaxed after a reasonable time acts as a perpetual impediment upon a citizen's right to life flowing from Article 21. In the present case, it has not only dented the Applicant's liberty flowing from Article 21 but also his business prospects thereby infringing his rights conferred by Article 19(1)(g) of the Constitution considering the present exigency in the system, it involves substantial delays in approaching the Court of law for seeking permission for placing the Application and for hearing and deciding the said Application by which time the real essence and purpose for which the Applicant desires to travel is lost. While the Court was justified to impose the condition at the time of passing the order, if the condition is allowed to operate in perpetuity, it would be unjust upon the Applicant.

**8.** In the case of *Enforcement Directorate Vs. Nemi Chand Jain*<sup>2</sup>, the Delhi High Court held that liberty of an individual cannot be curtailed on the ground that investigation was pending for several years. Similarly this Court in the case of *Mohammad Hanif Nurani Vs. The State of Maharashtra and Anr.*<sup>3</sup> has dealt with the issue of curtailing retention of passport by a Court exhaustively by relying

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2 2008 (101) DRJ 2055

3 Cri. Appln. No.434 of 2024 – Decided on 05.02.2025.

upon the decision of the Supreme Court in the case of *Suresh Nanda Vs. Central Bureau of Investigation*<sup>4</sup>.

**9.** In the light of the foregoing observations, the Application is allowed in terms of the primary relief sought in prayer clause (a). Condition (v) in the order dated 18.11.2005 in Criminal Application No. 5 of 2005 shall be dispensed forthwith. Rest of the portion of the order dated 18.11.2005 shall be retained as it is. Applicant is at liberty to make appropriate application to the appropriate authority in order to get his passport back in his possession and if so made, it shall be returned back to him.

**10.** However, Applicant shall always intimate the details of his travel itinerary abroad and all such details including his return dates to the concerned Investigating Officer as and when he travels and in case he travels.

**11.** With the above directions, Interim Application is allowed and disposed.

[ MILIND N. JADHAV, J. ]

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<sup>4</sup> (2008) 3 SCC 674