

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE MANINDER S. BHATTI
MCRC No.4923 of 2022

Between:-

- 1. JAGDISH ARORA S/O LATE MOHAN**

- 2. AJAY ARORA**

.....PETITIONERS

(BY SHRI NAMAN NAGRATH, SENIOR ADVOCATE WITH SHRI RAHUL DIWAKAR, ADVOCATE)

AND

**UNION OF INDIA THROUGH THE SENIOR
INTELLIGENCE OFFICER GST
INTELLIGENCE 4TH FLOOR CHINAR
INCUBE BUSINESS CENTRE
HOSHANGABAD ROAD BHOPAL MP
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI SIDDHARTH SETH, ADVOCATE)

Reserved on : 28.02.2022

Passed on : 31.03.2022

Per: Sheel Nagu, J.

ORDER

The inherent powers of this Court are invoked u/S.482 of Cr.P.C. seeking modification of final order dated 18.08.2020 passed in MCRC. No.24219/2020 to the extent that said order of bail u/S.439 of Cr.P.C. passed in favour of the petitioners therein was made subject to five conditions including following condition:-

“(v) The applicants shall submit their passports, if any, before the trial Court and shall not leave India without prior permission of this Court.

2. Prayer made herein is for deletion of aforesaid condition as it restricts the petitioners to go abroad (Germany) in furtherance of their business and professional pursuits.

3. Learned counsel for the petitioners in support of aforesaid contention has relied upon the order dated 08.04.2021 passed by Coordinate Bench of this Court in MCRC. No.19222/2021 (***Dr. Anira Iqbal vs. Central Bureau of Investigation***) wherein similar condition was

relaxed to the extent indicated above to enable the petitioner therein to pursue her academic career in abroad in the field of medicine.

4. Learned counsel for the prosecuting agency has relied upon judgment of Apex Court in **(2019) 17 SCC 299 (Atul Shukla vs. State of M.P. & Another)** and order of Karnataka High Court in **ILR 2017 KAR 1967 (Imran Khan & Another vs. The State of Karnataka Forest Department)** to contend that no recall, review or modification of an order passed under Cr.P.C. is permissible by exercise of inherent powers u/S.482 of Cr.P.C. Relying upon Single Bench judgment of Karnataka High Court, it is submitted by respondent that after passing of order dated 18.08.2020 in MCRC. No.24219/2020, this Court has become *functus officio* and cannot carry out any modification thereof in view of bar contained u/S.362 of Cr.P.C. However, Single Bench of Karnataka High Court while passing aforesaid order did not dispute the fact that power to correct a condition, subject to which a bail order is passed, is vested with the Court u/S.439(1)(b) of Cr.P.C., but the same cannot be exercised by invoking inherent powers u/S.482 of Cr.P.C. as it is a power to be independently exercised on the invocation of aggrieved person.

5. For the sake of clarity, it would be apt to reproduce entire Section 439 of Cr.P.C. as follows:-

“439. Special powers of High Court or Court of Session regarding bail-
(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

[1A. The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

6. A bare perusal of aforesaid provision, in particular Section 439(1) (b) of Cri.P.C. it is vivid that High Court is vested with the power to

modify any condition imposed by a Magistrate while passing an order of bail u/S.437 of Cr.P.C. whereas Section 439(1)(a) of Cr.P.C. empowers the High Court to release a person on bail but when doing so in connection with offences punishable with imprisonment of seven years or more under Chapter VI, XVI and XVII of IPC or of abetment or conspiracy or attempt to commit such offences, then this Court in its discretion may impose any condition considered necessary in the attending facts and circumstances.

6.1 In exercise of power u/S.439(1)(a) of Cr.P.C. the Coordinate Bench of this Court while passing order dated 18.08.2020 in MCRC. No.24219/2020 granted bail to petitioners *inter alia* subject to condition that petitioners shall submit their passports before the Trial Court and shall not leave India without permission of this Court. The said bail order was made subject to said condition after considering the gravity of offence and other relevant circumstances.

7. The petitioners seek deletion of said condition for travelling abroad in furtherance of their business and professional pursuits as contended by them. It is not disputed that travelling abroad is one of the concomitants of right to liberty enshrined Article 21 of the Constitution subject to compliance of relevant laws which regulates such travel.

8. The aforesaid fundamental right of personal liberty under Article 21 of the Constitution can admittedly be denied by procedure established

by law. It is trite law that concept of bail flows out of fundamental right of personal liberty. The procedure for granting and denying bail or subjecting order of bail to conditions is governed by procedure statutorily laid down by Cr.P.C. and through judicial pronouncements rendered by Apex Court, which are law of the land under Article 141 of Constitution.

8.1 It is also settled that grant of bail is a rule whereas its denial is an exception. Once bail is granted subject to certain conditions by the High Court u/S.439(1)(a) of Cr.P.C. as is the case herein, the power to modify or delete the conditions subject to which bail is granted, is also inherently vested with the High Court.

8.2 The power of amending or deleting any condition, subject to which bail order u/S.439(1)(a) of Cr.P.C. is granted, is however not expressly provided in Cr.P.C. Thus, the only course available for seeking and granting modification/ deletion of such a condition is by invoking the inherent powers of this Court u/S.482 of Cr.P.C. to ensure the ends of justice.

8.3 Section 482 of Cr.P.C. saves inherent powers of this Court to be exercised *inter alia* to secure the ends of justice. The ends of justice can only be secured when in absence of any express provision this Court is not prevented from deleting/modifying any of the conditions subject to which an order of bail u/S.439(1)(a) of Cr.P.C. is passed. If such inherent powers are otherwise not available to this Court u/S.482 of Cr.P.C., then

object of insertion of Section 482 of Cr.P.C. would stand defeated and this Court would be rendered a toothless tiger.

9. The Legislature while enacting the Code of Criminal Procedure could never have approved a situation where this superior Court is handicapped to exercise its inherent powers to modify/delete a condition imposed u/S.439(1)(a) of Cr.P.C. despite existence of compelling circumstances merely because of absence of enabling provision in the Cr.P.C.

9.1 The object behind bestowing inherent powers in this Court is to do complete justice and to prevent miscarriage of justice. The inherent powers are saved with this Court to be exercised in such circumstances where cause for doing complete justice or preventing failure of justice exists, but there is no express provision in Cr.P.C. As such Constitutional Courts are saved with such inherent powers to do complete justice without being inhibited or disabled by absence of enabling provision.

10. In view of above discussion, this Court is in respectful disagreement with the Single Bench verdict of Karnataka High Court in the case of *Imran Khan* (supra).

11. Accordingly, this Court deems it proper to invoke its inherent powers u/S.482 of Cr.P.C. to substitute condition No.(v) of Para 40 of order dated 18.08.2020 in MCRC. No.24219/2020 to be replaced by following conditions:-

(1) The petitioners shall file a written undertaking before the Trial Court disclosing the date of departure and return of foreign trip and shall inform the Trial Court at the earliest after returning to India.

(2) The petitioners shall also file a similar undertaking before the Ministry of Foreign Affairs and relevant Embassy disclosing the fact of pendency of offence against them with full details and only after such condition is complied with, the petitioners may be allowed to proceed abroad subject to satisfying all other relevant provisions of law.

(3) The petitioners shall also furnish additional security within 30 days from today in shape of fixed deposit receipt of Rs.10 lacs each in the Trial Court, which shall stand forfeited in case of default of any of the conditions contained in this order or in the bail bond.

12. Copy of this order be sent to Shri Siddharth Seth, learned counsel for the respondent and also to Shri J.K. Jain, learned A.S.G.I. for onward transmission to Ministry of Home and Foreign Affairs.

13. Copy of this order be also sent to the Trial Court for information and compliance.

14. With the aforesaid directions, this MCRC is disposed of.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE