Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 648 of 2020
(Arising out of SLP(Crl) No 3420 of 2020)

Parvez Noordin Lokhandwalla ...Appellant(s)

Versus

State of Maharashtra & Anr. ...Respondent(s)

J U D G M E N T

Dr Dhananjaya Y Chandrachud

1 Leave granted.

2 This appeal arises from a judgment and order of a Single Judge of the High Court of Judicature at Bombay[1] dated 23 July 2020. The High Court, by its order which is in appeal, declined to modify its earlier order dated 19 May 2020 so as to permit the appellant to travel to the US for a period of eight weeks from 25 July 2020 to 6 September 2020. The appellant sought the leave of the High Court to do so since as a Green Card holder, it was mandatory for him to return to the US within a stipulated period of his departure from that country, failing which the conditions for revalidation of the Green Card would not be fulfilled. The High Court declined to relax the conditions imposed by it for the grant of interim bail on the ground that an FIR has been registered against the appellant. Though the period during which the appellant sought to travel abroad has lapsed, the cause survives. The appeal raises interesting issues about the interface between the fundamental right to travel

1 "High Court"

abroad and its curtailment under a judicial order as an incident to regulate conditions governing the grant of bail.

3. The genesis of the present case arises from a private complaint which was filed in January 2014 by Mehraj Rajabali Merchant in the court of the JMFC Thane alleging that the appellant has fabricated a Power of Attorney dated 19 December 2011 by forging the signature of his brother, Shalin Lokhandawalla. On 10 April 2014, the JMFC passed an order, by which he directed an investigation under Section 156(3) of the Code of Criminal Procedure 1973[2] in terms of the following directions:

> "1. The Kapurbavdi police station is directed to register the crime and investigate into the matter.
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> 2. Further it is hereby directed to submit the report before the court for taking action, if any, u/s.340 of Cr.P.C."

4 A First Information Report was registered against the appellant on 22 April 2014 in which the appellant is alleged to be involved in offences punishable under Sections 420, 467, 468, 469, 470, 471 and 474 of the Indian Penal Code 1860[3] read with the provisions of Section 34.

5 The appellant and the co-accused, Arun Fatehpuria, had preferred an application for grant of anticipatory bail before the Sessions Court Thane, which granted interim protection from arrest to both the accused on 17 February 2018. On 16 April 2018, the Sessions Court at Thane confirmed the interim order and granted anticipatory bail to the co-accused, Arun Fatehpuria, primarily on the basis that the allegations in the complaint depend largely on documentary material, rendering custodial interrogation unnecessary. However, the interim order protecting the appellant was

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2 "CrPC"
3 "IPC"

cancelled because the counsel representing the appellant withdrew the application on his behalf.

6 The appellant is an Indian citizen and holds an Indian passport. He holds a Green Card, enabling him to reside in the US. He has resided in the US since 1985. However, between 10 March 2015 and 10 January 2020, the appellant visited India on sixteen occasions, details of which have been filed on an affidavit dated 7 August 2020 in these proceedings. A tabulated chart (Annexure P-3 to the affidavit) contains details of his travel history, and is extracted below:

"Sr. No.	Arrival Date	Departure Date	
1.	10/3/2015	Mumbai	Mumbai
2.		19/03/2015	Mumbai
3.	21/4/2015		Mumbai
4.		22/4/2015	Mumbai
5.	7/5/2015		Mumbai
6.		10/5/2015	New Delhi
7.	21/8/2015		Mumbai
8.		24/8/2015	Mumbai
9.	3/2/2016		New Delhi
10.		11/2/2016	New Delhi
11.	14/2/2016		New Delhi
12.		24/2/2016	New Delhi
13.	24/6/2016		Mumbai
14.		28/7/2016	Mumbai
15.		10/2/2017	New Delhi
16.	4/5/2017		Mumbai
17.		10/7/2017	Mumbai
18.	15/7/2017		Mumbai
19.		24/7/2017	Mumbai
20.	9/8/2017		Mumbai
21.	19/10/2017		Mumbai

22.	3/11/2017		Mumbai
23.		11/11/2017	India (City not known)
24.		26/2/2018	Mumbai
25.	1/6/2018		Mumbai
26.		10/7/2018	India (City not known)
27.	26/9/2018		Mumbai
28.		26/10/2018	Mumbai
29.	22/11/2018		Mumbai
30.		14/12/2018	Mumbai
31.	4/4/2019		Mumbai
32.		22/5/2019	Mumbai
33.	10/1/2020		Mumbai

7 The appellant arrived in India on 10 January 2020. He was arrested on 21 February 2020 at the point of departure in Mumbai in pursuance of a look-out notice which appears to have been issued on the basis of the FIR dated 22 April 2014. An application for bail was filed before the Sessions Court in the first week of March 2020 but was rejected on 4 May 2020. On 23 April 2020, the appellant filed an application for bail before the High Court of Judicature at Bombay. The High Court, by its order dated 19 May 2020, granted temporary bail to the appellant, subject to the following conditions:

> "a) The applicant be released on temporary bail for a period of eight weeks in C.R. No.I-156 of 2014 registered with Kapurbavadi Police Station, Thane on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties to make up the amount.
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> b) Till the procedure for furnishing sureties is completed, the applicant is permitted to furnish cash bail.
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> c) Before his actual release from jail, the Applicant is directed

> to surrender his Passport and/or Green Card issued by the United States of America with the Investigating Agency, if not earlier seized by it or other Government Authorities.
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> d) After his release from jail, the applicant is directed not to leave jurisdiction of Thane Police Commissionerate without prior permission of the trial Court.
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> e) Place the Application for regular bail before the regular Court after normal functioning of the Court begins."

8 On 10 June 2020, the appellant filed an IA before the High Court seeking permission to visit the US for a period of eight weeks. The High Court was hearing only urgent applications during the course of the lock down occasioned by the outbreak of Covid-19. The Registry of the High Court informed him on 15 June 2020 that no urgency was found in the praecipe for urgent listing. The appellant filed fresh praecipes for urgent listing on 17 June 2020 and 19 June 2020. On 26 June 2020, a Single Judge (Justice S. K. Shinde) expressed his inability to take up the IA for relaxation of the conditions attached to the grant of interim bail since the order dated 19 May 2020 had been passed by Justice A. S. Gadkari. The contention of the appellant, it may be noted, has been that under the conditions prescribed by the US Immigration and Nationality Act 1952, he has to return for a short period for revalidating the Green Card. Among them are the following:

> "(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien-
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> (i) has abandoned or relinquished that status,
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> (ii) has been absent from the United States for a continuous period in excess of 180 days,
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> (iii) has engaged in illegal activity after having departed the United States,

> (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
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> (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer."

9 The High Court, by its order dated 26 June 2020, rejected the application for considering his prayer for relaxing the conditions attaching to the grant of interim bail following which the appellant moved this Court[4]. By an order dated 13 July 2020, this Court requested the High Court to take up the IA filed by the appellant seeking permission to travel to the US, at an early date. This Court, in its order dated 13 July 2020, noted the submission of the learned counsel for the appellant in paragraph 2 of its order and then issued the following directions:

> "2. Mr Subhash Jha, learned counsel appearing on behalf of the petitioner, submitted that in the event that the petitioner is unable to arrive in the US by 29 July 2020, he will not be in a position to retain his Green Card as he is required to return to the US within 180 days of his departure and his status will then be that of an alien seeking entry into the US.
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> 3. Since the interim application which has been filed by the petitioner is pending before the High Court, we request the High Court to take it up at an early date having regard to the timeline which has been set out in the submissions which have been recorded above. We clarify that since the interim application is still pending before the High Court, we have not expressed any view on the merits of the matter. The observations contained in the order declining to entertain the praecipe shall not come in the way of the disposal of the interim application. The Special Leave Petition is

[4] SLP (Crl) No 3034 of 2020

accordingly disposed of.

4. The Registry of the Bombay High Court may obtain, if required, administrative directions of the Hon'ble Chief Justice for the assignment of the interim application."

10 In pursuance of the order of this Court, the High Court heard the IA and has declined to grant permission to the appellant to visit the US for a period of eight weeks, by its order dated 23 July 2020.

11 Mr. Subhash Jha, learned counsel appearing on behalf of the appellant submits that:

(i) The appellant is a resident of the US since 1985; holds a Green Card since 2010 and has not violated any provision of law in the US;

(ii) The appellant and the members of his family have been involved in a long drawn out litigation against the complainant, both of a civil and criminal nature;

(iii) In the private complaint that was instituted by the complainant in January 2014, the co-accused was granted anticipatory bail by the Sessions Judge, Thane on the ground that the complaint essentially turns upon documents;

(iv) Between 2015 and 2020, the appellant has visited India on as many as sixteen occasions;

(v) The family of the appellant, which includes him, his brother Shalin and two sisters, jointly owns properties at Thane and Panvel worth more than Rs 100 crores and the appellant is the only member of the family who is looking after the litigation;

(vi) Far from being a fugitive from justice, the appellant has consistently travelled to India and the mere filing of the private complaint and the registration of an FIR should not preclude him from travelling to the US, failing which he would incur serious consequences of the invalidation of his Green Card;

(vii) While the court which grants bail under Section 439 of the Code of Criminal Procedure 1973 can impose conditions which ensure the presence of the accused to face trial, the conditions must balance the liberty of the accused and not result in the arbitrary deprivation of the right to livelihood; and

(viii) The order of the JMFC dated 10 April 2014 has been passed as a matter of routine course without application of mind and has been misused by the police machinery to harass and arrest the appellant at the behest of an adversary.

12 Mr Jha further submitted that the appellant would undertake to come to India on every hearing of the criminal cases before the concerned courts and he has no intention to evade the process of law. Mr. Jha has stated that in pursuance of the notice issued by this court, the complainant has been served.

13 On the other hand, Mr. Sachin Patil, learned counsel appearing on behalf of the State of Maharashtra, who appeared in pursuance of the notice issued by this Court on 29 July 2020, submitted that the conduct of the appellant has been improper. Mr. Patil stated that, on the grant of anticipatory bail by the Sessions Court in 2018, the appellant left for the US, without seeking permission, though as a matter of fact, he returned subsequently to India on several occasions until 2020, when he was arrested. It was urged that the appellant has not complied with the conditions on which he was granted interim bail for eight weeks and he ought to have, but has

not, surrendered after the period was over. Mr. Patil submitted that since the appellant is facing a criminal trial, the Court may expedite the course of the trial, but not permit him to leave for the US at this stage; there being no guarantee of his return.

14 The language of Section 437(3) of the CrPC which uses the expression "any condition… otherwise in the interest of justice" has been construed in several decisions of this court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437 (3) and 439 (1) (a) of the CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.

15 In **Kunal Kumar Tiwari** v **The State of Bihar**[5], the appellant who was alleged to have committed offences under Sections 498-A, 341, 323, 379 and 506, read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act 1961 was denied anticipatory bail by the High Court. However, the High Court directed that if the appellant was willing to treat his wife with dignity and care but she refuses to live with him or both parties prefer to obtain a divorce by mutual consent, the court below would release the appellant on provisional bail. The trial court was permitted to confirm the provisional bail after one year and was directed to monitor the relationship between the parties, who would appear before it every three months. This Court, while holding that the conditions imposed by the High Court on grant of

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5 (2018) 16 SCC 74

bail were onerous and arbitrary, observed:

> "9. …Sub-clause (c) of Section 437(3) allows Courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase 'interest of justice' as used under the Sub-clause (c) of Section 437(3) means "good administration of justice" or "advancing the trial process" and inclusion of broader meaning should be shunned because of purposive interpretation.
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> 10. … from the perusal of the impugned order it is clear that the court exceeded its jurisdiction in imposing such arbitrary conditions. Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eyes of law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an over-zealous exercise in utter disregard to the very purpose of the criminal justice system. In view of the above, the impugned order passed by the High Court is set aside and the interim protection granted to the Petitioner by this Court… is made absolute."

16 In **Dataram Singh** v **State of Uttar Pradesh**[6], this Court observed that:

> "7. ….The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

17 In **Sumit Mehta** v. **State (NCT of Delhi)**[7], in the context of conditions under Section 438 (2) of the CrPC, this Court observed that a balance has to be struck between the rights of the accused and the enforcement of the criminal justice system while

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6 (2018) 3 SCC 22

7 (2013) 15 SCC 570

imposing conditions on the grant of bail:

> "11. While exercising power Under Section 438 of the Code, the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed Under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint."

This Court also discussed the scope of the discretion of the court to impose "any condition" on the grant of bail and observed:

> "15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail."

18 In **Barun Chandra Thakur** v. **Ryan Augustine Pinto**[8], this Court restored a condition mandating that the respondent seek prior permission from a competent court for travel abroad. The condition, which was originally imposed by the High Court while granting anticipatory bail was subsequently deleted by it. This Court made the following observations with respect to imposing restrictions on the accused's right to travel:

> "9. ….There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory-bail in this case. ……At best, the condition for seeking

[8] Criminal Appeal No. 1618 of 2019 (Arising out of SLP (Crl.) No. 9873 of 2019), order dated 21 October 2019.

> permission before travelling abroad could have been regulated, not deleted altogether."

19 This Court has passed multiple orders previously allowing an accused enlarged on bail to travel abroad. In **Ganpati Ramnath** v **State of Bihar**[9], this Court allowed an accused-applicant to travel abroad for medical treatment, modifying its earlier bail order, noting that the applicant had travelled abroad on the ground of medical necessity on six occasions with the permission of the court and had returned. In **K. Mohammed** v **The State of Kerala**[10], this Court allowed the accused-appellant to travel abroad to meet in the exigencies of a family situation. In **Tarun Trikha** v **State of West Bengal**[11], this Court allowed the accused-petitioner to travel to Indonesia in connection with his employment and to return once the work was completed. In **Pitam Pradhan** v **State of A P**[12],this Court while granting anticipatory bail, permitted the petitioner to travel abroad noting that his job required him to travel abroad at frequent intervals and may lose his employment if he were not permitted to travel abroad.

20. Having heard the learned counsel appearing on behalf of the appellant and the learned counsel for the State of Maharashtra, it is necessary for the Court to notice at the outset that a large amount of litigation is pending between the appellant and the complainant, Mehraj Rajabali Merchant. The appellant has furnished details of the litigation between the parties as well as of the criminal prosecutions, in his affidavit dated 7 August 2020. This has been summarised in a tabular statement:

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[9] Crlmp. Nos. 6304 & 6305/2017 in Criminal Appeal Nos. 1187/2004, order dated 4 May 2017.
[10] Criminal Appeal Nos. 547/2012, order dated 2 March 2020.
[11] Special Leave to Appeal Crl. Nos. 4643/2015, order dated 29 May 2015.
[12] Special Leave to Appeal (Crl) No(s).9664/2013, order dated 26 February 2014.

"I. Cases initiated by Merchants

(Disposed)

Sr.No.	Court & Case	Parties	Disposal Date
1.	Civil SD. Court, Thane RCS/200577/2005	Ms. Lokhandwala Weigh Bridge Vs. M/s Asam Transport	Disposed
2.	4th Civil Judge JMFC, Thane RCC/420380/2010	Firdaus Rajabali Merchant Vs. Farida Firoz Lokhandwala	08/10/2010
3.	1st C J Magistrate, Thane CR.MA/300998/2013	Firdaus Rajabali Merchant Vs. Parvez Noor Lokhandwala	03/01/2014
4.	4th Joint Civil Judge Sr. Division, Thane RCS/201541/2001	Firoz Pirbhai Lokhandwala Vs Nooruddin Pirbhai Lokhandwala	16/09/2016
5.	Add. Dist. Judge, Thane Civil MA/286/2019	Mehraj Rajabali Merchant Vs. 1. Parvez Noor Lokhandwala 2. Farida Noor Lokhandwala 3. Faizmin Amin Hussain 4. Dinaz Akbar 5. Shalin Noor Lokhandwala 6. Arun Fathepuria 7. Firadaus Rajabali Merchant 8. Municipal Comr. of Thane	25/01/2020

II. Cases initiated by Lokhandwallas

(Disposed)

Sr.No.	Court & Case	Parties	Disposal Date
1.	4th Civil Judge S D, Thane RCS/200143/2011	Parvez Noor. Lokhandwala Vs Firdaus Rajabali Merchant	07/01/2013
2.	Dist & Session Court, Thane	Shalin Noor. Lokhandwala Vs.	11/08/2015

	Civil MA/100012/2008	Hindustan Petroleum	
3.	2nd Joint Civil Judge SD, Thane RCS/201901/2012	Farida Noor. Lokhandwala Vs. Farida Firoz Lokhandwala	22/01/2019
4.	4th Joint Civil Judge SD, Thane Sp. Case/200905/2012	Farida Noor. Lokhandwala Vs. Farida Firoz Lokhandwala	13/09/2019

III. Cases initiated by Merchants (Active)

Sr. No.	Court & Case	Parties	Stage	Next date
1.	2nd Joint Judge, Sr. Division, Thane Sp. Case/200393/2010	Firdaus Rajabali Merchant Vs. Farida Firoz Lokhandwala	Argument	3.8.2020
2.	2nd Civil Judge, JD, JMFC, Thane – Misc. Cr. Application 799/2017	Firdaus Rajabali Merchant Vs. 1. Parvez N. Lokhandwala 2. Farida N. Lokhandwala	Order	10.8.2020
3.	8th Dist. Judge MCA/10/2020	Mehraj Rajabali Merchant Vs. 1. Parvez Noor. Lokhandwala 2. Farida Noor. Lokhandwala 3. Faizmin Amin Husain 4. Dinaz Akbar 5. Shalin Noor. Lokhandwala 6. Arun Fatehpuria 7. Firdaus Rajabali Merchant 8. Thane Municipal Corp. Commissioner	Notice Unready	19.08.2020
4.	5th Court Joint Civil Judge Sr.	Mehraj Rajabali Merchant Vs.	File of Stay	19.8.2020

	Div., Thane Civil MA/200687/2015	1. Parvez Noor. Lokhandwala 2. Farida Noor. Lokhandwala 3. Faizmin Amin Husain 4. Dinaz Akbar 5. Shalin Noor. Lokhandwala 6. Arun Fatehpuria 7. Firdaus Rajabali Merchants 8. Thane Municipal Corp. Commissioner 9. Ganesh Hanuman Autee 10. Sanjay Salvi 11. Amarjit Singh Dhri		
5.	Civil Judge Senior Division, Thane Civil MA/200404/2015	Farida Firoz Lokhandwala Vs. Farida Noor. Lokhandwala	Notice	19.8.2020
6.	5th Court Joint Civil Judge, Sr. Div, Thane RCS/200566/2013	Mehraj Rajabali Merchant Vs. Parvez Nooruddin Lokhandwala	Evidence	3.9.2020
7.	3rd Joint Civil Judge Sr. Division, Thane Sp. Case/424/2017	Mehraj Rajabali Merchant Vs. Parvez Noor Lokhandwala	Summons	17/09/2020

IV.Cases initiated by Lokhandwallas (Active)

Sr. No.	Court & Case	Parties	Stage	Next date
1.	4th Joint Civil Judge Sr. Division, Thane	Farida Noor. Lokhandwala Vs. Farida	Argument	19/08/2020

	Civil MA/200315/2015	Firoz Lokhandwala		
2.	1st CJM, Thane Cri M.A./91/2014	Farida N. Lokhandwalla Vs. Firdaus Rajabali Merchant & Ors.	Arg on Exh. Unready	24/09/2020

V. Misc Cases

Sr. No.	Court & Case	Parties	Stage	Next date
1.	Supreme Court SLP (CRL) No. 3420/2020 SLP (CRL) No.3034/2020	Parvez N. Lokhandwalla Vs. State of Maharashtra	Argument	12/08/2020 (tentative)
2.	High Court LD/VC/BA/24/2020	Parvez N. Lokhandwalla Vs. State of Maharashtra	Argument	Praecipe circulated 06/08/2020 (tentative)
3.	High Court ASDB-LD-VC No.102 of 2020 along with WP/891/2018	Parvez N. Lokhandwalla Vs. State of Maharashtra & Ors	Amendment carried out	Seeking circulation

21 The private complaint which is the genesis of the present proceedings was instituted in January 2014. The gravamen of the allegation is that the appellant has forged and fabricated the Power of Attorney of 19 December 2011 of his brother Shalin. Mr. Jha submits that, as a matter of fact, the Power of Attorney has not been used at any point; his brother was present in India at the time when conveyance was entered into; and that his brother has never raised any objection. However, we are not inclined to go into these factual aspects at the present stage. It would suffice to note that the co-accused was granted bail by the Sessions Judge Thane on 16 April

2018. We are called upon to decide only whether the appellant should be permitted to travel to the US for eight weeks. In evaluating this issue, we must have regard to the nature of the allegations, the conduct of the appellant and above all, the need to ensure that he does not pose a risk of evading the prosecution. The details which have been furnished to the Court by the appellant, indicate that he has regularly travelled between the US and India on as many as sixteen occasions between 2015 and 2020. He has maintained a close contact with India. The view of the High Court that he has no contact with India is contrary to the material on record. The lodging of an FIR should not in the facts of the present case be a bar on the travel of the appellant to the US for eight weeks to attend to the business of revalidating his Green Card. The conditions which a court imposes for the grant of bail – in this case temporary bail – have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.

22 Mr. Sachin Patil submitted that the appellant was granted temporary bail for a period of eight weeks by the High Court, by its order dated 19 May 2020, and the appellant has neither furnished surety nor he has surrendered after the expiry of the period of eight weeks.

23 As far as the furnishing of sureties is concerned, Mr. Jha stated, on instructions, that the directions of the High Court have been complied with. In regard to the surrender of the appellant, the Court has been apprised of the fact that as a result of the lock down occasioned by the outbreak of Covid-19, the High Court on the judicial side passed successive orders[13] on 26 March 2020, 15 April 2020 and 15 June 2020 extending its interim orders. In the meantime, to establish his bona fides, the appellant states that he had moved the High Court in successive praecipes for early hearing, while instituting an IA for modification of the conditions imposed on 19 May 2020 and, eventually, it was on the direction of this Court that the High Court passed the impugned order.

24 Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel

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to the US for a period of eight weeks. We accordingly permit the appellant to do so, subject to his furnishing an undertaking to this Court before the date of travel that he will return to India after the expiry of a period of eight weeks and that he shall be available on all dates of hearing before the court of criminal jurisdiction, unless specifically exempted from personal appearance. The undertaking shall be filed in this court before the appellant undertakes travel. On the return of the appellant after eight weeks and if it becomes necessary for him to travel to the US, the appellant shall apply to the concerned court for permission to travel and any such application shall be considered on its own merits by the competent court. The appellant shall travel only upon the grant of permission and subject to the terms imposed. The passport of the appellant shall be handed over to the appellant to facilitate his travel, subject to the condition that he shall deposit it with the investigating officer immediately on his return.

25 Accordingly, the order of the High Court dated 23 July 2020 shall stand set aside and the appeal shall stand disposed of in terms of the above directions.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indira Banerjee]

New Delhi;
October 01, 2020

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