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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 1048/2016**

VISHAL MAHESH KAPOOR

.....Appellant

Through: None.

versus

STATE

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP, Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with SI Manju Bola, PS AEKC/ Crime.

90

WITH

+ **CRL.A. 1152/2016**

ADIL NAWAZ KHAN

.....Appellant

Through: Mr. Abhishek Dhingra, Mr. Yousuf Karim, Ms. Mehzabin Nawaz Khan, Advs. (M: 9999228952)

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP, Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with SI Manju Bola, PS AEKC/ Crime.

91

WITH

+ **CRL.A. 1169/2016**

ROHIT SINGH

.....Appellant

Through: Mr. Abhishek Dhingra, Mr. Yousuf Karim, Ms. Mehzabin Nawaz Khan, Advs. (M: 9999228952)

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP, Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with SI Manju Bola, PS AEKC/ Crime.

94

AND

+ **CRL.A. 1028/2016 & CRL.M.A. 3379/2025**



KASHIF KHAN

.....Appellant

Through: Mr. Abhishek Dhingra, Mr. Yousuf Karim, Ms. Mehzabin Nawaz Khan, Advs. (M: 9999228952)

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP, Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with SI Manju Bola, PS AEKC/ Crime.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

% 19.02.2025

1. This hearing has been done through hybrid mode.

CRL.M.A. 3379/2025 (Seeking modification of the bail condition and permission to travel abroad) in CRL.A. 1028/2016

2. The present application has been moved by the Appellant under Section 482 Cr.PC seeking modification of the bail conditions imposed *vide* order dated 30th July 2018 and consequent permission to travel abroad. *Vide* the said order suspending the sentence of the Appellant certain conditions had been imposed including the condition that the Appellant shall not leave India and that he shall surrender his passport. The said order is extracted below:

“Crl. M. B. No. 1256/2017

We have heard learned counsel for the appellant and the learned APP for the State. Considering the fact that the appellant has been awarded a sentence of 4 years and the appellant has already undergone 2 years 3 months 18 days incarceration as on 23.07.2018 and has also earned a remission of 6 months 26 days, the remaining sentence of the appellant is suspended and he is released on bail during the pendency of the appeal



considering the fact that the appeal is not likely to be heard early.

The appellant's sentence shall remain suspended and the appellant is admitted to bail subject to:

- (i) The appellant furnishing personal bond with one surety in the sum of Rs. 20,000/- to the satisfaction of the Trial Court;
- (ii) The appellant shall provide his mobile phone number which shall be kept in working condition at all times and the same shall not be changed without prior intimation to the Trial Court,
- (iii) **He shall not leave India and he shall surrender his passport, if he has obtained the same. However, in case he has not obtained any passport, he shall not be issued any passport without permission of the Court.**
- (iv) He shall not contact any of the witnesses or the victims or tamper with any evidence.
- (v) He shall not indulge in any criminal activity while on bail; and
- (vi) He shall remain present in Court on each and every date of hearing.

Dasti

CRL.A. 1028/2016

List the appeal for hearing in due course.”

3. The case of the Appellant is that for about 6 years he was working as the Sales Manager for M/s. Fatima Engineering Works, which is an import-export firm. The Appellant claims to have started his own business, involved in the business of importing food products. The Appellant also works as the quality control manager and he wishes to travel to various countries for the purposes of testing, in person, the quality of the products as set out in the present application.



4. The Court has noticed that in the present case, the Trial Court *vide* impugned order dated 29th September, 2016 had acquitted the Appellant and other co-accused under Sections 364A and 384 of the IPC. However, they all have been convicted under Sections 120-B, 506(II) of the IPC with the aid of Sections 364A and 384 of the IPC. Accordingly, the Appellant has been sentenced to four years rigorous imprisonment and a fine Rs. 1 lakh. The relevant paragraphs of the order on sentence dated 8th October, 2016 read as under:

*“Accordingly, convict persons namely **Adil Nawaz Khan; Kasif Khan; Rohit Singh; and Vishal Mahesh Kapoor** are sentenced to undergo rigorous imprisonment for 04 years and fine of Rs.1,00,000/- each as compensation, out of which Rs.80,000/- each be given to victim Rakesh Kathuria and Rs.20,000/- each be deposited to the NDBA A/C **National Relief Fund**, UCO Bank, Patiala House Courts, New Delhi. A/c No.18580110072394 - IFSC Code UCBA0001858 for the offences u/s 120-B IPC and 506-II / 120-B IPC as convict persons have been convicted with the aid of sections 364-A IPC and 384 IPC. In default of payment fine convict persons shall further undergo 06 months Simple Imprisonment.*

*Convict **Adil Nawaz Khan @ Sharma and Vishal Mahesh Kapoor @ Yusuf Pathan** are sentenced to undergo rigorous imprisonment for **02 years** and **fine Rs.10,000/- each u/s 170 IPC** and in default of payment fine convict persons shall further undergo 06 months Simple Imprisonment. This fine amount shall be deposited to the NDBA A/C **National Relief Fund**, UCO Bank, Patiala House Courts, New Delhi, A/c No.18580110072394 - IFSC Code UCBA0001858.*

All the sentences shall run concurrently.

Benefit of section 428 Cr. PC be given to the convict persons.”



5. The present Appellant has also been allowed to apply for and get Passport & VISA for visiting countries such as Saudi Arabia *vide* order dated 22nd August, 2023 in **CRL.M.A. 22428/2023**. He has also been allowed to visit Mecca, Saudi Arabia from 12th December, 2023 to 15th January, 2024 *vide* order dated 6th December, 2023 in **CRL.M.A. 32251/2023**.

6. A perusal of the order suspending the sentence passed by this Court on 30th July, 2018 shows that the Appellant had already undergone 2 years 3 months and 18 days in custody and also earned 6 months 26 days in remission. Further, the Appellant was directed not to leave India and to surrender the passport if he has obtained the same.

7. The appeal has since been pending for hearing and consideration. On the last date *i.e.*, 3rd February, 2025, notice was issued in the present application and the State was directed to verify the facts and file the status report.

8. Today, a status report dated 17th February, 2025 by PS, Sunlight Colony, New Delhi has been handed over in Court and the same is taken on record. The relevant paragraphs of the said report read as under:

“3. The applicant company has been engaged in an import-export business and has obtained a GST registration and Importer-Exporter Code (IEC) was found correct and the Managing Director of M/s Nice Import and Export, is the stepbrother Fawad Khan of the applicant.

4. That the Managing Director of M/s Nice Import and Export, stepbrother Fawad Khan, pays the Applicant (Kashif Khan) a fixed cash salary of Rs. 25,000 per month, who is appointed as Purchasing Manager in the company. However, the payment of salary in cash



further raises questions about the financial transparency of the company & employee.

5. That the Applicant's stepbrother is actively involved in the company, which raises a valid alternative - that another responsible person from the company, including the stepbrother or Managing Director, Fawad Khan, can undertake business trips on behalf of the company instead of the Applicant himself. This contradicts the Applicant's argument that his physical presence abroad is mandatory for business negotiations. This aspect strengthens the concern of flight risk, as allowing unrestricted travel without prior permission could enable the Applicant to misuse the liberty granted by this Hon'ble Court.

6. That the Hon'ble Court vide its order dated 03/02/25 also issued notice to another appellants to appear before the Hon'ble Court for 18/02/25 with the remark either in person or through an advocate, In this regard, notices were served to appellant i.e. (1) Rohit Singh S/o ShriAnand Singh R/o 11/A, 105, Patliputra Nagar, Oshiware, Jogeshwari West, Andheri West, Mumbai-400058 and (2) The wife Smt. HarjinderKaur met, who stated that she is not in touch with her husband Vishal Mahesh Kapoor since 2013 and a domestic violence case is subjudice. Hence, the notice could not be served to appellant Vishal Mahesh Kapoor S/o Mahesh Kapoor R/o B-1001, 10th Floor, Prathmesh Residency, JP Road, Andheri West, Mumbai-400058, who is deliberately absconding from the process of law and is an interim bail jumper (3) Notice was served to SudarshanRajan (Counsel for appellant).”

9. As can be seen from the above, the Appellant is working on fixed cash salary and is also working as Purchase Manager of M/s Nice Import and



Export, a proprietary concern of the Appellant's step brother Mr. Fawad Khan.

10. The stand of the State is that the proprietor of the said firm can travel abroad for undertaking business trips and there is no imminent necessity to permit the Appellant to travel abroad.

11. Considering the fact that the Appellant's employment with M/s Nice Import and Export is not in dispute and the long pendency of this appeal as also the substantial period of sentence already undergone by the Appellant, the bail condition no. (iii) of the order dated 30th July, 2018 to the extent that it restrains the Appellant from travelling abroad is relaxed. The said condition is modified to the following effect:

- (i) The Appellant is permitted to travel abroad. The Appellant shall, however, intimate the concerned Investigating Officer before travelling abroad and upon return to India.
- (ii) The Appellant shall provide his mobile number to the concerned Investigating Officer on which he would be available before travelling abroad.

12. The application is disposed of in these terms.

13. A copy of this order be communicated to the concerned Jail Superintendent for necessary information and compliance.

CRL.A. 1048/2016

CRL.A. 1152/2016

CRL.A. 1169/2016

CRL.A. 1028/2016

14. All the parties shall prepare for arguments and file their written submissions by the next date of hearing.



15. List for hearing on 5th May, 2025.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

FEBRUARY 19, 2025

dj/ms