



2025:DHC:4214



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment delivered on: 22.05.2025*+ **BAIL APPLN. 1337/2024****CHRISTIAN JAMES MICHEL**

.....Petitioner

Through: Mr. Aljo K. Joseph, Mr.
Vishnu Shankar, Mr. Sriram P,
Mr. Sheikh Mohsin, Advocates

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Zoheb Hossain, Special
Counsel for ED with Mr.
Vivek Gurnani, Panel Counsel
for ED with Mr. Kartik
Sabharwal, Ms. Pranjal
Tripathi and Mr.
Kanishk Maurya, Advocates.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J****CRL.M.A. 8942/2025(modification in bail condition)**

1. By way of this application, the applicant seeks modification of order dated 04.03.2025 passed by this Court in the captioned bail application, *vide* which the applicant herein was granted regular bail in case arising out of ECIR No. DLZO/15/2014/AD(VM) 7551-7584, dated 03.07.2014, recorded for offence under Sections 3 and 4 of the



Prevention of Money Laundering Act, 2002 [hereafter '*PMLA*'].

2. The concluding paragraph of the order dated 04.03.2025 is set out below:

“....36. In view of the above discussion, considering the period of incarceration of about six years and two months undergone by the applicant, and in view of the fact that he has also been granted bail in the case pertaining to predicate offence by the Hon’ble Supreme Court on the ground that the investigation has not been completed and the trial has not even begun, and considering that there seems to be no possibility of trial in this case concluding too within the remaining duration of the maximum prescribed sentence under Section 4 of PMLA, inasmuch as the same has not even begun as of now, this Court is inclined to grant regular bail to the present applicant, on furnishing a personal bond and surety in the sum of ₹5,00,000/- each and on surrendering the passport before the learned Trial Court, which be not released without permission of this Court, considering that investigation qua the present applicant is still pending. The rest of the conditions be imposed by the learned Special Court, since as per order of the Hon’ble Apex Court, the learned Trial Court has been directed to impose conditions as deemed appropriate while granting bail in predicate offence.

37. Taking into account the directions in order dated 18.02.2025 of the Hon’ble Supreme Court, and lest any order of this Court is in conflict with order of Supreme court and following the judicial discipline, it is directed that the DoE shall be at liberty to request the concerned Court for imposing necessary/ stringent conditions before releasing the applicant on bail, considering the previous conduct of the applicant and the fact that he was extradited to India. It is also clarified that the applicant will extend all co-operation in the investigation (if required) and during the trial, as and when the same would commence....”

3. Evidently, this Court had imposed only the following conditions upon the applicant, subject to which he was granted bail:



(i) *First*, that he shall furnish a personal bond as well as a surety in the sum of ₹5,00,000/- each.

(ii) *Second*, that he shall surrender his passport before the learned Trial Court, which be not released without permission of this Court.

4. The rest of the conditions were to be imposed by the learned Trial Court, after considering the submissions of the Directorate of Enforcement [hereafter '*DoE*'] in this regard.

5. The applicant has now sought modification of both the conditions imposed by this Court.

6. The learned counsel appearing on behalf of the applicant contends that the first condition i.e. requiring the applicant to furnish, alongwith his personal bond – a surety – be modified or waived since the applicant, who is a foreign national, has no person, family or friend in India who would stand surety for him. Thus, given his lack of personal ties to the country, it is impossible for him to provide a surety from India.

7. The learned counsel for the applicant also submits that the second condition of surrendering his passport be also waived off. In this regard, it is contended that the applicant's old passport has expired, and therefore, it is not possible for the applicant to comply with the said condition, since he would need to retain the passport for the renewal process. It is also submitted that the process for obtaining a new passport will take a minimum of four to eight weeks, as per the guidelines available on the official website of HMPO (His Majesty's



Passport Office), and thus, satisfying this condition is not possible as of now.

8. Lastly, it is submitted that the imposition of such onerous and practically impossible conditions would defeat the very purpose of bail and violate the applicant's fundamental right under Article 21 of the Indian Constitution. It is contended that the applicant has already undergone over 6 years and 4 months of incarceration in India, apart from 130 days in custody in the UAE prior to his extradition. The maximum sentence, if convicted, can be seven years, yet the trial has not even commenced. It is argued that in such circumstances, continuing to impose bail conditions, which the applicant cannot fulfil, would serve no legitimate purpose and would rather amount to a denial of liberty.

9. During the course of proceedings before this Court, the concerned Jail Superintendent was directed to produce the applicant through video-conferencing from the concerned Jail. The applicant herein had appeared and submitted that he had preferred the present application, through his counsel, as he has no one in India who can stand as a surety for him.

10. *Conversely*, the learned Special Counsel appearing for the DoE has opposed the present application and contended that insofar as the first condition i.e. furnishing a personal bond and surety in the sum of ₹5,00,000/- is concerned, the applicant herein is a foreign national and has no roots in India and if no local surety is furnished by the



applicant as per the conditions imposed by this Court, then there is no way to ensure his presence in India and he can easily flee the country. Considering the conduct of the applicant in the past, it will be difficult to secure his presence for the purpose of the trial, if the condition of surety is waived off by this Court. It is also stated that this prayer of the applicant is directly contrary to Section 441(1) of Cr.P.C.

11. The learned Special Counsel further submits that as regards the condition of surrendering passport before the learned Trial Court, the applicant can undertake the process of renewal of his passport, and this Court may direct the Embassy that once the passport is renewed, the same be handed over to the investigating officer or be forwarded directly to the learned Trial Court to ensure that the same is not misused. Without prejudice to this contention, it is argued that the applicant herein is duty bound to deposit his present passport even though he claims that the same is expired. On these grounds, it is prayed that the present application be dismissed.

12. This Court has **heard** arguments addressed by the learned counsel appearing for either side, and has perused the material placed on record.

13. This Court shall first address the contention of the applicant – that the condition requiring him to surrender his passport be waived, as his existing passport has expired and he needs to retain it for the renewal process. It is his case that as per the official guidelines of



HMPO, the issuance of a new passport may take between four to eight weeks, and therefore, compliance with the said condition is not presently feasible.

14. In this regard, it shall be relevant to take note of the proceedings which have taken place in this case earlier. The Hon'ble Supreme Court had granted regular bail to the present applicant, *vide* order dated 18.02.2025, in the connected case/RC registered by the CBI. While granting bail, it was directed as under:

“we are inclined to grant bail to the petitioner on such terms and conditions as may be determined by the Trial Court in connection with FIR/RC No.RC-217-2013-A0003 dated 12.03.2013.

The CBI will make appropriate request before the Trial Court for imposing necessary conditions before releasing the petitioner on bail...”

15. Pursuant to the above order, the CBI had moved an application seeking to place on record its request to impose appropriate conditions on the applicant herein for his release on bail.

16. In the meantime, this Court had granted regular bail to the applicant on 04.03.2025 in case arising out of the present ECIR. Except imposing two conditions, i.e. furnishing of personal bond and one surety, and of depositing his passport with the Trial Court, this Court had also directed the DoE to request the Trial Court to impose appropriate conditions on the applicant. After hearing arguments on behalf of the applicant/accused and the DoE, the learned Trial Court was pleased to impose the following conditions:



- “a) The accused shall mark his attendance physically in the office of CBI/IO once every 15 days after his release.
- b) The accused shall provide his mobile phone/E-mail to the IO and the Court immediately after his release, on which he shall always be available.
- c) The accused shall also provide his residential address in Delhi, where he will be residing after his release and shall immediately communicate to the Court and the IO, in case of change of his residential address.
- d) The accused shall not temper with the evidence.
- e) The accused shall not try or contact or influence any of the witnesses of this case.
- f) The accused shall not interact with respect to the present case with media nor shall communicate regarding this case at any forum, during the trial of this case.
- g) The accused shall extend all cooperation in further investigations, if any required and during the trial.
- h) He shall not leave India without the permission of this Court.”

17. Thereafter, *vide* order dated 11.03.2025, the learned Trial Court had imposed the following conditions on the present applicant in the case registered by the CBI:

“ After hearing the Ld. Counsel for the accused and Ld. Sr. Counsel for the CBI at length, the following conditions are laid down for release of the accused on bail:

- a) The accused shall furnish a personal bond in the sum of Rs. 5 Lakhs with one surety of like amount;
- b) The accused shall surrender his passport before this Court, since his passport has already expired, he will immediately apply for the renewal of the passport with the British High Commission, as per rules. Till such time, the passport is made or is under process to be made by the British High Commission, then the British High Commission if it considers fit at its own sole discretion only may issue an emergency certificate to him, if they think it proper and if permissible as



per their Rules.

- c) The accused shall mark his attendance physically in the office of CBI/IO once every 15 days after his release.
- d) The accused shall provide his mobile phone/E-mail to the IO and the Court immediately after his release, on which he shall always be available.
- e) The accused shall also provide his residential address in Delhi, where he will be residing after his release and shall immediately communicate to the Court and the IO, in case of change of his residential address.
- f) The accused shall not temper with the evidence.
- g) The accused shall not try or contact or influence any of the witnesses of this case.
- h) The accused shall not interact with respect to the present case with media nor shall communicate regarding this case at any forum, during the trial of this case.
- i) The accused shall extend all cooperation in further investigations, if any required and during the trial.
- j) He shall not leave India without the permission of this Court.

In view of the judgment of the Hon'ble Supreme Court in ***Criminal Appeal Nos. 2814-2815 of 2024 in case titled as Frank Vitus Vs. Narcotics Control Bureau and Ors. decided on 06.01.2025***, the IO/CBI are directed to immediately inform the concerned Registration Officer appointed under Rule 3 of The Registration of Foreigners Rules, 1992 about the grant of bail to his accused, so that the Registration Officer can bring the fact of grant of bail to the notice of the concerned civil authorities constituted as per Section 3 of the Foreigners Order 1948..."

18. Thereafter, as apparent from the order dated 11.03.2025, the learned counsel for the applicant had submitted before the learned Trial Court that the applicant needs to apply for a fresh British Passport online, for which necessary directions may be given to the jail authorities. The learned Trial Court had directed as under:



“ ...It is further submitted by the accused C.M. James that in terms of the bail conditions laid down by this Court vide order dated 07.03.2025, he needs to apply for a fresh British Passport, for which necessary directions may be given to the Jail Authorities to apply the said passport online at the site of British High Commission/HMPO.

In these circumstances, the Superintendent Jail concerned is directed to allow the accused C.M. James to apply a passport online on the aforesaid site(s), for which they will provide him online facility with internet and in this regard he can take the assistance of his above Counsel Sh. Aljo K. Joseph, who is allowed to visit to the concerned Jail No. 4, Tihar to assist the accused in applying the fresh British Passport on 13.03.2024 from 11:00 AM onwards till the said formalities of applying the passport are completed.

Needless to say that the Superintendent Jail concerned will provide the computer having internet facility to the accused C.M. James and his Counsel Sh. Aljo K. Joseph in this regard. The online payment for applying the online passport be made from the Prison Persons (PP) Account of the accused and in case the said payment is not going from the said account, Ld. Counsel for the accused may make the necessary payment for the making of the fresh British Passport from his account.

At this stage, it is submitted by Ld. Counsel for the accused C.M. James that copy of the previous passport be also provided to him, as the same would be required to apply for fresh passport. In view of submissions made, in the interest of justice, the same be provided to him by the Ahlmad of this Court during the course of the day...”

19. Thus, it is clear from a perusal of the aforesaid orders that the applicant herein has already been granted permission by the learned Trial Court, to apply for a fresh passport.

20. The grievance of the applicant herein is essentially that since bail has been granted to him, subject to him depositing his passport with the learned Trial Court, he cannot be released as he is not in a position to deposit his passport, for the aforesaid reason.



21. Having considered the aforesaid orders passed by the learned Trial Court, and the fact that it would take some time for a fresh passport being issued to the applicant by the HMPO/British High Commission, the bail condition imposed by this Court, in order dated 04.03.2025, ***stands modified, to the extent that applicant may be released on regular bail, without him depositing his passport immediately; however, the FRRO shall ensure that the applicant does not leave the country, and the British High Commission (or the concerned authority issuing the applicant's passport) shall ensure that the applicant's fresh passport, whenever the same is ready, is not handed over to the applicant, but directly deposited with the learned Trial Court under intimation to this Court.***

22. The second argument of the applicant pertains to modifying or waiving the condition of furnishing a surety bond, on the ground that he has no roots in India and there is no one who can stand surety for him. The applicant contends that he has no one in India who can stand as a surety for him and refusal to modify the said condition would be violative of Article 21 of the Constitution; however, the DoE argues that furnishing a surety bond is a mandatory condition as per Section 441 of Cr.P.C.

23. Thus, the issue before this Court is as to whether this Court can dispense with the requirement that the applicant, who is an accused in the present ECIR – must furnish a surety bond – alongwith his personal bond?



24. In this regard, it shall be apposite to take note of the decision of the Coordinate Bench of this Court in ***OBI Ogochukwa Stephen v. State (NCT of Delhi)***: 2024 SCC OnLine Del 7257, wherein a similar issue was decided. The Coordinate Bench was adjudicating two applications seeking modification of bail conditions – pertaining to furnishing of surety bond – filed by the petitioners therein, who were foreign nationals (nationals of Nigeria) and had been granted regular bail in a case registered under the NDPS Act, 1985. The Court had framed following issues for consideration:

“13. To crystalize the issue involved, the queries that the court seeks to answer by way of the present judgment are the following:

13.1 Whether it is *permissible* for a court to *completely dispense with* the requirement that an undertrial/convict must furnish a ‘surety bond’, that is to say a bond signed by a third person, who would be willing to assure the court that the undertrial/convict would remain available for proceedings before the court in a criminal matter ?

13.2 Whether it is *permissible* for a court to *substitute* the requirement of furnishing a surety bond with deposit of cash in lieu of surety, without any person signing a bond of assurance that an undertrial/convict would remain available for proceedings before the court in a criminal matter ?

13.3 If the answer to query (a) and (b) above is in the affirmative, should the waiver of furnishing surety or substitution of surety with a cash deposit, be granted by a court for the asking, or should such waiver or substitution be guarded, keeping in view the fundamentals for grant of bail or suspension of sentence; and furthermore, should the court be even more cautious in granting waiver or substitution to an undertrial/convict who is a ‘foreign national’ and who has *either* entered India illegally *or* has continued to stay in India without a valid visa/residence permit, during the pendency of a criminal trial or a criminal appeal?”



25. The Coordinate Bench, after considering several judicial precedents as well as Section 445 of Cr.P.C., reached the following conclusion:

“27.7. Furthermore, in its recent judgment in the *Frank Vitus* case, the Supreme Court has distinguished its earlier ruling in *Supreme Court Legal Aid Committee* case and has noted that “*bail conditions cannot be fanciful, arbitrary or freakish*” and are primarily aimed at ensuring that the accused does not disrupt the investigation, destroy evidence, commit further offenses, *or fail to appear before the trial court*, ultimately facilitating an efficient resolution of the trial;

27.8. Upon reviewing the Supreme Court's decisions in the *Supreme Court Legal Aid Committee* and *Frank Vitus* cases, it is clear that while *bail conditions must be achievable by the prisoner*, the court must still enforce those requirements that are necessary to *ensure the availability of the prisoner for trial and for compliance with any sentence imposed*, maintaining the integrity of the judicial process; and

27.9. After reviewing the judicial context, **this court believes that the conditions imposed for grant of bail or suspension of sentence must pass muster on the anvil of the following criteria : *First*, the conditions must be *necessary* to ensure that the *accused remains available* for trial. *Second*, the conditions must be *necessary to ensure that the integrity of the judicial process is preserved*. *Third*, the conditions *must not be impossible* for the accused to fulfill. Only then the conditions imposed meet the aforesaid three-fold test, would they be proportionate, fair and correct balance between the right of a prisoner to be able to avail their liberty and for the State to enforce the law.**

28. In light of the foregoing, the queries framed above are answered as follows:

28.1. ***It is permissible*** for a court to completely dispense with the requirement that an undertrial/convict must furnish a surety bond executed by a third person to avail bail or suspension of sentence;

28.2. **Waiver of the requirement of furnishing a surety or substituting surety with a cash deposit *should not be granted***



for the asking; and where granted, such waiver or substitution should be guarded, to ensure that at least the fundamental requirement that an undertrial/convict must remain available to face trial or to undergo the punishment awarded, is not jeopardised. Whether or not the requirement for furnishing surety is to be waived or substituted in a given case, must be tested on the anvil of the three essential tests referred to above; and if after applying such tests, the court is satisfied that the requirement of furnishing surety can be waived or substituted without compromising the judicial process, a court would be well-advised to do so. It must be reiterated however, that the requirement of furnishing surety should be *the norm*, and **dispensing with that requirement, the exception, to be made only where a prisoner suffers from genuine inability to furnish surety;**

28.3. Waiver or substitution of surety should be even more guarded where the prisoner is a foreign national, with the obvious heightened level of flight risk;

28.4. Furthermore, substitution of a surety with a cash deposit is an absolute exception, since the intent and purpose of the court in asking for a surety is simply not served by accepting a cash deposit instead. To say that if an accused/convict flees while on bail, the worst that can be done to a surety is to encash the surety bond is not at all a full answer, since in the opinion of this court, the encashment of a surety bond is the *residual obligation* of the surety, the *primary obligation* being to produce the accused/convict when asked by the court. All judgments which hold that the requirement of a surety can be waived, come from the standpoint that poverty or resourcelessness must not stand in the way of a person's liberty. The *purpose of justice is not served, by merely 'encashing' a prisoner's flight-risk;* and merely accepting cash in lieu of surety would not uphold the integrity of the judicial process; and

28.5. In the opinion of this court, before a court waives the requirement of furnishing a surety or substitutes it with a cash deposit, it is necessary to duly consider the facts and circumstances of a given case, and if necessary to seek appropriate verification, to be satisfied that the prisoner suffers from a genuine inability to furnish surety."

(Emphasis added)



26. Therefore, the Coordinate Bench has held that while the requirement of furnishing a surety bond by a third person is the norm, the same may be waived or substituted with a cash deposit in exceptional cases, particularly where the accused or convict is able to demonstrate a genuine and verifiable inability to furnish surety. However, such waiver or substitution must not be granted mechanically or for mere convenience, but only after careful scrutiny of the facts and circumstances of each case, including verification where necessary. Importantly, the Court emphasized that the substitution of surety with a cash deposit does not, by itself, satisfy the underlying purpose of ensuring the accused's continued presence during trial, unless accompanied by additional conditions that effectively mitigate the flight risk and uphold the integrity of the judicial process.

27. In the present case, the applicant has remained in custody in India for a period of about 6 years and 5 months. As already noted by this Court while granting bail, even if the applicant was to be convicted for the alleged offence, the maximum punishment prescribed is seven years of imprisonment. Thus, the applicant has already undergone a substantial portion of the maximum sentence that could be imposed, without the trial having even commenced. The continued curtailment of his liberty, particularly through the condition such as the furnishing of a surety bond – which he is unable to furnish due to his foreign nationality and lack of social ties in India



– would not serve the ends of justice. The principle that bail conditions must not be excessive or punitive in nature applies with greater force in cases where the undertrial has already spent a period in custody nearly equivalent to the potential maximum sentence. In these circumstances, the imposition of rigid conditions, without due regard to the applicant's peculiar situation, would amount to an unjust deprivation of liberty.

28. In the present case, the applicant is a British national. It is his case that he has no friends or relatives in India who can stand as a surety for him. To appreciate this submission, it is necessary to take note of some crucial facts. It is not in dispute that the applicant was apprehended in Dubai, UAE, where he remained in custody for approximately 130 days. Thereafter, he was extradited to India on 04.12.2018 and, following 14 days of custodial interrogation, was arrested by the DoE in the present case on 22.12.2018. Since then, the applicant has remained continuously incarcerated and has not stepped out of prison even for a single day. It is the DoE's own case that the applicant had not visited India at all after February 2013 and that he has no roots in the country. In such circumstances, the applicant's assertion that he has no friend or relative in India who could stand as a surety appears to be logical and acceptable.

29. However, one must also not lose sight of the fact that the condition of furnishing a surety is not merely a procedural formality, but serves a critical function in securing the presence of the accused



during the course of trial. Its ramifications extend beyond the mere possibility of undergoing the sentence upon conviction. The presence of the accused is essential for ensuring the effective conduct of trial proceedings and if an accused was to abscond and remain unavailable, the same may cause prejudice to the trial. Therefore, while genuine inability to furnish surety can be considered by a court, the court must also ensure that any relaxation in this regard does not compromise the integrity or continuity of the trial process.

30. Considering the overall facts and circumstances of the case, including the applicant's prolonged incarceration, his status as a foreign national with no roots in India, and his inability to arrange for a surety locally, this Court is inclined to **modify** the bail condition imposed earlier. Instead of the requirement to furnish a personal bond and surety bond of ₹5,00,000/- each – the applicant shall now furnish a personal bond of ₹5,00,000/- along with a cash surety in the enhanced sum of ₹10,00,000/-.

31. Further, to ensure adequate safeguards against any risk of absconding while also balancing the applicant's right to seek enlargement on bail, this Court also directs that the condition that the applicant shall deposit his passport with the learned Trial Court (as modified above) which shall not be released without the permission of the Court, shall be strictly adhered to. The applicant shall strictly adhere to the conditions imposed by the learned Trial Court, including marking his attendance physically in the office of



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DoE/concerned I.O. once every 15 days after his release. The applicant shall also furnish the details of his residential address where he intends to reside post-release. *Before being released from the jail, the said address will be verified by the learned Trial Court through DoE.* Additionally, he shall promptly inform both the learned Trial Court and the concerned I.O. in case of any change in such address. These conditions shall be strictly adhered to as a measure to ensure the applicant's continued presence during the course of trial.

32. With above directions, the present application is disposed of.

33. A copy of this judgment be forwarded to the learned Trial Court for necessary information.

34. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 22, 2025/zp